Tab 2	**SB 1940** by **Galvano (CO-INTRODUCERS) Benacquisto**; (Similar to H 07103) Public Records and Public Meetings/School Safety

Tab 3	**SPB 7028** by **RC**; Ratification of Department of Elderly Affairs Rules

Tab 4	**SPB 7030** by **RC**; Ratification of Agency for Health Care Administration Rules

Tab 5	**SB 1340** by **Benacquisto**; (Identical to H 07021) Florida Statutes

Tab 6	**SB 1342** by **Benacquisto**; (Identical to 1ST ENG/H 07023) Florida Statutes

951290	A	S	RCS	RC, Benacquisto	Delete L.3500 - 3520.	03/01 01:00 PM

Tab 7	**SB 1344** by **Benacquisto**; (Identical to H 07025) Florida Statutes

Tab 8	**SB 1346** by **Benacquisto**; (Identical to H 07027) Florida Statutes

Tab 9	**SB 7008** by **CU**; (Similar to H 07095) OGSR/Local Government Electric Utility

417470	A	S	RS	RC, Lee	Delete L.28:	03/01 02:14 PM
263700	SD	S	RCS	RC, Lee	Delete everything after	03/01 02:14 PM

Tab 10	**SB 7010** by **BI**; (Compare to H 07075) OGSR/Payment Instrument Transaction Information/Office of Financial Regulation

Tab 11	**SB 7012** by **BI**; (Similar to H 07097) OGSR/Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse

Tab 12	**SB 7018** by **EE**; (Identical to H 07077) OGSR/Agency Investigations

Tab 13	**SB 1500** by **Baxley**; (Identical to H 06033) Direct-support Organization of the Florida Commission on Community Service

Tab 14	**HB 7045** by **RPC, Nunez**; The Legislature/Date for Convening 2020 Regular Session

Tab 15	**SB 1862** by **Broxson**; Physician Fee Sharing

204760	D	S		RCS	RC, Broxson	Delete everything after	03/01 02:48 PM
~~176038~~	AA	S	L	WD	RC, Brandes	Delete L.91:	03/01 02:48 PM

Tab 16	**CS/SB 28** by **JU, Montford (CO-INTRODUCERS) Stewart**; (Identical to CS/H 06527) Relief of Christopher Cannon by the City of Tallahassee

Tab 17	**CS/SB 260** by **ED, Book (CO-INTRODUCERS) Flores, Hukill, Campbell, Perry**; (Similar to CS/1ST ENG/H 00063) Students with Disabilities in Public Schools

Tab 18	**SB 266** by **Passidomo**; (Identical to H 00617) Covenants and Restrictions

313106	A	S	RCS	RC, Passidomo	Delete L.131:	03/01 02:59 PM

Tab 19	**CS/CS/CS/SB 296** by **RI, CM, RI, Brandes**; (Compare to CS/H 00669) Beverage Law

Tab 20	**SB 358** by **Broxson (CO-INTRODUCERS) Book, Baxley, Campbell**; (Compare to CS/1ST ENG/H 00171) Transportation Facility Designations/Senator Greg Evers Memorial Highway

Tab 21	**CS/CS/SB 376** by **AP, BI, Book (CO-INTRODUCERS) Young, Taddeo, Montford, Stewart, Rader, Campbell, Torres**; (Similar to CS/CS/CS/H 00227) Workers' Compensation Benefits for First Responders

Tab 22	**CS/SB 520** by **HP, Young (CO-INTRODUCERS) Campbell**; (Similar to 1ST ENG/H 07059) Optometry

373208	A	S	RCS	RC, Young	Delete L.65 - 83:	03/01 12:45 PM

Tab 23	**CS/CS/SB 536** by **CA, JU, Passidomo (CO-INTRODUCERS) Campbell**; (Identical to CS/CS/H 00875) Limitations of Actions Other Than for the Recovery of Real Property

Tab 24	**SB 582** by **Rader**; (Identical to H 06009) Write-in Candidate Qualifying

Tab 25	**CS/SB 622** by **AP, Grimsley (CO-INTRODUCERS) Bean**; (Similar to CS/CS/H 00597) Health Care Facility Regulation

~~561258~~	A	S	WD	RC, Flores	btw L.3786 - 3787:	03/01 12:50 PM
111816	A	S	RCS	RC, Grimsley	btw L.3786 - 3787:	03/01 12:50 PM
138360	A	S L	UNFAV	RC, Lee	btw L.3703 - 3704:	03/01 12:50 PM

Tab 26	**SB 640** by **Rouson**; (Similar to H 00747) Consumer Finance Loans

Tab 27	**CS/SB 662** by **CM, Stargel (CO-INTRODUCERS) Taddeo**; (Similar to CS/CS/CS/1ST ENG/H 00681) Protection for Vulnerable Investors

Tab 28	**SB 720** by **Young (CO-INTRODUCERS) Campbell**; (Identical to H 00449) Children's Initiatives

Tab 29	**SB 756** by **Grimsley**; (Similar to CS/H 00533) Unfair Insurance Trade Practices

339504	A	S	RCS	RC, Grimsley	Delete L.37 - 38:	03/01 03:56 PM

Tab 30	**CS/CS/SB 762** by **CM, BI, Mayfield**; (Similar to CS/CS/1ST ENG/H 00483) Permissible Insurance Acts

Tab 31	**CS/SB 776** by **CJ, Grimsley**; (Identical to 1ST ENG/H 00491) Theft

Tab 32	**CS/SJR 792** by **EE, Lee**; (Identical to CS/H 01421) Chief Financial Officer

Tab 33	**SB 804** by **Passidomo**; (Similar to CS/1ST ENG/H 00631) Possession of Real Property

840282	A	S	RCS	RC, Passidomo	Delete L.343 - 348:	03/01 03:20 PM

Tab 34	**SB 806** by **Baxley**; (Similar to CS/H 00703) Water Management District Surplus Lands

936338	A	S	RCS	RC, Baxley	Delete L.21:	03/01 04:07 PM

Tab 35	**CS/SB 808** by **EP, Baxley**; (Similar to CS/CS/CS/H 00705) Public Records/Surplus Lands

Tab 36	**CS/SB 820** by **GO, Powell**; (Similar to H 00637) Firesafety Inspectors

Tab 37	**CS/CS/SB 822** by **CM, RI, Hutson**; (Similar to CS/H 00775) Beverage Law

646760 A S RCS RC, Hutson Delete L.201 - 220: 03/01 04:12 PM

Tab 38	**CS/CS/SB 858** by **CM, CA, Steube (CO-INTRODUCERS) Mayfield, Taddeo**; (Identical to H 01013) Daylight Saving Time

Tab 39	**SB 870** by **Bracy**; Capital Felonies

Tab 40	**CS/SB 918** by **JU, Grimsley**; (Similar to CS/CS/H 01361) Clerks of the Court

923156 A S L RCS RC, Grimsley Delete L.291: 03/01 04:18 PM

Tab 41	**CS/CS/SB 920** by **AP, CM, Bradley (CO-INTRODUCERS) Braynon**; (Similar to CS/CS/H 00857) Consumer Finance

951026 A S RCS RC, Bradley Delete L.67 - 76. 03/01 12:56 PM

Tab 42	**SB 922** by **Bean (CO-INTRODUCERS) Brandes**; (Compare to CS/H 01265) Sale of Alcoholic Beverages

Tab 43	**CS/SB 1042** by **GO, Brandes (CO-INTRODUCERS) Passidomo**; (Similar to CS/CS/H 00771) Notaries Public

Tab 44	**CS/SB 1044** by **CF, Book (CO-INTRODUCERS) Campbell, Steube, Perry, Flores**; (Similar to CS/H 00167) Victims of Human Trafficking

654858 D S RC, Book Delete everything after 02/23 02:04 PM

Tab 45	**SB 1094** by **Simmons**; (Identical to H 00523) Trespass on Airport Property

Tab 46	**CS/CS/SB 1134** by **AP, HP, Rouson (CO-INTRODUCERS) Bradley, Young**; (Similar to 1ST ENG/H 06049) Department of Health Responsibilities Related to the Medical Use of Marijuana

439506 A S L RCS RC, Rouson Delete L.20 - 31. 03/01 04:32 PM

Tab 47	**CS/CS/SB 1220** by **JU, CJ, Brandes**; (Compare to 1ST ENG/H 00733) Detention Facilities

Tab 48	**CS/SB 1226** by **CJ, Book (CO-INTRODUCERS) Hutson**; (Similar to CS/H 01301) Sentencing for Sexual Offenders and Sexual Predators

Tab 49	**CS/CS/SB 1244** by **AP, CA, Lee**; (Similar to CS/CS/2ND ENG/H 01151) Growth Management

Tab 50	**CS/CS/SB 1262** by **CA, EE, Hutson**; (Similar to 1ST ENG/H 07037) Election Dates for Municipal Office

Tab 51	**SB 1302** by **Brandes**; (Similar to H 00953) Consumer Report Security Freezes

Tab 52	**CS/SB 1364** by **HP, Rader**; (Similar to CS/H 01055) Public Records/Substance Abuse Service Providers

Tab 53	**SB 1426** by **Lee**; (Similar to H 00007) Local Government Fiscal Transparency

239684 A S RCS RC, Lee Delete L.46 - 494: 03/01 04:53 PM

Tab 54	**CS/SB 1460** by **CJ, Montford**; (Identical to CS/H 01177) Joint Task Force on State Agency Law Enforcement Communications

Tab 55	**SB 1562** by **Passidomo**; (Similar to CS/CS/CS/H 01059) Elder Abuse

Tab 56	**CS/CS/SB 1876** by **AP, HP, Young**; (Similar to CS/CS/H 01165) Trauma Services

517828	A	S	RCS	RC, Young	Delete L.206 - 208:	03/01 01:09 PM

Tab 57	**CS/CS/SB 1880** by **GO, BI, Broxson (CO-INTRODUCERS) Mayfield**; (Similar to CS/CS/H 01127) Public Records and Public Meetings/Security of Data and Information Technology in Citizens Property Insurance Corporation

354542	A	S	RCS	RC, Broxson	Delete L.202 - 265:	03/01 04:58 PM

Tab 58	**CS/SB 1348** by **JU, Perry**; (Compare to CS/CS/1ST ENG/H 00883) Community Development Districts

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, March 1, 2018
TIME: 9:00 a.m.—12:00 noon
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.		
	Florida Public Service Commission		
1	Clark, Gary F. (Chipley)	01/01/2019	Recommend Confirm Yeas 11 Nays 0
	Graham, Art (Jacksonville Beach)	01/01/2022	Recommend Confirm Yeas 11 Nays 0
	Fay, Andrew (Tallahassee)	01/01/2022	Recommend Confirm Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
2	**SB 1940** Galvano (Similar H 7103, Linked CS/S 7026)	Public Records and Public Meetings/School Safety; Creating an exemption from public records requirements for the identity of a reporting party held by a specified entity; providing an exemption from public meetings requirements for portions of meetings of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed; providing an exemption from public records requirements for information that would identify whether a particular individual has been appointed as a safe-school officer; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
	Consideration of proposed bill:		
3	**SPB 7028**	Ratification of Department of Elderly Affairs Rules; Ratifying a specified rule relating to emergency environmental control for assisted living facilities for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs, etc.	Submitted and Reported Favorably as Committee Bill Yeas 13 Nays 0
	Consideration of proposed bill:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SPB 7030**	Ratification of Agency for Health Care Administration Rules; Ratifying a specified rule relating to emergency environmental control for nursing homes for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact on or increase in regulatory costs, etc.	Submitted and Reported Favorably as Committee Bill Yeas 13 Nays 0
5	**SB 1340** Benacquisto (Identical H 7021)	Florida Statutes; Adopting the Florida Statutes 2018 and designating the portions thereof that are to constitute the official law of the state, etc. RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
6	**SB 1342** Benacquisto (Identical H 7023)	Florida Statutes; Deleting provisions that have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded, etc. RC 03/01/2018 Fav/CS	Fav/CS Yeas 13 Nays 0
7	**SB 1344** Benacquisto (Identical H 7025)	Florida Statutes; Deleting provisions which have become inoperative by noncurrent repeal or expiration and, pursuant to s. 11.242(5)(b) and (i), F.S., may be omitted from the 2018 Florida Statutes only through a reviser's bill duly enacted by the Legislature, etc. RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
8	**SB 1346** Benacquisto (Identical H 7027)	Florida Statutes ; Amending provisions to conform to the directive of the Legislature in section 9 of chapter 2012-116, Laws of Florida, codified as section 11.242(5)(j), Florida Statutes, to prepare a reviser's bill to omit all statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority, etc. RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
9	**SB 7008** Communications, Energy, and Public Utilities (Similar H 7095)	OGSR/Local Government Electric Utility; Amending provisions relating to an exemption from public records requirements for proprietary confidential business information held by a local government electric utility; removing the scheduled repeal of the exemption, etc. GO 01/10/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 7010** Banking and Insurance (Compare H 7075)	OGSR/Payment Instrument Transaction Information/Office of Financial Regulation; Amending provisions relating to an exemption from public records requirements for certain payment instrument transaction information held by the Office of Financial Regulation; removing the scheduled repeal of the exemption, etc. GO 01/30/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
11	**SB 7012** Banking and Insurance (Similar H 7097)	OGSR/Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse; Amending provisions relating to an exemption from public records requirements for certain proprietary business information provided by insurers to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse; removing the scheduled repeal of the exemption, etc. GO 01/30/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
12	**SB 7018** Ethics and Elections (Identical H 7077)	OGSR/Agency Investigations; Amending provisions which provides an exemption from public records requirements for complaints of misconduct filed with an agency against an agency employee, and all information obtained pursuant to an agency investigation of such complaints; removing the scheduled repeal of the exemption, etc. GO 02/06/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
13	**SB 1500** Baxley (Identical H 6033, S 1110)	Direct-support Organization of the Florida Commission on Community Service; Removing the scheduled repeal of provisions governing the commission's direct-support organization, etc. GO 01/30/2018 Favorable AP 02/15/2018 Not Considered AP 02/22/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
14	**HB 7045** Rules and Policy Committee / Nunez	The Legislature/Date for Convening 2020 Regular Session; Fixes date for convening 2020 Regular Session of the Legislature. RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**SB 1862** Broxson	Physician Fee Sharing; Revising an exemption relating to grounds for disciplinary action by the Boards of Medicine and Osteopathic Medicine and the Department of Health to authorize specified forms of payment to a physician or osteopathic physician, respectively, etc. HP 01/30/2018 Favorable JU 02/06/2018 Favorable RC 03/01/2018 Fav/CS	Fav/CS Yeas 13 Nays 0
16	**CS/SB 28** Judiciary / Montford (Identical CS/H 6527)	Relief of Christopher Cannon by the City of Tallahassee; Providing for the relief of Christopher Cannon; providing an appropriation to compensate him for injuries and damages sustained as a result of the alleged negligence of the City of Tallahassee, etc. SM JU 02/13/2018 Fav/CS GO 02/20/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
17	**CS/SB 260** Education / Book (Similar CS/H 63)	Students with Disabilities in Public Schools; Amending provisions relating to the seclusion and restraint of students with disabilities; revising school district policies and procedures relating to restraint; requiring continuing education and inservice training for teaching students with emotional or behavioral disabilities, etc. ED 02/06/2018 Fav/CS HP 02/13/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
18	**SB 266** Passidomo (Identical H 617)	Covenants and Restrictions; Designating the "Marketable Record Title Act"; revising the notice filing requirements for a person claiming an interest in land and other rights; exempting a specified summary notice and amendment from certain notice content requirements; authorizing the parcel owners of a community not subject to a homeowners' association to use specified procedures to revive certain covenants or restrictions, subject to certain exceptions and requirements, etc. CA 12/05/2017 Favorable JU 01/10/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	**CS/CS/CS/SB 296** Regulated Industries / Commerce and Tourism / Regulated Industries / Brandes (Compare CS/H 669)	Beverage Law; Repealing provisions relating to limitations on the size of individual wine containers; repealing provisions relating to limitations on the size of individual cider containers; revising provisions authorizing a restaurant to allow a patron to remove bottles of wine from a restaurant for off-premises consumption; providing limitations on retail sales by a craft distillery to consumers, etc. RI 12/07/2017 Fav/CS CM 01/09/2018 Fav/CS RI 01/23/2018 Temporarily Postponed RI 01/24/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 11 Nays 1
20	**SB 358** Broxson (Compare CS/H 171)	Transportation Facility Designations/Senator Greg Evers Memorial Highway; Providing honorary designation of a certain transportation facility in specified counties, etc. TR 10/24/2017 Favorable RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
21	**CS/CS/SB 376** Appropriations / Banking and Insurance / Book (Similar CS/CS/CS/H 227, Compare H 629, S 126)	Workers' Compensation Benefits for First Responders; Providing that, under certain circumstances, posttraumatic stress disorder suffered by a first responder is an occupational disease compensable by workers' compensation benefits; specifying that benefits do not require a physical injury and are not subject to certain apportionment or limitations, etc. BI 12/05/2017 Fav/CS CM 01/16/2018 Favorable AP 02/27/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
22	**CS/SB 520** Health Policy / Young (Similar H 7059)	Optometry; Requiring an applicant for licensure as an optometrist to submit proof to the Department of Health that she or he meets certain requirements; providing that an applicant must pass the licensure examination within a specified timeframe as a condition of licensure as an optometrist and certification to administer and prescribe ocular pharmaceutical agents, etc. HP 12/05/2017 Fav/CS AP 01/24/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
23	**CS/CS/SB 536** Community Affairs / Judiciary / Passidomo (Identical CS/CS/H 875)	Limitations of Actions Other Than for the Recovery of Real Property; Authorizing the commencement, within a specified timeframe, of counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction or occurrence set out or attempted to be set out in a pleading for which such claims relate, etc. JU 01/25/2018 Fav/CS CA 02/06/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 11 Nays 0
24	**SB 582** Rader (Identical H 6009)	Write-in Candidate Qualifying; Repealing provisions 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, etc. EE 02/13/2018 Favorable CA 02/20/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
25	**CS/SB 622** Appropriations / Grimsley (Similar CS/CS/H 597, Compare H 27, H 119, H 213, H 283, CS/H 7085, S 144, S 408, S 1088, S 1492)	Health Care Facility Regulation; Providing that a designated facility owned or operated by a public health trust and located within the boundaries of a municipality is under the exclusive jurisdiction of the county creating the public health trust; eliminating state licensure requirements for clinical laboratories; requiring a birth center to be federally certified and meet specified requirements to perform certain laboratory tests, etc. HP 12/05/2017 Favorable AHS 01/10/2018 Fav/CS AP 01/24/2018 Not Considered AP 01/31/2018 Fav/CS AP 02/01/2018 RC 03/01/2018 Fav/CS	Fav/CS Yeas 13 Nays 0
26	**SB 640** Rouson (Similar H 747, Compare CS/H 239, CS/S 386)	Consumer Finance Loans; Establishing the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; prohibiting a person from certain actions relating to program loans unless the person obtains a pilot program license from the office; providing that only one pilot program license is required for a person to make program loans, etc. BI 01/16/2018 Favorable CM 01/29/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 9 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	**CS/SB 662** Commerce and Tourism / Stargel (Similar CS/CS/CS/H 681)	Protection for Vulnerable Investors; Requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; authorizing dealers, investment advisers, and associated persons to delay certain transactions or disbursements if such persons reasonably believe certain exploitation of a specified adult has occurred, is occurring, has been attempted, or will be attempted, etc. BI 02/06/2018 Favorable CM 02/20/2018 Fav/CS RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
28	**SB 720** Young (Identical H 449)	Children's Initiatives; Creating the Tampa Sulphur Springs Neighborhood of Promise Success Zone within the City of Tampa in Hillsborough County and the Overtown Children and Youth Coalition within the City of Miami in Miami-Dade County; providing for the projects to be managed by not-for-profit corporations that are not subject to control, supervision, or direction by any department of the state, etc. CF 01/09/2018 Favorable CA 01/23/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
29	**SB 756** Grimsley (Similar CS/H 533)	Unfair Insurance Trade Practices; Authorizing insurers to refuse to insure or refuse to continue to insure an applicant or insured for failing to purchase certain noninsurance motor vehicle services, etc. BI 01/16/2018 Favorable CM 01/29/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 0
30	**CS/CS/SB 762** Commerce and Tourism / Banking and Insurance / Mayfield (Similar CS/CS/H 483)	Permissible Insurance Acts; Revising the types, value, and frequency of advertising and promotional gifts that licensed insurers or their agents may give to insureds, prospective insureds, or others; authorizing such insurers and agents to make specified charitable contributions on behalf of insureds or prospective insureds, etc. BI 01/23/2018 Fav/CS CM 02/06/2018 Fav/CS RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
31	**CS/SB 776** Criminal Justice / Grimsley (Similar H 491)	Theft; Increasing the fine for the theft of a commercially farmed animal or a bee colony of a registered beekeeper, etc. CJ 01/29/2018 Fav/CS AG 02/15/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 11 Nays 2
32	**CS/SJR 792** Ethics and Elections / Lee (Identical CS/HJR 1421)	Chief Financial Officer; Proposing an amendment to the State Constitution to revise the duties and responsibilities of the Chief Financial Officer, etc. EE 01/30/2018 Fav/CS JU 02/06/2018 Favorable AP 02/15/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
33	**SB 804** Passidomo (Similar CS/H 631)	Possession of Real Property; Authorizing a person with a superior right to possession of real property to recover possession by ejectment; providing that a person entitled to possession of real property has a cause of action to regain possession from another person who obtained possession of real property by forcible entry, unlawful entry, or unlawful detainer; requiring that the court determine the right of possession and damages, etc. JU 01/10/2018 Favorable CA 02/20/2018 Favorable RC 03/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 1
34	**SB 806** Baxley (Similar CS/H 703, Compare CS/CS/CS/H 705, Linked CS/S 808)	Water Management District Surplus Lands; Revising the circumstances when a water management district must publish its intention to sell surplus lands; revising the process for selling certain lower valued surplus lands, etc. EP 01/16/2018 Favorable GO 01/23/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 1
35	**CS/SB 808** Environmental Preservation and Conservation / Baxley (Similar CS/CS/CS/H 705, Compare CS/H 703, Linked S 806)	Public Records/Surplus Lands; Providing an exemption for valuations, certain records, and sales offers for sales related to surplus lands; authorizing disclosure of such records under certain circumstances; providing a statement of public necessity, etc. EP 01/16/2018 Temporarily Postponed EP 02/05/2018 Fav/CS GO 02/13/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 11 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
36	**CS/SB 820** Governmental Oversight and Accountability / Powell (Similar H 637)	Firesafety Inspectors; Prohibiting certain actions to influence a firesafety inspector to violate the Florida Fire Prevention Code, other rules of the State Fire Marshal, or ch. 633, F.S., etc. GO 01/23/2018 Fav/CS CJ 02/06/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
37	**CS/CS/SB 822** Commerce and Tourism / Regulated Industries / Hutson (Similar CS/H 775)	Beverage Law; Prohibiting certain entities and persons from directly or indirectly assisting any vendor in certain ways; authorizing the Division of Alcoholic Beverages and Tobacco to impose administrative sanctions for a violation of certain limitations established in the Beverage Law; providing exemptions relating to tied house evil for certain sales and purchases of merchandise; prohibiting a manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors, etc. RI 01/10/2018 Fav/CS CM 02/06/2018 Fav/CS RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 0
38	**CS/CS/SB 858** Commerce and Tourism / Community Affairs / Steube (Identical H 1013)	Daylight Saving Time; Creating the "Sunshine Protection Act"; providing legislative intent regarding the State of Florida and its political subdivisions observing daylight saving time year-round under certain conditions, etc. CA 01/23/2018 Fav/CS CM 02/12/2018 Fav/CS RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 11 Nays 0
39	**SB 870** Bracy	Capital Felonies; Providing legislative findings and intent regarding the retroactive application of Hurst v. State, No. SC12-1947 (Fla., October 14, 2016), etc. CJ 01/09/2018 Not Considered CJ 02/06/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 11 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
40	**CS/SB 918** Judiciary / Grimsley (Similar CS/CS/H 1361, Compare H 1195)	Clerks of the Court; Repealing provisions relating to the disposition of certain money paid into a court which is unclaimed; revising the time periods within which certain persons must file claims for certain unclaimed surplus funds; specifying procedures for the clerk to use in handling surpluses that remain unclaimed; revising service charges that a clerk may receive and deduct from surplus amounts, etc. TR 01/25/2018 Favorable JU 02/13/2018 Fav/CS RC 03/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 0
41	**CS/CS/SB 920** Appropriations / Commerce and Tourism / Bradley (Similar CS/CS/H 857)	Consumer Finance ; Revising a requirement for an assignee of the right to bill and collect a consumer debt to give the debtor written notice of the assignment; specifying the maximum face amount of checks that may be taken for deferred presentment installment transactions, exclusive of fees; specifying the maximum rate and frequency of fees that deferred presentment providers or their affiliates may charge on deferred presentment installment transactions, etc. BI 01/16/2018 Favorable CM 01/29/2018 Fav/CS AP 02/15/2018 Fav/CS RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 11 Nays 2
42	**SB 922** Bean (Compare CS/H 1265)	Sale of Alcoholic Beverages; Providing an exception to the miniature bottle requirement for operators of intrastate railroads and sleeper cars, etc. RI 01/23/2018 Favorable RI 01/24/2018 TR 02/13/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
43	**CS/SB 1042** Governmental Oversight and Accountability / Brandes (Similar CS/CS/H 771)	Notaries Public; Revising provisions relating to use of the office of notary public; requiring electronic signatures to include access protection; revising limitations on notary fees to conform to changes made by the act; prescribing online notarization procedures, etc. JU 01/30/2018 Favorable GO 02/13/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
44	**CS/SB 1044** Children, Families, and Elder Affairs / Book (Similar CS/H 167, S 338, Compare CS/H 169, S 340, S 342, Linked CS/S 1046)	Victims of Human Trafficking; Citing this act as the "Civil Cause of Action for Victims of Human Trafficking Act"; providing a civil cause of action for victims of human trafficking against a trafficker or facilitator; providing that such actions are not subject to a statute of limitations; providing an affirmative defense for owners or operators of public lodging establishments under certain circumstances, etc. CF 02/12/2018 Fav/CS RC 02/26/2018 Not Considered RC 03/01/2018 Temporarily Postponed	Temporarily Postponed
45	**SB 1094** Simmons (Identical H 523)	Trespass on Airport Property; Providing enhanced criminal penalties for a trespass upon the operational area of an airport with specified intent if specified signage is posted, etc. CJ 02/12/2018 Favorable CA 02/20/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
46	**CS/CS/SB 1134** Appropriations / Health Policy / Rouson (Similar H 6049)	Department of Health Responsibilities Related to the Medical Use of Marijuana; Requiring the department to adopt rules to allow qualified patients to change qualified physicians; revising a requirement that the department license one applicant who is a member of a certain class to exclude a requirement that the applicant also be a member of the Black Farmers and Agriculturalist Association-Florida Chapter, etc. HP 01/16/2018 Fav/CS AP 01/24/2018 Temporarily Postponed AP 01/31/2018 Fav/CS AP 02/01/2018 RC 03/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 0
47	**CS/CS/SB 1220** Judiciary / Criminal Justice / Brandes (Compare H 733, H 929, CS/S 1886)	Detention Facilities; Requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; providing immunity from civil liability to law enforcement agencies that enforce certain rules; prohibiting introduction into or possession of, on the grounds of any county detention facility, any cellular telephone or other portable communication device, etc. CJ 01/16/2018 Fav/CS JU 02/20/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
48	**CS/SB 1226** Criminal Justice / Book (Similar CS/H 1301)	Sentencing for Sexual Offenders and Sexual Predators; Redefining the terms "permanent residence," "temporary residence," and "transient residence" by decreasing the amount of days a person abides, lodges, or resides in a certain place to qualify for that type of residency category; revising existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations if the court does not impose a prison sentence, etc. CJ 02/06/2018 Fav/CS AP 02/22/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
49	**CS/CS/SB 1244** Appropriations / Community Affairs / Lee (Similar CS/CS/H 1151, Compare CS/CS/H 883, S 84)	Growth Management; Adding a minimum population standard as a criteria that must be met before qualified electors of an independent special district commence a certain municipal conversion proceeding; revising the statewide guidelines and standards for developments of regional impact; specifying that amendments to a development order for an approved development may not amend to an earlier date the date before when a development would be subject to downzoning, unit density reduction, or intensity reduction, except under certain conditions; requiring local governments to file a notice of abandonment under certain conditions, etc. CA 01/23/2018 Fav/CS ATD 02/08/2018 Fav/CS AP 02/27/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
50	**CS/CS/SB 1262** Community Affairs / Ethics and Elections / Hutson (Similar H 7037)	Election Dates for Municipal Office; Requiring the governing body of a municipality to determine the dates on which initial and runoff elections for municipal office are held and providing options therefor; requiring counties that have established certain dates for the election of municipal officers through a special act to conduct municipal elections on specified dates; requiring municipal recall elections to be held concurrently with municipal elections under certain conditions, etc. EE 02/06/2018 Fav/CS CA 02/20/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 7 Nays 6

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
51	**SB 1302** Brandes (Similar H 953)	Consumer Report Security Freezes; Deleting the authorization for consumer reporting agencies to charge specified fees to consumers electing to place, remove, or temporarily lift a security freeze on their consumer reports; deleting the authorization for consumer reporting agencies to charge a specified fee to representatives of protected consumers electing to place a security freeze on such consumer's consumer reports, etc. BI 01/30/2018 Favorable CM 02/12/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Favorable	Favorable Yeas 13 Nays 0
52	**CS/SB 1364** Health Policy / Rader (Similar CS/H 1055)	Public Records/Substance Abuse Service Providers ; Providing an exemption from public records requirements to certain identifying and location information of current or former directors, managers, supervisors, nurses, and clinical employees of substance abuse service providers that are licensed under part II of ch. 397, F.S., and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. HP 02/13/2018 Fav/CS GO 02/20/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
53	**SB 1426** Lee (Similar H 7)	Local Government Fiscal Transparency; Expanding the scope of the Legislative Auditing Committee review to include compliance with local government fiscal transparency requirements; creating the "Local Government Fiscal Transparency Act"; requiring local governments to post certain voting record information on their websites, etc. CA 01/30/2018 Favorable AP 02/22/2018 Favorable RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 7 Nays 5
54	**CS/SB 1460** Criminal Justice / Montford (Identical CS/H 1177)	Joint Task Force on State Agency Law Enforcement Communications; Providing that a representative of the Florida Sheriffs Association shall be an appointed member of the Joint Task Force on State Agency Law Enforcement Communications; providing that the sheriff's office that employs the representative must pay the per diem and travel expenses incurred by the representative, etc. CJ 01/22/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
55	**SB 1562** Passidomo (Similar CS/CS/CS/H 1059)	Elder Abuse; Creating a cause of action for an injunction for protection against the exploitation of a vulnerable adult; providing a list of persons who may seek an injunction; requiring that a clerk of the circuit court assist the petitioner in preparing an affidavit or direct the petitioner to a certain office, under certain circumstances, etc. CF 02/06/2018 Favorable AP 02/22/2018 Favorable RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0
56	**CS/CS/SB 1876** Appropriations / Health Policy / Young (Similar CS/CS/H 1165)	Trauma Services; Requiring that moneys received from specified penalties be allocated to certain trauma centers by a calculation that uses the Agency for Health Care Administration's hospital discharge data; revising the trauma service areas and provisions relating to the number and location of trauma centers; requiring the Department of Health to periodically prepare an analysis of the state trauma system using the agency's hospital discharge data and specified population data; requiring trauma centers to participate in the National Trauma Data Bank, etc. HP 01/23/2018 Fav/CS AHS 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 9 Nays 4
57	**CS/CS/SB 1880** Governmental Oversight and Accountability / Banking and Insurance / Broxson (Similar CS/CS/H 1127)	Public Records and Public Meetings/Security of Data and Information Technology in Citizens Property Insurance Corporation; Providing an exemption from public records requirements for certain records held by the Citizens Property Insurance Corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; providing for future legislative review and repeal; providing a statement of public necessity, etc. BI 01/30/2018 Fav/CS GO 02/13/2018 Fav/CS RC 02/26/2018 Not Considered RC 03/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
58	**CS/SB 1348** Judiciary / Perry (Compare CS/CS/H 883)	Community Development Districts; Authorizing sufficiently contiguous lands located within the county or municipality which a petitioner anticipates adding to the boundaries of a new community development district to also be identified in a petition to establish the new district under certain circumstances; providing that the amendment of a district by the addition of a parcel does not alter the transition from landowner voting to qualified elector voting; requiring the petitioner to cause to be recorded a certain notice of boundary amendment upon adoption of the ordinance expanding the district, etc. CA 01/23/2018 Favorable JU 01/30/2018 Fav/CS RC 03/01/2018 Favorable	Favorable Yeas 12 Nays 0

Other Related Meeting Documents

A black and white copy of this document is not official

5

2020

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Gary F. Clark

is duly appointed a member of the

Florida Public Service Commission

for a term beginning on the Fifteenth day of September, A.D., 2017, until the First day of January, A.D., 2019 and is subject to be confirmed by the Senate during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Sixth day of November, A.D., 2017.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8½ x 11" document.

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

RICK SCOTT
GOVERNOR

RECEIVED
17 SEP 20 AM 9:39
DIVISION OF ELECTIONS
SECRETARY OF STATE

September 15, 2017

Secretary Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment under the provisions of Section 350.01, Florida Statutes:

Mr. Gary F. Clark
1670 Peel Road
Chipley, Florida 32428

as a member of the Florida Public Service Commission, filling a vacant seat, subject to confirmation by the Senate. This appointment is effective September 15, 2017, for a term ending January 1, 2019.

Sincerely,

Rick Scott
Governor

RS/kb

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED
17 OCT 20 PM 1:43
DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Florida Public Service Commissioner
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." *See* § 92.52, Fla. Stat.]

Signature

Sworn to and subscribed before me this 5th *day of* October, 2017.

Carlotta S Stauffer
Signature of Officer Administering Oath or of Notary Public

CARLOTTA S. STAUFFER
Commission # FF 905534
Expires November 30, 2019

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☑ ***OR*** *Produced Identification* ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

1670 Peel Rd
Street or Post Office Box

Chipley Fl. 32428
City, State, Zip Code

Gary F. Clark
Print Name

Signature

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Gary F. Clark

Florida Public Service Commission

NOTICE OF HEARING

TO: Mr. Gary F. Clark

YOU ARE HEREBY NOTIFIED that the Committee on Rules of the Florida Senate will conduct a hearing on your executive appointment on Monday, February 26, 2018, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 2:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 21st day of February, 2018

Committee on Rules

Senator Lizbeth Benacquisto
As Chair and by authority of the committee

cc: Members, Committee on Rules
Office of the Sergeant at Arms

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-1-18
Meeting Date

Bill Number (if applicable)

Topic Fl. PSC confirmation

Amendment Barcode (if applicable)

Name Gary F. Clark

Job Title Commissioner

Address Shumard Oaks Blvd
Street

Phone 850 326 0318

Tallahassee Fl.
City *State* *Zip*

Email gclark@psc.fl.us.state

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

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

Representing

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Gary F. Clark

ANSWER: I do.

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Rules Committee

DATE: March 1, 2018

A black and white copy of this document is not official

2020

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Art Graham

is duly appointed a member of the

Florida Public Service Commission

for a term beginning on the Second day of January, A.D., 2018, until the First day of January, A.D., 2022 and is subject to be confirmed by the Senate during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Nineteenth day of October, A.D., 2017.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8½ x 11" document.

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

RICK SCOTT
GOVERNOR

RECEIVED
17 SEP 20 AM 9:39
DIVISION OF ELECTIONS
SECRETARY OF STATE

September 15, 2017

Secretary Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 350.01, Florida Statutes:

Mr. Arthur L. Graham
602 Third Avenue North
Jacksonville Beach, Florida 32250

as a member of the Florida Public Service Commission, subject to confirmation by the Senate. This appointment is effective January 2, 2018, for a term ending January 1, 2022.

Sincerely,

Rick Scott
Governor

RS/kb

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE
17 OCT 16 AM 9:27
DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Florida Public Service Commissioner

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." *See* § 92.52, Fla. Stat.]

Signature

Sworn to and subscribed before me this 3rd *day of* October, 2017.

Signature of Officer Administering Oath or of Notary Public

Nancy A. Harrison

Print, Type, or Stamp Commissioned Name of Notary Public

NANCY ALLEN HARRISON
MY COMMISSION # FF 135349
EXPIRES: June 23, 2018
Bonded Thru Pichard Insurance Agency

Personally Known ☑ ***OR*** *Produced Identification* ☐

Type of Identification Produced n/a

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☑ Home ☐ Office

602 3rd Avenue North
Street or Post Office Box

Jacksonville Beach, FL 32250
City, State, Zip Code

Art Graham
Print Name

Signature

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Art Graham

Florida Public Service Commission

NOTICE OF HEARING

TO: Commissioner Art Graham

YOU ARE HEREBY NOTIFIED that the Committee on Rules of the Florida Senate will conduct a hearing on your executive appointment on Monday, February 26, 2018, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 2:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 21st day of February, 2018

Committee on Rules

Senator Lizbeth Benacquisto
As Chair and by authority of the committee

cc: Members, Committee on Rules
Office of the Sergeant at Arms

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

Bill Number (if applicable)

Topic PSC Confirmation

Amendment Barcode (if applicable)

Name Art Graham

Job Title Commissioner

Address 2540 Shumard Oaks Blvd
Street

Phone (904) 249-4888

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 Myself

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Art Graham

ANSWER: I do.

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Rules Committee

DATE: March 1, 2018

A black and white copy of this document is not official

2020

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Andrew Fay

is duly appointed a member of the

Florida Public Service Commission

for a term beginning on the Second day of February, A.D., 2018, until the First day of January, A.D., 2022 and is subject to be confirmed by the Senate during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Fifth day of February, A.D., 2018.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8½ x 11" document.

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2018 FEB -5 AM 9:24
DIVISION OF ELECTIONS
TALLAHASSEE, FL

February 2, 2018

Secretary Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment under the provisions of Section 350.01, Florida Statutes:

Mr. Andrew Giles Fay
1125 Waverly Road
Tallahassee, Florida 32312

as a member of the Florida Public Service Commission, filling a vacant seat, subject to confirmation by the Senate. This appointment is effective February 2, 2018, for a term ending January 1, 2022.

Sincerely,

Rick Scott
Governor

RS/kb

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 717-9249

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED
18 FEB -5 PM 2:02
DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Public Service Commission
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." *See* § 92.52, Fla. Stat.]

Andrew Fay
Signature

Sworn to and subscribed before me this 5 *day of* February, 2018.

NANCY MADDEN
Commission # FF 914005
Expires August 30, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

Signature of Officer Administering Oath or of Notary Public

Nancy Madden
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☐ ***OR*** *Produced Identification* ☑

Type of Identification Produced

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

1125 Waverly Rd
Street or Post Office Box

Tallahassee, FL, 32312
City, State, Zip Code

Andrew Fay
Print Name

Andrew Fay
Signature

DS-DE 56 (Rev. 11/16)

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Andrew Fay

Florida Public Service Commission

NOTICE OF HEARING

TO: Mr. Andrew Fay

YOU ARE HEREBY NOTIFIED that the Committee on Rules of the Florida Senate will conduct a hearing on your executive appointment on Monday, February 26, 2018, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 2:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 21st day of February, 2018

Committee on Rules

Senator Lizbeth Benacquisto
As Chair and by authority of the committee

cc: Members, Committee on Rules
Office of the Sergeant at Arms

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Service Commission

Name Andrew Fay

Job Title Public Service Commissioner

Address 2540 Shumard Oak
Street

Tallahassee FL
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Public Service Commission

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Andrew Fay

ANSWER: I do.

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Rules Committee

DATE: March 1, 2018

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1940
INTRODUCER:	Senators Galvano and Benacquisto
SUBJECT:	Public Records and Public Meetings
DATE:	February 28, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Phelps	RC	**Favorable**

I. Summary:

SB 1940 creates public records and public meetings exemptions for certain information related to school safety.

Specifically, the bill provides the following exemptions:

- As part of the School Safety Awareness Program, the bill makes confidential and exempt from disclosure the identity of a party making a report of suspicious activity which is held by the Department of Law Enforcement, a law enforcement agency, or school officials;
- The bill makes exempt from disclosure a portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission (Commission) at which exempt or confidential and exempt information is discussed; and
- The bill makes exempt from disclosure any information held by a law enforcement agency, school district, or charter school which would identify whether a particular individual has been appointed as a safe-school officer.

The bill provides the required statements of public necessity.

The Open Government Sunset Review in the bill provides that the exemption will stand repealed October 2, 2023, unless reviewed and saved from repeal before that date.

The bill requires a two-thirds vote for passage as it creates new public records exemptions.

The bill takes effect on the same date that SB 7026 or similar legislation takes effect, if the legislation is adopted in the same legislative session or during an extension of the session.

II. Present Situation:

Public Records Law

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

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

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

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So.2d 633, 640 (Fla. 1980).
[8] s. 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] *Id*.
[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[12] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[13]

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[14] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[15] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[16]

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the "Government in the Sunshine Law"[17] or the "Sunshine Law,"[18] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[19] The board or commission must provide the public reasonable notice of such meetings.[20] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status, or which operates in a manner that unreasonably restricts the public's access to the facility.[21] Minutes of a public meeting must be promptly recorded and open to public inspection.[22] Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[23] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[24]

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narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

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

[13] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

[14] FLA. CONST., art. I, s. 24(b).

[15] *Id*.

[16] FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

[17] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

[18] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

[19] Section 286.011(1)-(2), F.S.

[20] *Id.*

[21] Section 286.011(6), F.S.

[22] Section 286.011(2), F.S.

[23] Section 286.011(1), F.S.

[24] Section 286.011(3), F.S.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.[25] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[26] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[27]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.[28] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[29] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[30] 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;[31]
- 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;[32] or
- It protects trade or business secrets.[33]

The OGSR also requires specified questions to be considered during the review process.[34] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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[25] FLA. CONST., art. I, s. 24(c).
[26] *Id*.
[27] *See supra* note 11.
[28] Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[29] Section 119.15(3), F.S.
[30] Section 119.15(6)(b), F.S.
[31] Section 119.15(6)(b)1., F.S.
[32] Section 119.15(6)(b)2., F.S.
[33] Section 119.15(6)(b)3., F.S.
[34] 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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.[35] 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 otherwise provided for by law.[36]

The Marjory Stoneman Douglas High School Public Safety Act

The Marjory Stoneman Douglas High School Public Safety Act (Act) contains a number of provisions designed to enhance public school safety and prevent further incidents of mass violence. The Act revises various provisions of the School Safety Awareness Program to facilitate reporting to the school and to law enforcement authorities of suspicious behavior pursuant to a newly-created mobile suspicious activity tool.

The Act also establishes the Marjory Stoneman Douglas High School Public Safety Commission. As part of its duties, the Commission will review information and evidence from the incident of mass violence that took place at the Marjory Stoneman Douglas High School, and make recommendations for system improvements.

The Act also expands the role of safe-school officers to enable a person to participate in the Florida Sheriff's Marshall Program and become certified as a law enforcement officer. Upon certification, a safe-school officer will be able to carry a concealed weapon onto school grounds.

III. Effect of Proposed Changes:

This bill creates public records and public meetings exemptions for certain information related to school safety.

Specifically, the bill provides the following exemptions:

- As part of the School Safety Awareness Program, the bill makes confidential and exempt from disclosure the identity of a party making a report of suspicious activity held by the Department of Law Enforcement, a law enforcement agency, or school officials;
- The bill makes exempt from disclosure a portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed; and
- The bill makes exempt from disclosure any information held by a law enforcement agency, school district, or charter school which would identify whether a particular individual has been appointed as a safe-school officer.

The bill provides the required statements of public necessity. As justification for the exemptions:

- Regarding the identity of a person reporting suspicious activity, the exemption could encourage the person to make a report that could lead to intervention before an incident of mass violence occurs.

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

[35] FLA. CONST., art. I, s. 24(c).

[36] Section 119.15(7), F.S.

- Regarding Marjory Stoneman Douglas High School Public Safety Commission meetings, to ensure the effective and efficient administration of the Commission and make meaningful recommendations for system improvements, the Commission must be able to receive information it receives as part of its investigation including exempt or confidential and exempt information and without the exemption, the exemptions that apply to those records received by the Commission would be negated.
- Regarding the identity of a person as a safe-school officer, the exemption is needed to maximize the effectiveness of safe-school officers who are authorized to carry a concealed weapon, disclosure of which could compromise the ability of the safe-school officer to adequately respond to an active assailant situation.

The Open Government Sunset Review in the bill provides that the exemption will stand repealed October 2, 2023, unless reviewed and saved from repeal before that date.

The bill requires a two-thirds vote for passage as it creates new public records exemptions.

The bill takes effect on the same date that SB 7026 or similar legislation takes effect, if the legislation is adopted in the same legislative session or during an extension of the session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Voting Requirement
Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Public Necessity Statement
Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. Regarding the identity of a person reporting suspicious activity, the exemption will encourage a person to report, which could lead to intervention before an incident of mass violence occurs. Regarding Marjory Stoneman Douglas High School Public Safety Commission meetings, to fulfill its mission, the Commission must be able to discuss information it receives as part of its investigation including exempt or confidential and exempt information, without which the exemptions that apply to those records received by the Commission would be negated. Finally, the exemption is necessary to protect the identity of a person as a safe-school officer, to maximize his or her effectiveness in adequately responding to an active assailant situation.

Breadth of Exemption
Article I, Section 24(c) of the Florida Constitution requires a newly created or expanded public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts from disclosure the identity of reporting persons and safe-school officers, and information that already has exempt or confidential and exempt status which is received by the Commission. Therefore, this bill appears to be no broader than necessary to accomplish the public necessity for these public records exemptions.

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, a law enforcement agency, or a school board may have a nominal but indeterminate fiscal impact implementing this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends s. 943.082, 943.687, and 1006.12 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senators Galvano and Benacquisto

21-03852-18 20181940__

A bill to be entitled

An act relating to public records and public meetings; amending s. 943.082, F.S.; creating an exemption from public records requirements for the identity of a reporting party held by a specified entity; amending s. 943.687, F.S.; providing an exemption from public meetings requirements for portions of meetings of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed; amending s. 1006.12, F.S.; providing an exemption from public records requirements for information that would identify whether a particular individual has been appointed as a safe-school officer; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Subsection (6) is added to section 943.082, Florida Statutes, as created by SB 7026, 2018 Regular Session, to read:

943.082 School Safety Awareness Program.—

(6) The identity of the reporting party held by the department, a law enforcement agency, or school officials is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15

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and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Present subsection (7) of s. 943.687, Florida Statutes, as created by SB 7026, 2018 Regular Session, is renumbered as subsection (8), and a new subsection (7) is added to that section, to read:

943.687 Marjory Stoneman Douglas High School Public Safety Commission.—

(7) Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. Subsection (4) is added to section 1006.12, Florida Statutes, as amended by SB 7026, 2018 Regular Session, to read:

1006.12 Safe-school officers at each public school.—

(4) Any information that would identify whether a particular individual has been appointed as a safe-school officer pursuant to this section held by a law enforcement agency, school district, or charter school is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

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Section 4. (1) The Legislature finds that it is a public necessity that the identity of a person reporting unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, held by the Department of Law Enforcement, a law enforcement agency, or school officials, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the reporting person provides his or her identity. The public records exemption for the identity of those individuals reporting potentially harmful or threatening activities as part of the School Safety Awareness Program encourages individuals to act and not be fearful that their identities will be revealed to their fellow students. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear. Ensuring their identities are protected will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs.

(2) The Legislature also finds that it is a public necessity that any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The purpose of the commission is to investigate failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in Florida and develop recommendations for system improvements. In order to fulfill its directive, the commission must be able to discuss

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exempt or confidential and exempt information that it receives as part of its investigation. The public meetings exemption will allow the commission to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements for prevention and response to mass violence incidents. As such, it is a necessity that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements. If such portions of meeting are not closed, then the public records exemptions would be negated. Thus, the Legislature finds that the public meeting exemption is a public necessity in order to ensure the effective and efficient administration of the Marjory Stoneman Douglas High School Public Safety Commission.

(3) The Legislature further finds that it is a public necessity that any information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. School security and student safety are fundamental priorities in this state. In light of the tragic events at Marjory Stoneman Douglas High School, in which 14 students and 3 adults were shot and killed on February 14, 2018, school districts in this state must be allowed to provide a supplemental security presence. To maximize the effectiveness of safe-school officers as a deterrent and responsive factor to situations threatening the lives of students and school staff, safe-school officers may perform their school-related duties while carrying a concealed

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weapon. Disclosure of the identity of a safe-school officer can affect his or her ability to adequately respond to an active assailant situation. Accordingly, it is necessary to protect the identity of safe-school officers from public records requirements in order to effectively and efficiently implement the purpose and intent of the program.

Section 5. This act shall take effect on the same date that SB 7026 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7028
INTRODUCER:	Rules Committee
SUBJECT:	Ratification of Department of Elderly Affairs Rules
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Phelps		**RC Submitted as Comm.Bill/Fav**
2.				
3.				
4.				

I. Summary:

SB 7028 ratifies Rule 58A-5.036, F.A.C., entitled "Emergency Environmental Control for Assisted Living Facilities" by the Department of Elder Affairs. This rule requires, by June 1, 2018, each assisted living facility to acquire an alternative power source to ensure that temperatures are maintained at 81 degrees Fahrenheit or cooler in a sufficient portion of the facility to accommodate all of the facility's residents.

The Statement of Estimated Regulatory Costs (SERC) developed by the Department of Elder Affairs determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The bill's provisions take effect upon becoming law.

II. Present Situation:

DOEA Rule for Assisted Living Facility Generators

The DOEA filed the rule 58A-5.036, F.A.C., for adoption with the Department of State on February 13, 2018.[1] The DOEA proposed the rule for Emergency Environmental Control for Assisted Living Facilities on November 14, 2017 and corrected the proposed rule January 19, 2018.

Rule 58A-5.036, F.A.C., requires each assisted living facility to prepare a detailed plan, as a supplement to the facility's comprehensive emergency management plan, to address emergency

[1] See rule package filed with the Department of State for Rule 58A-5.036. On file with Senate Children, Families and Elder Affairs Committee.

power in the event of the loss of primary electrical power to the facility. The plan is required to include the following:

- The acquisition of a sufficient alternate power source maintained at the facility to ensure the protection of resident health, safety, welfare, and comfort for a minimum of 96 hours in the event of the loss of primary electrical power.
    - Each facility must determine a safe indoor air temperature required to meet the needs of residents that cannot be higher than 81 degrees Fahrenheit. The required temperature must be maintained in an area determined by the facility to be sufficient to maintain resident safety at all times, but not less than 20 square feet per resident.
    - The rule allows a facility to provide emergency power through its essential electrical system required by the Florida Building Code and allows flexibility for each assisted living facility to determine the best method for achieving the requirement for an alternative power source.
    - The rules specifies that a facility in an evacuation zone may use portable generators if an evacuation is necessary; that a facility on a campus with other licensed facilities under common ownership may share power sources, fuel, and space with the other licensed facilities; and that a multistory facility that plans on moving residents to a higher floor during a flood or surge event must also place its alternative power source in an area protected from flooding or storm surge.
- The acquisition of sufficient fuel to run the alternate power source and to maintain safe air temperatures. For facilities with 16 beds or less must store 48 hours of fuel on site. For facilities with 17 or more beds, 72 hours must be stored onsite at the facility. For a facility in a declared state of emergency area must secure 96 hours of fuel. If local ordinances or other regulations limit the amount of fuel that may be stored onsite, the assisted living facility must store the maximum amount of fuel allowed and must have a plan to obtain the remaining required amount of fuel within 24 hours prior to depleting its onsite supply. The rule specifies that piped natural gas is an allowed fuel source.
- The acquisition of services necessary to install, maintain, and test the equipment and to ensure the safe a sufficient operation of the alternate power source.

Each existing assisted living facility is required to submit its plan to the local emergency management agency within 30 days of the effective date of the rule. Each newly licensed assisted living facility must submit its plan prior to obtaining a license. If any additions, modifications, alterations, refurbishments, reconstructions, or renovations of an assisted living facility affect the its compliance with the rule, the facility must amend its plan and resubmit it to the local emergency management agency for review and approval.

The local emergency management agency must review each plan and once approved, the plan must be submitted to AHCA for approval. Each assisted living facility must maintain a copy of its plan in a form that is readily available for review and must submit a consumer friendly summary of the plan to the AHCA. The AHCA must post the summary and notice of approval within ten business days on its website.

Each existing assisted living facility must have implemented its plan no later than June 1, 2018, and a new assisted living facility must have the plan implemented prior to obtaining a license. The AHCA may grant an extension of time up to January 1, 2019, if the implementation is delayed due to necessary construction, delivery of ordered equipment, or zoning or other

regulatory processes. If an assisted living facility is granted an extension of time, the facility must update the AHCA on implementation progress monthly. If an assisted living facility is granted an extension of time, it must make arrangements to ensure that the residents are housed in an area that meets the safe indoor air temperature requirement for a minimum of 96 hours during that time.

The rules also require each facility to implement policies and procedures to ensure that it can effectively and immediately activate, operate, and maintain the alternate power source. The policies and procedures must be resident-focused and ensure that the residents do not suffer complications from heat exposure.

The rules specify that the AHCA may seek any statutory remedy for noncompliance including, but not limited to, license revocation, license suspension, and administrative fines.

Hurricane Irma

Between September 10 and September 16, 2017, Hurricane Irma swept across Florida causing heavy damage and widespread loss of power. In the aftermath of the hurricane, the nursing home Rehabilitation Center at Hollywood Hills (Center) was left without power and air conditioning for multiple days. As a consequence of the uncontrolled heat in the Center and because the Center's staff neglected to evacuate its residents, 12 Center residents died from heat exposure.[2]

On September 16, 2017, (after eight of the 12 resident deaths had occurred) Governor Scott issued a press release announcing emergency action for nursing homes and ALFs. In the press release, the Governor stated that "[a]ssisted living facilities and nursing homes serve our elderly and Florida's most vulnerable residents, and so many families rely on the health care professionals at these facilities to care for their loved ones…During emergencies, health care facilities must be fully prepared to ensure the health, safety and wellbeing of those in their care and there is absolutely no excuse not to protect life. The inability for this nursing home in Broward County to protect life has shined the light on the need for emergency action."[3]

Statement of Estimated Regulatory Costs (SERC) Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than $200,000 in the aggregate within 1 year after implementation of the rule.[4]

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;

[2] Eight residents died before the Center evacuated the facility and six more died in the following weeks. Two of the 14 deaths were found not to be related to heat exposure. See *12 of 14 Nursing Home Deaths After Irma Ruled Homicides*, WUSF News, available at http://wusfnews.wusf.usf.edu/post/12-14-nursing-home-deaths-after-irma-ruled-homicides, (last visited on Jan. 26, 2018).

[3] See https://www.flgov.com/2017/09/16/gov-scott-i-am-aggressively-fighting-to-keep-vulnerable-floridians-safe-during-emergencies/, (last visited on Jan. 26, 2018).

[4] Sections 120.54(3)(b) and 120.541(1)(b), F.S.

- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.[5]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:
- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,[6] productivity, or innovation; or
- Regulatory costs, including any transactional costs.[7,8]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[9]

The DOEA has estimated the cost for assisted living facilities to comply with this rule will be approximately $243 million.[10]

III. Effect of Proposed Changes:

SB 7028 ratifies DOEA Rule 58A-5.036, F.A.C., entitled "Emergency Environmental Control for Assisted Living Facilities." This rule requires, by June 1, 2018, each facility to acquire an alternative power source to ensure that temperatures are maintained at 81 degrees Fahrenheit or cooler in a sufficient portion of the facility to accommodate all of the facility's residents. The rule also requires each facility to implement certain policies and procedures to ensure that resident's do not suffer complications from heat exposure.

The bill also:
- Directs that the act shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule; and

[5] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of $5 million or less. *See* ss. 120.52(18), (19), and 288.703(6), respectively.
[6] Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[7] Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to by employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.
[8] Section 120.541(2)(a), F.S.
[9] Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.
[10] Summary of SERC for Rule 58A-5.036, published in a notice of correction in the Florida Administrative Register on January 19, 2018.

- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of requirements governing adoption of the rule.

The SERC developed by the DOEA determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The bill's provisions take effect upon becoming law at that time, the rule becomes effective.[11]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By the Legislature's ratification of this rule, assisted living facilities that have not complied with the new requirements will experience increased costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[11] Section 120.54(3)(e)6., F.S.

VIII. Statutes Affected:

This bill creates one undesignated section of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Rules

595-03726-18 20187028pb

A bill to be entitled

An act relating to ratification of Department of Elderly Affairs rules; ratifying a specified rule relating to emergency environmental control for assisted living facilities for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 58A-5.036, Florida Administrative Code, entitled "Emergency Environmental Control for Assisted Living Facilities," as filed for adoption with the Department of State pursuant to the certification package dated February 13, 2018.

(2) This act serves no other purpose and may not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is

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Florida Senate - 2018 (PROPOSED BILL) SPB 7028

595-03726-18 20187028pb

intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/18
Meeting Date

SPB 7098
Bill Number (if applicable)

Topic Ratification by DOEA

Amendment Barcode (if applicable)

Name Gail Metillo (May-till o)

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Email gmetillo@floridaseniorliving.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Senior Living Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 7028
Bill Number (if applicable)

Topic Ratification of Dept of Elderly Affairs Rule
Amendment Barcode (if applicable)

Name Dorene Barker

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City *State* *Zip*

Email dobarker@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

3/1/18
Meeting Date

SPB 7028
Bill Number (if applicable)

Topic Ratification of Dept. of Elderly Affairs Rule

Amendment Barcode (if applicable)

Name Susan Langston

Job Title VP of Advocacy

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing LeadingAge Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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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)

03-01-18
Meeting Date

SPB 7028
Bill Number (if applicable)

Topic Elderly Affairs Rules

Amendment Barcode (if applicable)

Name Ray Colburn

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 7028
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Emmett Reed

Job Title Executive Directo

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Health Care Assoc

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/1/2018 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SPB 7028

Meeting Date *Bill Number (if applicable)*

Topic Ratification of DOEA Rules *Amendment Barcode (if applicable)*

Name Shad Haston

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City *State* *Zip*

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

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

Representing Florida Assisted Living Association

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7030
INTRODUCER:	Rules Committee
SUBJECT:	Ratification of Agency for Health Care Administration Rules
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Phelps		**RC Submitted as Comm. Bill/Fav**
2.				
3.				
4.				

I. Summary:

SB 7030 ratifies Agency for Health Care Administration (AHCA) Rule 59A-4.1265, F.A.C., entitled "Emergency Environmental Control for Nursing Homes." This rule requires, by June 1, 2018, each nursing home to acquire an alternative power source to ensure that temperatures are maintained at 81 degrees Fahrenheit or cooler in a sufficient portion of the facility to accommodate all of the facility's residents. The rule also requires each facility to implement certain policies and procedures to ensure that resident's do not suffer complications from heat exposure.

The Statement of Estimated Regulatory Costs (SERC) developed by the AHCA determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The bill's provisions take effect upon becoming law.

II. Present Situation:

AHCA Rule for Nursing Home Generators

Rule History

The AHCA filed the rule 59A-4.1265, F.A.C., for adoption with the Department of State on February 2, 2018.[1] The AHCA initiated the rulemaking process on October 11, 2017, with rules published on November 14, 2017. The AHCA issued a notice of change published on January

[1] See rule package filed with the Department of State for Rule 59A-4.1265. On file with Senate Health Policy Committee staff.

10, 2017. Leading Age Florida challenged the validity of the AHCA's proposed rules for nursing homes but the challenge was withdrawn on January 26, 2018.

Alternate Power Source Plan

Rule 59A-4.1265, F.A.C., requires each nursing home to prepare a detailed plan, as a supplement to the facility's comprehensive emergency management plan, to address emergency power in the event of the loss of primary electrical power to the facility. The plan is required to include the following:

- The acquisition of a sufficient alternate power source maintained at the nursing home to ensure the protection of resident health, safety, welfare, and comfort for a minimum of 96 hours in the event of the loss of primary electrical power.
  - Each facility must determine a safe indoor air temperature required to meet the needs of residents that cannot be higher than 81 degrees Fahrenheit. The required temperature must be maintained in an area determined by the facility to be sufficient to maintain resident safety at all times, but not less than 30 square feet per resident.
  - The rule allows a facility to provide emergency power through its essential electrical system required by the Florida Building Code and allows flexibility for each nursing home to determine the best method for achieving the requirement for an alternative power source.
  - The rules specifies that a facility in an evacuation zone may use portable generators if an evacuation is necessary; that a facility on a campus with other licensed facilities under common ownership may share power sources, fuel, and space with the other licensed facilities; and that a multistory facility that plans on moving residents to a higher floor during a flood or surge event must also place its alternative power source in an area protected from flooding or storm surge.
- The acquisition of sufficient fuel to run the alternate power source and to maintain safe air temperatures for at least 96 hours. Of the 96 hours of required fuel, 72 hours must be stored onsite at the facility and the remaining 24 hours' worth of fuel must be obtained if the facility is located within an area in a declared state of emergency. If local ordinances or other regulations limit the amount of fuel that may be stored onsite, the nursing home must store the maximum amount of fuel allowed and must have a plan to obtain the remaining required amount of fuel within 24 hours prior to depleting its onsite supply. The rule specifies that piped natural gas is an allowed fuel source.
- The acquisition of services necessary to install, maintain, and test the equipment and to ensure the safe a sufficient operation of the alternate power source.

Submission of the Plan

Each existing nursing home is required to submit its plan to the local emergency management agency within 30 days of the effective date of the rule. Each newly licensed nursing home must submit its plan prior to obtaining a license. If any additions, modifications, alterations, refurbishments, reconstructions, or renovations of a nursing home affect the nursing home's compliance with the rule, the nursing home must amend its plan and resubmit it to the local emergency management agency for review and approval.

Review and Approval of the Plan

The local emergency management agency must review each plan and the AHCA's Office of Plans and Construction must review any related architectural and engineering plans. If the plan is deficient, the local emergency management agency must report such deficiencies to the nursing home for resubmission of a corrected plan within ten business days. If the plan is approved or denied the local emergency management agency must report the approval or denial to the AHCA. The nursing home must also submit proof of approval of the plan to the AHCA within two business days of the plan's approval. Each nursing home must maintain a copy of its plan in a form that is readily available for review and must submit a consumer friendly summary of the plan to the AHCA. The AHCA must post the summary and notice of approval within ten business days on its website.

Plan Implementation

Each existing nursing home must have implemented its plan no later than June 1, 2018, and a new nursing home must have the plan implemented prior to obtaining a license. The AHCA may grant an extension of time up to January 1, 2019, if the implementation is delayed due to necessary construction, delivery of ordered equipment, or zoning or other regulatory processes. If a nursing home is granted an extension of time, the facility must update the AHCA on implementation progress monthly. If a nursing home is granted an extension of time, it must make arrangements to ensure that the residents are housed in an area that meets the safe indoor air temperature requirement for a minimum of 96 hours during that time.

Policies and Procedures

The rules also require each facility to implement policies and procedures to ensure that it can effectively and immediately activate, operate, and maintain the alternate power source. The policies and procedures must be resident-focused and ensure that the residents do not suffer complications from heat exposure. A contingency plan must also exist to transport residents to a safe facility if required. The policies and procedures must be available for inspection by residents, their representatives, and any other parties authorized in law.

Enforcement

The rules specify that the AHCA may seek any statutory remedy for noncompliance including, but not limited to, license revocation, license suspension, and administrative fines.

History of Nursing Home Generator Rulemaking

Hurricane Irma

Between September 10 and September 16, 2017, Hurricane Irma swept across Florida causing heavy damage and widespread loss of power. In the aftermath of the hurricane, the nursing home Rehabilitation Center at Hollywood Hills (Center) was left without power and air conditioning for multiple days. As a consequence of the uncontrolled heat in the Center and because the Center's staff neglected to evacuate its residents, 12 Center residents died from heat exposure.[2]

[2] Eight residents died before the Center evacuated the facility and six more died in the following weeks. Two of the 14 deaths were found not to be related to heat exposure. See *12 of 14 Nursing Home Deaths After Irma Ruled Homicides*, WUSF News,

On September 16, 2017, (after eight of the 12 resident deaths had occurred) Governor Scott issued a press release announcing emergency action for nursing homes and ALFs. In the press release, the Governor stated that "[a]ssisted living facilities and nursing homes serve our elderly and Florida's most vulnerable residents, and so many families rely on the health care professionals at these facilities to care for their loved ones…During emergencies, health care facilities must be fully prepared to ensure the health, safety and wellbeing of those in their care and there is absolutely no excuse not to protect life. The inability for this nursing home in Broward County to protect life has shined the light on the need for emergency action."[3]

Emergency Rules for Nursing Home Generators

Complying with the Governor's order, the AHCA published an emergency Rule 59AER17-1, F.A.C., requiring that all nursing homes install emergency generators. This emergency rule took effect on September 18, 2017; was renewed on December 15, 2017; [4] and established:

- The requirement that each facility provide a detailed plan within 45 days of the effective date of the rule for the acquisition and installation of an emergency generator and sufficient fuel to power the generator for 96 hours. The generator must be sufficiently large to cool the facility to 80 degrees Fahrenheit or below for the required time period;
- The requirement that each facility implement its plan within 60 days of the effective date of the rule; and
- Penalties for violating the emergency rule including possible license revocation and monetary penalties of up to $1,000 per day for continuing violations.

The emergency rule was challenged at the Division of Administrative Hearings (DOAH) and was ruled invalid on October 27, 2017. A similar emergency rule for Assisted Living Facilities was also challenged. The DOAH judge ruled that there was no emergency that required the rules and that the rules were invalid exercises of delegated legislative authority. The judge ruled that the rules:

- Were arbitrary and capricious in that complying with the rules in the timeframes allowed was impossible;
- Vested unbridled discretion in the AHCA and the DOEA in that the rules were so vague as to require agency discretion to implement them; and
- Contravened the implementing statute in that the penalties made no effect to classify noncompliance in a manner consistent with statute.[5]

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available at http://wusfnews.wusf.usf.edu/post/12-14-nursing-home-deaths-after-irma-ruled-homicides, (last visited on Jan. 26, 2018).

[3] See https://www.flgov.com/2017/09/16/gov-scott-i-am-aggressively-fighting-to-keep-vulnerable-floridians-safe-during-emergencies/, (last visited on Jan. 26, 2018).

[4] Generally, emergency rules expire after 90 days and are not renewable. See s. 120.54(c), F.S. However, s. 120.54(4)(c)2., F.S., allows an agency to extend the period of time that emergency rules are effective if the agency has initiated the rulemaking process on the same subject and the proposed rules are awaiting legislative ratification. Currently, the AHCA and the DOEA have initiated rulemaking to adopt rules on the same subject (see section below) and the agencies' have submitted the proposed rules to the Legislature for ratification.

[5] *Florida Association of Homes and Services for the Aging, Inc., d/b/a, Leadingage Florida v. the Agency for Health Care Administration*, case no. 17-5388RE, and *Florida Assisted Living Association, Inc., a Florida not for Profit Corporation v. the Florida Department of Elder Affairs,* case no. 17-5409RE

The case has been appealed to the Florida First District Court of Appeal[6] (DCA). The DCA denied a motion to stay the effect of the rules on November 11, 2017, and consequently, the emergency rule continues to be in effect pending appeal.

Federal Regulations for Nursing Home Emergency Power

Federal regulations currently in effect require nursing homes[7] to obtain emergency power in a similar manner to the permanent rules in development by the AHCA. The regulations in 42 CFR 483.73 require each long term care facility, including nursing homes, to develop and implement emergency preparedness policies and procedures that must include alternative sources of energy to maintain safe air temperatures for residents. Based on the facility's policies and procedures, each facility must implement emergency and standby power systems and maintain on onsite fuel source and a plan to keep the power systems operational, unless the facility evacuates. These regulations took effect on November 16, 2017, and are a requirement for the nursing home to participate in the Medicare or Medicaid programs.

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than $200,000 in the aggregate within 1 year after implementation of the rule.[8]

A SERC must include estimates of:
- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.[9]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:
- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,[10] productivity, or innovation; or
- Regulatory costs, including any transactional costs.[11,12]

[6] Case no. 1D17-4534.
[7] While nursing homes are federally regulated, the regulation of ALFs is delegated to the states.
[8] Sections 120.54(3)(b) and 120.541(1)(b), F.S.
[9] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of $5 million or less. *See* ss. 120.52(18), (19), and 288.703(6), respectively.
[10] Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[11] Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to by employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.
[12] Section 120.541(2)(a), F.S.

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[13]

The AHCA has determined that the likely aggregate cost for nursing homes to comply with this rule will be approximately $108,224,945.[14]

III. Effect of Proposed Changes:

SB 7030 ratifies AHCA Rule 59A-4.1265, F.A.C., entitled "Emergency Environmental Control for Nursing Homes." This rule requires, by June 1, 2018, each nursing home to acquire an alternative power source to ensure that temperatures are maintained at 81 degrees Fahrenheit or cooler in a sufficient portion of the facility to accommodate all of the facility's residents. The rule also requires each facility to implement certain policies and procedures to ensure that resident's do not suffer complications from heat exposure.

The bill also:

- Directs that the act shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of requirements governing adoption of the rule.

The SERC developed by the AHCA determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The bill's provisions take effect upon becoming law at that time, the rule becomes effective.[15]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[13] Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

[14] Summary of SERC for Rule 59A-4.1265, published in a notice of correction in the Florida Administrative Register on January 11, 2018.

[15] Section 120.54(3)(e)6., F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates one undesignated section of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Rules

A bill to be entitled

An act relating to ratification of Agency for Health Care Administration rules; ratifying a specified rule relating to emergency environmental control for nursing homes for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact on or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 59A-4.1265, Florida Administrative Code, entitled "Emergency Environmental Control for Nursing Homes," as filed for adoption with the Department of State pursuant to the certification package dated February 2, 2018.

(2) This act serves no other purpose and may not be codified in the Florida Statutes. After this act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the cited rule, and is intended to preserve the status of the cited rule as a rule

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

Florida Senate - 2018 (PROPOSED BILL) SPB 7030

595-02763B-18 20187030pb

under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of the cited rule.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 7030
Bill Number (if applicable)

Topic Ratification of ACHA Rules - 2018

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title ASD

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Email dobarker@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SPB 7030
Bill Number (if applicable)

Topic AHCA Rules

Amendment Barcode (if applicable)

Name Rich Rasmussen

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLA. Hospital 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.

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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)

3/1/18
Meeting Date

SPB 7030
Bill Number (if applicable)

Topic Ratification of Agency for Health Care Admin Rules

Amendment Barcode (if applicable)

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Phone 850/671-3700

Email slangston@leadingagefl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LeadingAge Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

7030
Bill Number (if applicable)

Topic AHCA

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title ATTORNEY

Address 120 S. MONROE ST
Street

Phone 850-727-7087

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 CONSULATE HEALTH CARE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03-01-16
Meeting Date

SPB 7030
Bill Number (if applicable)

Topic AHCA Rules

Amendment Barcode (if applicable)

Name Ray Colburn

Job Title Executive Director

Address 880 Airport Rd
Street

Ormond Beach FL 32174
City *State* *Zip*

Phone 407-468-6622

Email ray@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 7030
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Emmett Reed

Job Title Exec Dir

Address 307 W Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-224-3907

Email Ereed@fhaorg

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Health Care Assoc

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1340
INTRODUCER:	Senator Benacquisto
SUBJECT:	Florida Statutes
DATE:	February 28, 2018
REVISED:	

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Pollitz (DLRI)	Phelps	RC	**Favorable**

I. Summary:

This bill is drafted by the Division of Law Revision and Information of the Office of Legislative Services to adopt the Florida Statutes 2018 and designate the portions thereof that are to constitute the official statutory law of the state. This adoption act amends ss. 11.2421, 11.2422, 11.2424, and 11.2425, Florida Statutes, and provides a 1-year window for finding errors and making changes before statutory material becomes the best evidence of the law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: amends ss. 11.2421, 11.2422, 11.2424, and 11.2425, F.S.

II. Present Situation:

The 2018 adoption act will adopt all statutes material passed through the June 2017 Special Session and printed in the 2017 edition. Material passed in a session occurring since publication of the 2017 edition must wait 1 more year before being adopted, and the session law form of that material will remain the best evidence of the law for that material.

III. Effect of Proposed Changes:

The adoption act amends ss. 11.2421, 11.2422, 11.2424, and 11.2425, Florida Statutes, and provides a 1-year window for finding errors and making changes before statutory material becomes the best evidence of the law. The 2018 adoption act adopts as the official statute law of the state those portions of the 2018 Florida Statutes edition that are carried forward unchanged from the edition published 1 year previously (2017). Portions carried forward from the 2017 edition are the official law of the state and, therefore, constitute the best evidence of the law. The portions resulting from sessions occurring subsequent to the publication of the 2017 edition are prima facie evidence of the law in all courts of the state; for this material, the enrolled acts stand as the best evidence of the law. Any "statute of a general and permanent nature" enacted before publication of the 2017 Florida Statutes that does not appear in the 2017 edition, or is not

recognized and continued in force by reference therein or in s. 11.2423 or s. 11.2424, Florida Statutes, stands repealed, both by the logic of the system and by operation of s. 11.2422, Florida Statutes. *See National Bank v. Williams*, 28 Fla. 305, 20 So. 931 (1896).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: ss. 11.2421, 11.2422, 11.2424, and 11.2425, F.S.
This bill creates the following sections of the Florida Statutes: None.
This bill repeals the following sections of the Florida Statutes: None.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Benacquisto

27-00780-18 20181340__

A bill to be entitled

An act relating to the Florida Statutes; amending ss. 11.2421, 11.2422, 11.2424, and 11.2425, F.S.; adopting the Florida Statutes 2018 and designating the portions thereof that are to constitute the official law of the state; providing that the Florida Statutes 2018 shall be effective immediately upon publication; providing that general laws enacted during the June 7-9, 2017, special session and prior thereto and not included in the Florida Statutes 2018 are repealed; providing that general laws enacted after the June 7-9, 2017, special session are not repealed by this adoption act; providing an effective date.

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

Section 1. Section 11.2421, Florida Statutes, is amended to read:

11.2421 Florida Statutes 2018 ~~2017~~ adopted.—The accompanying revision, consolidation, and compilation of the public statutes of 2017 ~~2016~~ of a general and permanent nature, excepting tables, rules, indexes, and other related matter contained therein, prepared by the Office of Legislative Services under the provisions of s. 11.242, together with corrections, changes, and amendments to and repeals of provisions of Florida Statutes 2017 ~~2016~~ enacted in additional reviser's bill or bills by the 2018 ~~2017~~ Legislature, is adopted and enacted as the official statute law of the state under the title of "Florida Statutes 2018 ~~2017~~" and shall take effect

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27-00780-18 20181340__

immediately upon publication. Said statutes may be cited as "Florida Statutes 2018 ~~2017~~," "Florida Statutes," or "F.S. 2018 ~~2017~~."

Section 2. Section 11.2422, Florida Statutes, is amended to read:

11.2422 Statutes repealed.—Every statute of a general and permanent nature enacted by the State or by the Territory of Florida at or prior to the June 7-9, 2017, special ~~2016 regular~~ legislative session, and every part of such statute, not included in Florida Statutes 2018 ~~2017~~, as adopted by s. 11.2421, as amended, or recognized and continued in force by reference therein or in ss. 11.2423 and 11.2424, as amended, is repealed.

Section 3. Section 11.2424, Florida Statutes, is amended to read:

11.2424 Laws not repealed.—Laws enacted after the June 7-9, 2017, special ~~2016 regular~~ session are not repealed by the adoption and enactment of the Florida Statutes 2018 ~~2017~~ by s. 11.2421, as amended, but shall have full effect as if enacted after its said adoption and enactment.

Section 4. Section 11.2425, Florida Statutes, is amended to read:

11.2425 Rights reserved under repealed statutes.—The repeal of any statute by the adoption and enactment of Florida Statutes 2018 ~~2017~~, by s. 11.2421, as amended, shall not affect any right accrued before such repeal or any civil remedy where a suit is pending.

Section 5. This act shall take effect on the 60th day after adjournment sine die of the session of the Legislature in which

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enacted.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1342
INTRODUCER:	Rules Committee and Senator Benacquisto
SUBJECT:	Florida Statutes
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pollitz (DLRI)	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

The Division of Law Revision and Information of the Office of Legislative Services is required, by statute, to conduct a systematic and continuing study of the Florida Statutes. The purpose of this study is to recommend to the Legislature changes that will remove inconsistencies, redundancies, and unnecessary repetition from the statutes; improve clarity and facilitate correct interpretation; correct grammatical and typographical errors; and delete obsolete, repealed, or superseded provisions. These recommendations are submitted to the Legislature in the form of technical, nonsubstantive reviser's bills.

This is a general reviser's bill to delete expired or obsolete language; correct cross-references and grammatical or typographical errors; remove inconsistencies and redundancies from the statutes; improve the clarity of the statutes and facilitate their correct interpretation; and confirm the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process. A reviser's bill cannot be amended except to delete a bill section.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: amends ss. 14.20195, 14.31, 27.341, 27.405, 27.511, 39.3035, 106.34, 119.071, 119.092, 121.091, 197.3632, 197.502, 199.303, 206.8745, 213.755, 215.442, 215.444, 215.4725, 252.357, 252.358, 258.501, 261.04, 261.20, 284.02, 286.29, 288.0001, 288.101, 288.1258, 315.03, 320.833, 320.865, 331.3051, 332.007, 344.26, 364.386, 366.92, 373.036, 373.042, 373.470, 373.709, 376.303, 379.2495, 381.986, 381.987, 394.75, 400.6045, 403.061, 403.064, 408.0611, 408.062, 408.811, 408.9091, 409.1754, 409.906, 409.913, 420.609, 429.52, 429.75, 455.219, 456.013, 456.017, 456.041, 462.18, 471.003, 475.451, 475.611, 477.014, 487.2071, 489.529,

490.012, 497.140, 497.282, 497.468, 497.552, 497.553, 497.608, 499.012, 499.01211, 509.049, 520.68, 554.115, 559.11, 626.9541, 627.066, 627.285, 627.748, 663.532, 741.0306, 744.331, 796.04, 817.311, 817.625, 876.24, 905.37, 943.0311, 944.48, 948.03, 1000.06, 1001.215, 1002.61, 1003.4282, 1003.491, 1003.621, 1004.4473, 1006.735, 1007.01, 1011.67, 1011.71, and 1013.64, F.S.

II. Present Situation:

The Division of Law Revision and Information, under the authority and requirements of s. 11.242, Florida Statutes, submits reviser's bills to the rules committees of both houses as needed. General reviser's bills to clean up obsolete language, update cross-references, and correct grammatical and typographical errors and the like are submitted every year.

III. Effect of Proposed Changes:

The effect of this bill is of a technical nature only; reviser's bills do not contain substantive changes. The bill will clean up grammatical and similar errors in the Florida Statutes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: ss. 14.20195, 14.31, 27.341, 27.405, 27.511, 39.3035, 106.34, 119.071, 119.092, 121.091, 197.3632, 197.502, 199.303, 206.8745, 213.755, 215.442, 215.444, 215.4725, 252.357, 252.358, 258.501, 261.04, 261.20, 284.02, 286.29, 288.0001, 288.101, 288.1258, 315.03, 320.833, 320.865, 331.3051, 332.007, 344.26, 364.386, 366.92, 373.036, 373.042, 373.470, 373.709, 376.303, 379.2495, 381.986, 381.987, 394.75, 400.6045, 403.061, 403.064, 408.0611, 408.062, 408.811, 408.9091, 409.1754, 409.906, 409.913, 420.609, 429.52, 429.75, 455.219, 456.013, 456.017, 456.041, 462.18, 471.003, 475.451, 475.611, 477.014, 487.2071, 489.529, 490.012, 497.140, 497.282, 497.468, 497.552, 497.553, 497.608, 499.012, 499.01211, 509.049, 520.68, 554.115, 559.11, 626.9541, 627.066, 627.285, 627.748, 663.532, 741.0306, 744.331, 796.04, 817.311, 817.625, 876.24, 905.37, 943.0311, 944.48, 948.03, 1000.06, 1001.215, 1002.61, 1003.4282, 1003.491, 1003.621, 1004.4473, 1006.735, 1007.01, 1011.67, 1011.71, and 1013.64, F.S.
This bill creates the following sections of the Florida Statutes: None.
This bill repeals the following sections of the Florida Statutes: None.

IX. Additional Information:

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

CS by Rules on March 1, 2018:
The Committee Substitute saves from repeal s. 1004.34(1)(c), Florida Statutes.

B. Amendments:

None.

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

951290

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 3500 - 3520.

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

And the title is amended as follows:

Delete line 20

and insert:

1002.61, 1003.4282, 1003.491, 1003.621,

By Senator Benacquisto

27-00781-18 20181342__

A reviser's bill to be entitled

An act relating to the Florida Statutes; amending ss. 14.20195, 14.31, 27.341, 27.405, 27.511, 39.3035, 106.34, 119.071, 119.092, 121.091, 197.3632, 197.502, 199.303, 206.8745, 213.755, 215.442, 215.444, 215.4725, 252.357, 252.358, 258.501, 261.04, 261.20, 284.02, 286.29, 288.0001, 288.101, 288.1258, 315.03, 320.833, 320.865, 331.3051, 332.007, 344.26, 364.386, 366.92, 373.036, 373.042, 373.470, 373.709, 376.303, 379.2495, 381.986, 381.987, 394.75, 400.6045, 403.061, 403.064, 408.0611, 408.062, 408.811, 408.9091, 409.1754, 409.906, 409.913, 420.609, 429.52, 429.75, 455.219, 456.013, 456.017, 456.041, 462.18, 471.003, 475.451, 475.611, 477.014, 487.2071, 489.529, 490.012, 497.140, 497.282, 497.468, 497.552, 497.553, 497.608, 499.012, 499.01211, 509.049, 520.68, 554.115, 559.11, 626.9541, 627.066, 627.285, 627.748, 663.532, 741.0306, 744.331, 796.04, 817.311, 817.625, 876.24, 905.37, 943.0311, 944.48, 948.03, 1000.06, 1001.215, 1002.61, 1003.4282, 1003.491, 1003.621, 1004.34, 1004.4473, 1006.735, 1007.01, 1011.67, 1011.71, and 1013.64, F.S.; and reenacting ss. 1001.42 and 1008.34, F.S.; deleting provisions that have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replacing incorrect cross-references and citations; correcting grammatical, typographical, and like errors; removing inconsistencies, redundancies, and unnecessary repetition in the statutes; and

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27-00781-18 20181342__

improving the clarity of the statutes and facilitating their correct interpretation; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 14.20195, Florida Statutes, is amended to read:

14.20195 Suicide Prevention Coordinating Council; creation; membership; duties.—There is created within the Statewide Office for Suicide Prevention a Suicide Prevention Coordinating Council. The council shall develop strategies for preventing suicide.

(1) SCOPE OF ACTIVITY.—The Suicide Prevention Coordinating Council is a coordinating council as defined in s. 20.03 and shall:

(c) Make findings and recommendations regarding suicide prevention programs and activities. The council shall prepare an annual report and present it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, ~~2008, and~~ each year ~~thereafter~~. The annual report must describe the status of existing and planned initiatives identified in the statewide plan for suicide prevention and any recommendations arising therefrom.

Reviser's note.—Amended to delete obsolete language.

Section 2. Paragraph (a) of subsection (4) of section 14.31, Florida Statutes, is amended to read:

14.31 Florida Faith-based and Community-based Advisory Council.—

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(4) MEETINGS; ORGANIZATION.—

(a) The ~~first meeting of the council shall be held no later than August 1, 2006. Thereafter, the~~ council shall meet at least once per quarter per calendar year. Meetings may be held via teleconference or other electronic means.

Reviser's note.—Amended to delete obsolete language.

Section 3. Subsection (3) of section 27.341, Florida Statutes, is amended to read:

27.341 Electronic filing and receipt of court documents.—

~~(3) The Florida Prosecuting Attorneys Association shall file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office of the state attorney has made to use the Florida Courts E-Portal or, if the case type is not approved for the Florida Courts E-Portal, separate clerks' offices portals for purposes of electronic filing and documenting receipt of court documents. For any office of the state attorney that has not fully implemented an electronic filing and receipt system by March 1, 2012, the report must also include a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.~~

Reviser's note.—Amended to delete obsolete language.

Section 4. Subsection (3) of section 27.405, Florida Statutes, is amended to read:

27.405 Court-appointed counsel; Justice Administrative Commission tracking and reporting.—

~~(3) From October 1, 2005, through September 30, 2007, the commission shall also track and issue a report on the race,~~

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~~gender, and national origin of private court-appointed counsel for the Eleventh Judicial Circuit.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 5. Subsection (1) of section 27.511, Florida Statutes, is amended to read:

27.511 Offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.—

(1) It is the intent of the Legislature to provide adequate representation to persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. It is the further intent of the Legislature to provide adequate representation in a fiscally sound manner, while safeguarding constitutional principles. Therefore, an office of criminal conflict and civil regional counsel is created within the geographic boundaries of each of the five district courts of appeal. The regional counsel shall be appointed as set forth in subsection (3) for each of the five regional offices. ~~The offices shall commence fulfilling their constitutional and statutory purpose and duties on October 1, 2007.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 6. Paragraph (c) of subsection (3) of section 39.3035, Florida Statutes, is amended to read:

39.3035 Child advocacy centers; standards; state funding.—

(3) A child advocacy center within this state may not receive the funds generated pursuant to s. 938.10, state or federal funds administered by a state agency, or any other funds appropriated by the Legislature unless all of the standards of

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subsection (1) are met and the screening requirement of subsection (2) is met. The Florida Network of Children's Advocacy Centers, Inc., shall be responsible for tracking and documenting compliance with subsections (1) and (2) for any of the funds it administers to member child advocacy centers.

(c) At the end of each fiscal year, each children's advocacy center receiving revenue as provided in this section must provide a report to the board of directors of the Florida Network of Children's Advocacy Centers, Inc., which reflects center expenditures, all sources of revenue received, and outputs that have been standardized and agreed upon by network members and the board of directors, such as the number of clients served, client demographic information, and number and types of services provided. The Florida Network of Children's Advocacy Centers, Inc., must compile reports from the centers and provide a report to the President of the Senate and the Speaker of the House of Representatives in August of each year ~~beginning in 2005~~.

Reviser's note.—Amended to delete obsolete language.

Section 7. Subsection (3) of section 106.34, Florida Statutes, is amended to read:

106.34 Expenditure limits.—

(3) For purposes of this section, "Florida-registered voter" means a voter who is registered to vote in Florida as of June 30 of each odd-numbered year. The Division of Elections shall certify the total number of Florida-registered voters no later than July 31 of each odd-numbered year. Such total number shall be calculated by adding the number of registered voters in each county as of June 30 in the year of the certification date.

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~~For the 2006 general election, the Division of Elections shall certify the total number of Florida-registered voters by July 31, 2005.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 8. 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. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt

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from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. 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-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and

shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, 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.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the

names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and

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

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

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and

s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

p. 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. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

q. 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. 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.

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

facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. 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.

Reviser's note.—Amended to improve clarity.

Section 9. Section 119.092, Florida Statutes, is amended to read:

119.092 Registration by federal employer's registration number.—Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, ~~by July 1, 1978,~~ within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number;

however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

Reviser's note.—Amended to delete obsolete language.

Section 10. Paragraphs (b) and (c) of subsection (9) of section 121.091, Florida Statutes, are amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(b) Any person whose retirement is effective before July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates before July 1, 2010, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that

participates in a state-administered retirement system and receive retirement benefits and compensation from that employer, except that the person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 12 calendar months immediately subsequent to the date of retirement. However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. A retiree who violates such reemployment limitation before completion of the 12-month limitation period must give timely notice of this fact in writing to the employer and to the Division of Retirement or the state board and shall have his or her retirement benefits suspended for the months employed or the balance of the 12-month limitation period as required in sub-subparagraphs b. and c. A retiree employed in violation of this paragraph and an employer who employs or appoints such person are jointly and severally liable for reimbursement to the retirement trust fund, including the Florida Retirement System Trust Fund and the Florida Retirement System Investment Plan Trust Fund ~~Public Employee Optional Retirement Program Trust Fund~~, from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment has been made. Benefits suspended beyond the reemployment limitation shall apply toward repayment of benefits received in violation of the

reemployment limitation.

a. A district school board may reemploy a retiree as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver, or food service worker on a noncontractual basis after he or she has been retired for 1 calendar month. A district school board may reemploy a retiree as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month. Any member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. District school boards reemploying such teachers, education paraprofessionals, transportation assistants, bus drivers, or food service workers are subject to the retirement contribution required by subparagraph 2.

b. A Florida College System institution board of trustees may reemploy a retiree as an adjunct instructor or as a participant in a phased retirement program within the Florida College System, after he or she has been retired for 1 calendar month. A member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. Boards of trustees reemploying such instructors are subject to the retirement contribution required in subparagraph 2. A retiree may be reemployed as an adjunct instructor for no more than 780 hours during the first 12 months of retirement. A retiree reemployed for more than 780 hours during the first 12 months of retirement must give timely notice in writing to the employer and to the Division of Retirement or the state board of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder

of the 12 months of retirement. Any retiree employed in violation of this sub-subparagraph and any employer who employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by the retiree while reemployed in excess of 780 hours during the first 12 months of retirement must be repaid to the Florida Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

c. The State University System may reemploy a retiree as an adjunct faculty member or as a participant in a phased retirement program within the State University System after the retiree has been retired for 1 calendar month. A member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The State University System is subject to the retired contribution required in subparagraph 2., as appropriate. A retiree may be reemployed as an adjunct faculty member or a participant in a phased retirement program for no more than 780 hours during the first 12 months of his or her retirement. A retiree reemployed for more than 780 hours during the first 12 months of retirement must give timely notice in writing to the employer and to the Division of Retirement or the state board of the date he or she

will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the 12 months. Any retiree employed in violation of this sub-subparagraph and any employer who employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by the retiree while reemployed in excess of 780 hours during the first 12 months of retirement must be repaid to the Florida Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

d. The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retiree as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for 1 calendar month. Any member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The Board of Trustees of the Florida School for the Deaf and the Blind reemploying such teachers, residential instructors, or nurses is subject to the retirement contribution required by subparagraph 2.

e. A developmental research school may reemploy a retiree as a substitute or hourly teacher or an education paraprofessional as defined in s. 1012.01(2) on a noncontractual

basis after he or she has been retired for 1 calendar month. A developmental research school may reemploy a retiree as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month after retirement. Any member who is reemployed within 1 calendar month voids his or her application for retirement benefits. A developmental research school that reemploys retired teachers and education paraprofessionals is subject to the retirement contribution required by subparagraph 2.

f. A charter school may reemploy a retiree as a substitute or hourly teacher on a noncontractual basis after he or she has been retired for 1 calendar month. A charter school may reemploy a retired member as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month after retirement. Any member who is reemployed within 1 calendar month voids his or her application for retirement benefits. A charter school that reemploys such teachers is subject to the retirement contribution required by subparagraph 2.

2. The employment of a retiree or DROP participant of a state-administered retirement system does not affect the average final compensation or years of creditable service of the retiree or DROP participant. Before July 1, 1991, upon employment of any person, other than an elected officer as provided in s. 121.053, who is retired under a state-administered retirement program, the employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution which would be required for regular

members of the Florida Retirement System. Effective July 1, 1991, contributions shall be made as provided in s. 121.122 for retirees who have renewed membership or, as provided in subsection (13), for DROP participants.

3. Any person who is holding an elective public office which is covered by the Florida Retirement System and who is concurrently employed in nonelected covered employment may elect to retire while continuing employment in the elective public office if he or she terminates his or her nonelected covered employment. Such person shall receive his or her retirement benefits in addition to the compensation of the elective office without regard to the time limitations otherwise provided in this subsection. A person who seeks to exercise the provisions of this subparagraph as they existed before May 3, 1984, may not be deemed to be retired under those provisions, unless such person is eligible to retire under this subparagraph, as amended by chapter 84-11, Laws of Florida.

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer. However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after

meeting the definition of termination. However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. The reemployed retiree may not renew membership in the Florida Retirement System, except as provided in s. 121.122.

2. The employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the Florida Retirement System in addition to the contributions required by s. 121.76.

3. A retiree initially reemployed in violation of this paragraph and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any retirement benefits paid to the retirement trust fund from which the benefits were paid, including the Florida Retirement System Trust Fund and the Florida Retirement System Investment Plan Trust Fund ~~Public Employee Optional Retirement Program Trust Fund~~, as appropriate. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's 6-month reemployment limitation period shall apply toward the repayment of benefits received in violation of this paragraph.

Reviser's note.—Amended to conform to the renaming of the trust fund by s. 27, ch. 2011-68, Laws of Florida.

Section 11. Paragraph (b) of subsection (5) of section 197.3632, Florida Statutes, is amended to read:

197.3632 Uniform method for the levy, collection, and enforcement of non-ad valorem assessments.—

(5)

(b) ~~Beginning in 2009,~~ By December 15 of each year, the tax collector shall provide to the department a copy of each local governing board's non-ad valorem assessment roll containing the data elements and in the format prescribed by the executive director. In addition, ~~beginning in 2008,~~ a report shall be provided to the department by December 15 of each year for each non-ad valorem assessment roll, including, but not limited to, the following information:

1. The name and type of local governing board levying the non-ad valorem assessment;

2. Whether or not the local government levies a property tax;

3. The basis for the levy;

4. The rate of assessment;

5. The total amount of non-ad valorem assessment levied; and

6. The number of parcels affected.

Reviser's note.—Amended to delete obsolete language.

Section 12. 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 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 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 reports within the county, the tax collector must ensure that the contract for property information reports include all requests for title searches or abstracts for a given period of time.

Reviser's note.—Amended to correct an apparent error. The word "reports" was stricken in error by s. 3, ch. 2017-132, Laws of Florida; the intent is for the word to remain.

Section 13. Subsection (3) of section 199.303, Florida Statutes, is amended to read:

199.303 Declaration of legislative intent.—

~~(3) It is hereby declared to be the specific intent of the Legislature that all annual intangible personal property taxes imposed as provided by law for calendar years 2006 and prior shall remain in full force and effect during the period specified by s. 95.091 for the year in which the tax was due. It is further the intent of the Legislature that the department continue to assess and collect all taxes due to the state under such provisions for all periods available for assessment, as provided for the year in which tax was due by s. 95.091.~~

Reviser's note.—Amended to improve clarity.

Section 14. Paragraph (b) of subsection (8) of section 206.8745, Florida Statutes, is amended to read:

206.8745 Credits and refund claims.—

(8) Undyed, tax-paid diesel fuel purchased in this state and consumed by the engine of a qualified motor coach during idle time for the purpose of running climate control systems and maintaining electrical systems for the motor coach is subject to a refund. As used in this subsection, the term "qualified motor coach" means a privately owned vehicle that is designed to carry nine or more passengers, that has a gross vehicle weight of at least 33,000 pounds, that is used exclusively in the commercial application of transporting passengers for compensation, and that has the capacity to measure diesel fuel consumed in Florida during idling, separate from diesel fuel consumed to propel the vehicle in this state, by way of an on-board computer.

(b) The annual refund claim must be submitted before April

1 of the year following the year in which the tax was paid ~~and after December 31, 2000~~.

The Department of Revenue may adopt rules to administer this subsection.

Reviser's note.—Amended to delete obsolete language.

Section 15. Subsection (5) of section 213.755, Florida Statutes, is amended to read:

213.755 Filing of returns and payment of taxes by electronic means.—

(5) ~~Beginning January 1, 2003,~~ Consolidated filers shall file returns and remit taxes by electronic means.

Reviser's note.—Amended to delete obsolete language.

Section 16. Subsection (1) of section 215.442, Florida Statutes, is amended to read:

215.442 Executive director; reporting requirements; public meeting.—

(1) ~~Beginning October 2007 and quarterly thereafter,~~ The executive director shall present to the Board of Trustees of the State Board of Administration a quarterly report to include the following:

(a) The name of each equity in which the State Board of Administration has invested for the quarter.

(b) The industry category of each equity.

Reviser's note.—Amended to delete obsolete language.

Section 17. Subsection (1) of section 215.444, Florida Statutes, is amended to read:

215.444 Investment Advisory Council.—

(1) There is created a nine-member ~~six-member~~ Investment

Advisory Council to review the investments made by the staff of the Board of Administration and to make recommendations to the board regarding investment policy, strategy, and procedures. ~~Beginning February 1, 2011, the membership of the council shall be expanded to nine members.~~ The council shall meet with staff of the board at least once each quarter and shall provide a quarterly report directly to the Board of Trustees of the State Board of Administration at a meeting of the board.

Reviser's note.—Amended to delete obsolete language.

Section 18. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 215.4725, Florida Statutes, are amended to read:

215.4725 Prohibited investments by the State Board of Administration; companies that boycott Israel.—

(2) IDENTIFICATION OF COMPANIES.—

(a) ~~By August 1, 2016,~~ The public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:

1. To the extent that the public fund finds it appropriate, reviewing and relying on publicly available information regarding companies that boycott Israel, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the public fund for information regarding companies that boycott Israel; or

3. Contacting other institutional investors that prohibit such investments or that have engaged with companies that boycott Israel.

(3) REQUIRED ACTIONS.—The public fund shall adhere to the following procedures for assembling companies on the Scrutinized Companies that Boycott Israel List.

(a) *Engagement.*—

1. The public fund shall immediately determine the companies on the Scrutinized Companies that Boycott Israel List in which the public fund owns direct or indirect holdings.

2. For each company newly identified under this paragraph ~~after August 1, 2016~~, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to investment prohibition by the public fund. The notice must inform the company of the opportunity to clarify its activities regarding the boycott of Israel and encourage the company to cease the boycott of Israel within 90 days in order to avoid qualifying for investment prohibition.

3. If, within 90 days after the public fund's first engagement with a company pursuant to this paragraph, the company ceases a boycott of Israel, the company shall be removed from the Scrutinized Companies that Boycott Israel List, and the provisions of this section shall cease to apply to that company unless that company resumes a boycott of Israel.

Reviser's note.—Amended to delete obsolete language.

Section 19. Section 252.357, Florida Statutes, is amended to read:

252.357 Monitoring of nursing homes and assisted living facilities during disaster.—The Florida Comprehensive Emergency Management Plan shall permit the Agency for Health Care Administration, working from the agency's offices or in the

Emergency Operations Center, ESF-8, to make initial contact with each nursing home and assisted living facility in the disaster area. The agency, by July 15, ~~2006, and~~ annually ~~thereafter~~, shall publish on the Internet an emergency telephone number that may be used by nursing homes and assisted living facilities to contact the agency on a schedule established by the agency to report requests for assistance. The agency may also provide the telephone number to each facility when it makes the initial facility call.

Reviser's note.—Amended to delete obsolete language.

Section 20. Section 252.358, Florida Statutes, is amended to read:

252.358 Emergency-preparedness prescription medication refills.—All health insurers, managed care organizations, and other entities that are licensed by the Office of Insurance Regulation and provide prescription medication coverage as part of a policy or contract shall waive time restrictions on prescription medication refills, which include suspension of electronic "refill too soon" edits to pharmacies, to enable insureds or subscribers to refill prescriptions in advance, if there are authorized refills remaining, and shall authorize payment to pharmacies for at least a 30-day supply of any prescription medication, regardless of the date upon which the prescription had most recently been filled by a pharmacist, when the following conditions occur:

(1) The person seeking the prescription medication refill resides in a county that:

(a) Is under a hurricane warning issued by the National Weather Service;

(b) Is declared to be under a state of emergency in an executive order issued by the Governor; or

(c) Has activated its emergency operations center and its emergency management plan.

(2) The prescription medication refill is requested within 30 days after the origination date of the conditions stated in this section or until such conditions are terminated by the issuing authority or no longer exist. The time period for the waiver of prescription medication refills may be extended in 15- or 30-day increments by emergency orders issued by the Office of Insurance Regulation.

This section does not excuse or exempt an insured or subscriber from compliance with all other terms of the policy or contract providing prescription medication coverage. ~~This section takes effect July 1, 2006.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 21. Paragraph (c) of subsection (7) of section 258.501, Florida Statutes, is amended to read:

258.501 Myakka River; wild and scenic segment.—

(7) MANAGEMENT COORDINATING COUNCIL.—

~~(c) The Myakka River Management Coordinating Council shall prepare a report concerning the potential expansion of the Florida Wild and Scenic River designation to include the entire Myakka River. At a minimum, the report shall include a description of the extent of the Myakka River area that may be covered under the expanded designation and any recommendations or concerns of affected parties or other interests. During the development of the report, at least one public hearing shall be held in each of the affected areas of Manatee, Sarasota, and Charlotte Counties. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2008.~~

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

Reviser's note.—Amended to delete an obsolete provision.

Section 22. Subsection (1) of section 261.04, Florida Statutes, is amended to read:

261.04 Off-Highway Vehicle Recreation Advisory Committee; members; appointment.—

(1) ~~Effective July 1, 2003,~~ The Off-Highway Vehicle Recreation Advisory Committee is created within the Florida Forest Service and consists of nine members, all of whom are appointed by the Commissioner of Agriculture. The appointees shall include one representative of the Department of Agriculture and Consumer Services, one representative of the Department of Highway Safety and Motor Vehicles, one representative of the Department of Environmental Protection's Office of Greenways and Trails, one representative of the Fish and Wildlife Conservation Commission, one citizen with scientific expertise in disciplines relating to ecology, wildlife biology, or other environmental sciences, one representative of a licensed off-highway vehicle dealer, and three representatives of off-highway vehicle recreation groups. In making these appointments, the commissioner shall consider the places of residence of the members to ensure statewide representation.

Reviser's note.—Amended to delete obsolete language.

Section 23. Subsection (3) and paragraph (c) of subsection (4) of section 261.20, Florida Statutes, are amended to read:

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

261.20 Operations of off-highway vehicles on public lands; restrictions; safety courses; required equipment; prohibited acts; penalties.—

(3) ~~Effective July 1, 2008,~~ While operating an off-highway vehicle, a person who has not attained 16 years of age must have in his or her possession a certificate evidencing the satisfactory completion of an approved off-highway vehicle safety course in this state or another jurisdiction. A nonresident who has not attained 16 years of age and who is in this state temporarily for a period not to exceed 30 days is exempt from this subsection. Nothing contained in this chapter shall prohibit an agency from requiring additional safety-education courses for all operators.

(4)

(c) ~~On and after July 1, 2008,~~ Off-highway vehicles, when operating pursuant to this chapter, shall be equipped with a silencer or other device which limits sound emissions. Exhaust noise must not exceed 96 decibels in the A-weighting scale for vehicles manufactured after January 1, 1986, or 99 decibels in the A-weighting scale for vehicles manufactured before January 1, 1986, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287. Off-highway vehicle manufacturers or their agents prior to the sale to the general public in this state of any new off-highway vehicle model manufactured after January 1, 2008, shall provide to the department revolutions-per-minute data needed to conduct the J-1287 test, where applicable.

Reviser's note.—Amended to delete obsolete language.

Section 24. Subsection (1) of section 284.02, Florida Statutes, is amended to read:

284.02 Payment of premiums by each agency; handling of funds; payment of losses and expenses.—

(1) Premiums as calculated on all coverages shall be billed and charged to each state agency according to coverages obtained from the fund for their benefit, and such obligation shall be paid promptly by each agency from its operating budget upon presentation of a bill therefor. ~~However, no state agency shall be liable for the cost of insurance protection under this section prior to July 1, 1971, if any obligation therefor would be incurred against unappropriated funds. After July 1, 1971,~~ Billings and the obligation to pay shall be based on coverage provided during each fiscal year and annually thereafter.

Reviser's note.—Amended to delete an obsolete provision.

Section 25. Subsection (2) of section 286.29, Florida Statutes, is amended to read:

286.29 Climate-friendly public business.—The Legislature recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas emissions of state government operations. The following shall pertain to all state agencies when conducting public business:

(2) ~~Effective July 1, 2008,~~ State agencies shall contract for meeting and conference space only with hotels or conference facilities that have received the "Green Lodging" designation from the Department of Environmental Protection for best practices in water, energy, and waste efficiency standards, unless the responsible state agency head makes a determination that no other viable alternative exists. The Department of

Environmental Protection is authorized to adopt rules to implement the "Green Lodging" program.

Reviser's note.—Amended to delete obsolete language.

Section 26. Paragraph (c) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(c) By January 1, 2016, and every 3 years thereafter, an analysis of the following:

1. The qualified defense contractor and space flight business tax refund program established under s. 288.1045.

2. The tax exemption for semiconductor, defense, or space technology sales established under s. 212.08(5)(j).

3. The Military Base Protection Program established under s. 288.980.

~~4. The Manufacturing and Spaceport Investment Incentive Program formerly established under s. 288.1083.~~

4.~~5.~~ The Quick Response Training Program established under s. 288.047.

5.~~6.~~ The Incumbent Worker Training Program established under s. 445.003.

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6.~~7.~~ International trade and business development programs established or funded under s. 288.826.

Reviser's note.—Amended to conform to the repeal of referenced s. 288.1083 by s. 6, ch. 2014-18, Laws of Florida, to confirm repeal of s. 288.1083 pursuant to its own terms effective July 1, 2013.

Section 27. Paragraph (c) of subsection (3) of section 288.101, Florida Statutes, is amended to read:

288.101 Florida Job Growth Grant Fund.—

(3) For purposes of this section:

(c) "Targeted industry" means any industry identified in the most recent list provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 288.106(2)(q) ~~288.106(q)~~.

Reviser's note.—Amended to confirm the editorial substitution of a reference to s. 288.106(2)(q) for a reference to s. 288.106(q) to provide the complete citation.

Section 28. Subsection (5) of section 288.1258, Florida Statutes, is amended to read:

288.1258 Entertainment industry qualified production companies; application procedure; categories; duties of the Department of Revenue; records and reports.—

(5) RELATIONSHIP OF TAX EXEMPTIONS AND INCENTIVES TO INDUSTRY GROWTH; REPORT TO THE LEGISLATURE.—The Office of Film and Entertainment shall keep annual records from the information provided on taxpayer applications for tax exemption certificates ~~beginning January 1, 2001~~. These records also must reflect a ratio of the annual amount of sales and use tax exemptions under this section, plus the incentives awarded pursuant to s.

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288.1254 to the estimated amount of funds expended by certified productions. In addition, the office shall maintain data showing annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages. The employment information must include an estimate of the full-time equivalent positions created by each production that received tax credits pursuant to s. 288.1254. The Office of Film and Entertainment shall include this information in the annual report for the entertainment industry financial incentive program required under s. 288.1254(10).

Reviser's note.—Amended to delete obsolete language.

Section 29. Paragraph (b) of subsection (12) of section 315.03, Florida Statutes, is amended to read:

315.03 Grant of powers.—Each unit is hereby authorized and empowered:

(12)

(b) The Florida Seaport Transportation and Economic Development Council shall prepare an annual report detailing the amounts loaned, the projects financed by the loans, any interest earned, and loans outstanding. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1 of each year~~, beginning in 2004~~.

Reviser's note.—Amended to delete obsolete language.

Section 30. Subsection (3) of section 320.833, Florida Statutes, is amended to read:

320.833 Retention, destruction, and reproduction of records; electronic retention.—Records and documents of the Department of Highway Safety and Motor Vehicles, created in

compliance with, and in the implementation of, chapter 319 and this chapter, shall be retained by the department as specified in record retention schedules established under the general provisions of chapter 119. Further, the department is hereby authorized:

(3) ~~Beginning December 1, 2001, the department may~~ To maintain all records required or obtained in compliance with, and in the implementation of, chapter 319 and this chapter exclusively by electronic means.

Reviser's note.—Amended to delete obsolete language.

Section 31. Section 320.865, Florida Statutes, is amended to read:

320.865 Maintenance of records by the department.~~—Beginning December 1, 2001,~~ The department shall maintain electronic records of all complaints filed against licensees licensed under the provisions of ss. 320.27, 320.61, 320.77, 320.771, and 320.8225, any other provision of this chapter to the contrary notwithstanding. The records shall contain all enforcement actions taken against licensees and against unlicensed persons acting in a capacity which would require them to be licensed under those sections. The electronic file of each licensee and unlicensed person shall contain a record of any complaints filed against him or her and a record of any enforcement actions taken against him or her. The complainant and the referring agency, if there is one, shall be advised of the disposition by the department of the complaint within 10 days of such action.

Reviser's note.—Amended to delete obsolete language.

Section 32. Subsection (1) of section 331.3051, Florida Statutes, is amended to read:

331.3051 Duties of Space Florida.—Space Florida shall:

(1) Create a business plan to foster the growth and development of the aerospace industry. The business plan must address business development, finance, spaceport operations, research and development, workforce development, and education. The business plan must be ~~completed by March 1, 2007, and be~~ revised when determined as necessary by the board.

Reviser's note.—Amended to delete obsolete language.

Section 33. Subsection (8) of section 332.007, Florida Statutes, is amended to read:

332.007 Administration and financing of aviation and airport programs and projects; state plan.—

~~(8) Notwithstanding any other law to the contrary, any airport with direct intercontinental passenger service that is located in a county with a population under 400,000 as of July 1, 2002, and that has a loan from the Department of Transportation due in August of 2002 shall have such loan extended until September 18, 2008.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 34. Paragraph (d) of subsection (1) of section 344.26, Florida Statutes, is amended to read:

344.26 State Board of Administration; duties concerning debt service.—

(1)

(d) It shall be the duty of all officials of any such public body, county, district, municipality or other public authority to turn over to said State Board of Administration ~~within 30 days after May 27, 1943, or~~ within 30 days after the execution ~~hereafter~~ of any such lease or purchase agreement by

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Department of Transportation all moneys or other assets applicable to, or available for, the payment of said bonds or debentures, together with all records, books, documents or other papers pertaining to said bonds or debentures.

Reviser's note.—Amended to delete obsolete language.

Section 35. Subsection (1) of section 364.386, Florida Statutes, is amended to read:

364.386 Reports to the Legislature.—

(1)(a) The commission shall submit to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and the House of Representatives, on August 1, ~~2008, and~~ on an annual basis ~~thereafter~~, a report on the status of competition in the telecommunications industry and a detailed exposition of the following:

1. The ability of competitive providers to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions.

2. The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.

3. The overall impact of competition on the maintenance of reasonably affordable and reliable high-quality telecommunications services.

4. A listing and short description of any carrier disputes filed under s. 364.16.

(b) The commission shall make an annual request to providers of local exchange telecommunications services on or before March 1~~, 2008, and on or before March 1~~ of each year

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~~thereafter,~~ for the data it requires to complete the report. A provider of local exchange telecommunications services shall file its response with the commission on or before April 15~~, 2008, and on or before April 15~~ of each year ~~thereafter~~.

Reviser's note.—Amended to delete obsolete language.

Section 36. Subsection (3) of section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

(3) Each municipal electric utility and rural electric cooperative shall develop standards for the promotion, encouragement, and expansion of the use of renewable energy resources and energy conservation and efficiency measures. On or before April 1, ~~2009, and~~ annually ~~thereafter~~, each municipal electric utility and electric cooperative shall submit to the commission a report that identifies such standards.

Reviser's note.—Amended to delete obsolete language.

Section 37. Paragraph (a) of subsection (7) of section 373.036, Florida Statutes, is amended to read:

373.036 Florida water plan; district water management plans.—

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

(a) By March 1, ~~2006, and~~ annually ~~thereafter~~, each water management district shall prepare and submit to the department, the Governor, the President of the Senate, and the Speaker of the House of Representatives a consolidated water management district annual report on the management of water resources. In addition, copies must be provided by the water management districts to the chairs of all legislative committees having substantive or fiscal jurisdiction over the districts and the

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governing board of each county in the district having jurisdiction or deriving any funds for operations of the district. Copies of the consolidated annual report must be made available to the public, either in printed or electronic format.

Reviser's note.—Amended to delete obsolete language.

Section 38. Subsection (3) of section 373.042, Florida Statutes, is amended to read:

373.042 Minimum flows and minimum water levels.—

(3) By November 15, ~~1997, and~~ annually ~~thereafter~~, each water management district shall submit to the department for review and approval a priority list and schedule for the establishment of minimum flows and minimum water levels for surface watercourses, aquifers, and surface waters within the district. The priority list and schedule shall identify those listed water bodies for which the district will voluntarily undertake independent scientific peer review; any reservations proposed by the district to be established pursuant to s. 373.223(4); and those listed water bodies that have the potential to be affected by withdrawals in an adjacent district for which the department's adoption of a reservation pursuant to s. 373.223(4) or a minimum flow or minimum water level pursuant to subsection (1) may be appropriate. By March 1, ~~2006, and~~ annually ~~thereafter~~, each water management district shall include its approved priority list and schedule in the consolidated annual report required by s. 373.036(7). The priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing

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or may reasonably be expected to experience adverse impacts. Each water management district's priority list and schedule shall include all first magnitude springs, and all second magnitude springs within state or federally owned lands purchased for conservation purposes. The specific schedule for establishment of spring minimum flows and minimum water levels shall be commensurate with the existing or potential threat to spring flow from consumptive uses. Springs within the Suwannee River Water Management District, or second magnitude springs in other areas of the state, need not be included on the priority list if the water management district submits a report to the Department of Environmental Protection demonstrating that adverse impacts are not now occurring nor are reasonably expected to occur from consumptive uses during the next 20 years. The priority list and schedule is not subject to any proceeding pursuant to chapter 120. Except as provided in subsection (4), the development of a priority list and compliance with the schedule for the establishment of minimum flows and minimum water levels pursuant to this subsection satisfies the requirements of subsection (1).

Reviser's note.—Amended to delete obsolete language.

Section 39. Subsection (7) of section 373.470, Florida Statutes, is amended to read:

373.470 Everglades restoration.—

(7) ANNUAL REPORT.—To provide enhanced oversight of and accountability for the financial commitments established under this section and the progress made in the implementation of the comprehensive plan, the following information must be prepared annually as part of the consolidated annual report required by

s. 373.036(7):

(a) The district, in cooperation with the department, shall provide the following information as it relates to implementation of the comprehensive plan:

1. An identification of funds, by source and amount, received by the state and by each local sponsor during the fiscal year.

2. An itemization of expenditures, by source and amount, made by the state and by each local sponsor during the fiscal year.

3. A description of the purpose for which the funds were expended.

4. The unencumbered balance of funds remaining in trust funds or other accounts designated for implementation of the comprehensive plan.

5. A schedule of anticipated expenditures for the next fiscal year.

(b) The department shall prepare a detailed report on all funds expended by the state and credited toward the state's share of funding for implementation of the comprehensive plan. The report shall include:

1. A description of all expenditures, by source and amount, from the former Conservation and Recreation Lands Trust Fund, the Land Acquisition Trust Fund, the former Preservation 2000 Trust Fund, the Florida Forever Trust Fund, the Save Our Everglades Trust Fund, and other named funds or accounts for the acquisition or construction of project components or other features or facilities that benefit the comprehensive plan.

2. A description of the purposes for which the funds were

expended.

3. The unencumbered fiscal-year-end balance that remains in each trust fund or account identified in subparagraph 1.

(c) The district, in cooperation with the department, shall provide a detailed report on progress made in the implementation of the comprehensive plan, including the status of all project components initiated after the effective date of this act or the date of the last report prepared under this subsection, whichever is later.

The information required in paragraphs (a), (b), and (c) shall be provided as part of the consolidated annual report required by s. 373.036(7). ~~The initial report is due by November 30, 2000, and~~ Each annual report ~~thereafter~~ is due by March 1.

Reviser's note.—Amended to delete obsolete language.

Section 40. Subsection (9) of section 373.709, Florida Statutes, is amended to read:

373.709 Regional water supply planning.—

~~(9) For any regional water supply plan that is scheduled to be updated before December 31, 2005, the deadline for such update shall be extended by 1 year.~~

Reviser's note.—Amended to delete obsolete language.

Section 41. Paragraph (d) of subsection (1) of section 376.303, Florida Statutes, is amended to read:

376.303 Powers and duties of the Department of Environmental Protection.—

(1) The department has the power and the duty to:

(d) Establish a registration program for drycleaning facilities and wholesale supply facilities.

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1. Owners or operators of drycleaning facilities and wholesale supply facilities and real property owners shall jointly register each facility owned and in operation with the department by June 30, 1995, pay initial registration fees by December 31, 1995, and pay annual renewal registration fees by December 31, 1996, and each year thereafter, in accordance with this subsection. If the registration form cannot be jointly submitted, then the applicant shall provide notice of the registration to other interested parties. The department shall establish reasonable requirements for the registration of such facilities. The department shall use reasonable efforts to identify and notify drycleaning facilities and wholesale supply facilities of the registration requirements by certified mail, return receipt requested. The department shall provide to the Department of Revenue a copy of each applicant's registration materials, within 30 working days of the receipt of the materials. This copy may be in such electronic format as the two agencies mutually designate.

2.a. The department shall issue an invoice for annual registration fees to each registered drycleaning facility or wholesale supply facility by December 31 of each year. Owners of drycleaning facilities and wholesale supply facilities shall submit to the department an initial fee of $100 and an annual renewal registration fee of $100 for each drycleaning facility or wholesale supply facility owned and in operation. The fee shall be paid within 30 days after receipt of billing by the department. Facilities that fail to pay their renewal fee within 30 days after receipt of billing are subject to a late fee of $75.

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b. Revenues derived from registration, renewal, and late fees shall be deposited into the Water Quality Assurance Trust Fund to be used as provided in s. 376.3078.

3. ~~Effective March 1, 2009,~~ A registered drycleaning facility shall display in the vicinity of its drycleaning machines the original or a copy of a valid and current certificate evidencing registration with the department pursuant to this paragraph. ~~After that date,~~ A person may not sell or transfer any drycleaning solvents to an owner or operator of a drycleaning facility unless the owner or operator of the drycleaning facility displays the certificate issued by the department. Violators of this subparagraph are subject to the remedies available to the department pursuant to s. 376.302.

Reviser's note.—Amended to delete obsolete language.

Section 42. Subsection (5) of section 379.2495, Florida Statutes, is amended to read:

379.2495 Florida Ships-2-Reefs Program; matching grant requirements.—

(5) No later than January 1 of each year~~, 2009, and each January 1 thereafter~~, the commission shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the expenditure of the funds appropriated to it for the purposes of carrying out the provisions of this section.

Reviser's note.—Amended to delete obsolete language.

Section 43. Paragraph (d) of subsection (14) of section 381.986, Florida Statutes, is amended to read:

381.986 Medical use of marijuana.—

(14) EXCEPTIONS TO OTHER LAWS.—

(d) A licensed medical marijuana treatment center and its owners, managers, and employees are not subject to licensure or regulation under chapter 465 or chapter 499 for manufacturing, possessing, selling, delivering, distributing, dispensing, or lawfully disposing of marijuana or a marijuana delivery device, as provided in this section, in s. 381.988, and by department rule.

Reviser's note.—Amended to confirm the editorial insertion of the word "in."

Section 44. Paragraph (b) of subsection (1) of section 381.987, Florida Statutes, is amended to read:

381.987 Public records exemption for personal identifying information relating to medical marijuana held by the department.—

(1) The following information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(b) All personal identifying information collected for the purpose of issuing a patient's or caregiver's medical marijuana use registry identification card described in s. 381.986 ~~381.896~~.

Reviser's note.—Amended to correct an erroneous cross-reference. Section 381.986(7), as amended by s. 3, ch. 2017-232, Laws of Florida, authorizes and describes medical marijuana use registry identification cards.

Section 45. Subsection (2) of section 394.75, Florida Statutes, is amended to read:

394.75 State and district substance abuse and mental health plans.—

(2) The state master plan shall also include:

(a) A proposal for the development of a data system that will evaluate the effectiveness of programs and services provided to clients of the substance abuse and mental health service system.

(b) A proposal to resolve the funding discrepancies between districts.

(c) A methodology for the allocation of resources available from federal, state, and local sources and a description of the current level of funding available from each source.

(d) A description of the statewide priorities for clients and services, and each district's priorities for clients and services.

(e) Recommendations for methods of enhancing local participation in the planning, organization, and financing of substance abuse and mental health services.

(f) A description of the current methods of contracting for services, an assessment of the efficiency of these methods in providing accountability for contracted funds, and recommendations for improvements to the system of contracting.

(g) Recommendations for improving access to services by clients and their families.

(h) Guidelines and formats for the development of district plans.

(i) Recommendations for future directions for the substance abuse and mental health service delivery system.

A schedule, format, and procedure for development and review of the state master plan shall be adopted by the department by June

of each year. The plan and annual updates must be submitted to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year~~, beginning January 1, 2001~~.

Reviser's note.—Amended to delete obsolete language.

Section 46. Paragraph (i) of subsection (1) of section 400.6045, Florida Statutes, is amended to read:

400.6045 Patients with Alzheimer's disease or other related disorders; staff training requirements; certain disclosures.—

(1) A hospice licensed under this part must provide the following staff training:

~~(i) An employee who is hired on or after July 1, 2003, must complete the required training by July 1, 2004, or by the deadline specified in this section, whichever is later.~~

Reviser's note.—Amended to delete obsolete language.

Section 47. Subsection (23) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(23) Adopt rules and regulations to ensure that no detergents are sold in Florida ~~after December 31, 1972,~~ which are reasonably found to have a harmful or deleterious effect on human health or on the environment. Any regulations adopted pursuant to this subsection shall apply statewide. Subsequent to the promulgation of such rules and regulations, no county, municipality, or other local political subdivision shall adopt or enforce any local ordinance, special law, or local regulation

governing detergents which is less stringent than state law or regulation. Regulations, ordinances, or special acts adopted by a county or municipality governing detergents shall be subject to approval by the department, except that regulations, ordinances, or special acts adopted by any county or municipality with a local pollution control program approved pursuant to s. 403.182 shall be approved as an element of the local pollution control program.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Reviser's note.—Amended to delete obsolete language.

Section 48. Subsection (16) of section 403.064, Florida Statutes, is amended to read:

403.064 Reuse of reclaimed water.—

(16) Utilities implementing reuse projects are encouraged, except in the case of use by electric utilities as defined in s. 366.02(2), to meter use of reclaimed water by all end users and to charge for the use of reclaimed water based on the actual volume used when such metering and charges can be shown to encourage water conservation. Metering and the use of volume-based rates are effective water management tools for the following reuse activities: residential irrigation, agricultural irrigation, industrial uses, landscape irrigation, irrigation of other public access areas, commercial and institutional uses such as toilet flushing, and transfers to other reclaimed water utilities. ~~Beginning with the submittal due on January 1, 2005,~~

Each domestic wastewater utility that provides reclaimed water for the reuse activities listed in this section shall include a summary of its metering and rate structure as part of its annual reuse report to the department.

Reviser's note.—Amended to delete obsolete language.

Section 49. Subsection (3) of section 408.0611, Florida Statutes, is amended to read:

408.0611 Electronic prescribing clearinghouse.—

(3) The agency shall work in collaboration with private sector electronic prescribing initiatives and relevant stakeholders to create a clearinghouse of information on electronic prescribing for health care practitioners, health care facilities, and pharmacies. These stakeholders shall include organizations that represent health care practitioners, organizations that represent health care facilities, organizations that represent pharmacies, organizations that operate electronic prescribing networks, organizations that create electronic prescribing products, and regional health information organizations. Specifically, the agency shall~~, by October 1, 2007~~:

(a) Provide on its website:

1. Information regarding the process of electronic prescribing and the availability of electronic prescribing products, including no-cost or low-cost products;

2. Information regarding the advantages of electronic prescribing, including using medication history data to prevent drug interactions, prevent allergic reactions, and deter doctor and pharmacy shopping for controlled substances;

3. Links to federal and private sector websites that

provide guidance on selecting an appropriate electronic prescribing product; and

4. Links to state, federal, and private sector incentive programs for the implementation of electronic prescribing.

(b) Convene quarterly meetings of the stakeholders to assess and accelerate the implementation of electronic prescribing.

Reviser's note.—Amended to delete obsolete language.

Section 50. Paragraphs (i) and (j) of subsection (1) of section 408.062, Florida Statutes, are amended to read:

408.062 Research, analyses, studies, and reports.—

(1) The agency shall conduct research, analyses, and studies relating to health care costs and access to and quality of health care services as access and quality are affected by changes in health care costs. Such research, analyses, and studies shall include, but not be limited to:

(i) The use of emergency department services by patient acuity level and the implication of increasing hospital cost by providing nonurgent care in emergency departments. The agency shall submit an annual report based on this monitoring and assessment to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the substantive legislative committees, due ~~with the first report due~~ January 1~~, 2006~~.

(j) The making available on its Internet website ~~beginning no later than October 1, 2004~~, and in a hard-copy format upon request, of patient charge, volumes, length of stay, and performance indicators collected from health care facilities pursuant to s. 408.061(1)(a) for specific medical conditions,

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surgeries, and procedures provided in inpatient and outpatient facilities as determined by the agency. In making the determination of specific medical conditions, surgeries, and procedures to include, the agency shall consider such factors as volume, severity of the illness, urgency of admission, individual and societal costs, and whether the condition is acute or chronic. Performance outcome indicators shall be risk adjusted or severity adjusted, as applicable, using nationally recognized risk adjustment methodologies or software consistent with the standards of the Agency for Healthcare Research and Quality and as selected by the agency. The website shall also provide an interactive search that allows consumers to view and compare the information for specific facilities, a map that allows consumers to select a county or region, definitions of all of the data, descriptions of each procedure, and an explanation about why the data may differ from facility to facility. Such public data shall be updated quarterly. The agency shall submit an annual status report on the collection of data and publication of health care quality measures to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the substantive legislative committees, ~~with the first status report~~ due January 1~~, 2005~~.

Reviser's note.—Amended to delete obsolete language.

Section 51. Paragraph (a) of subsection (6) of section 408.811, Florida Statutes, is amended to read:

408.811 Right of inspection; copies; inspection reports; plan for correction of deficiencies.—

(6)(a) Each licensee shall maintain as public information, available upon request, records of all inspection reports

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pertaining to that provider that have been filed by the agency unless those reports are exempt from or contain information that is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution or is otherwise made confidential by law. ~~Effective October 1, 2006,~~ Copies of such reports shall be retained in the records of the provider for at least 3 years following the date the reports are filed and issued, regardless of a change of ownership.

Reviser's note.—Amended to delete obsolete language.

Section 52. Paragraph (d) of subsection (10) of section 408.9091, Florida Statutes, is amended to read:

408.9091 Cover Florida Health Care Access Program.—

(10) PROGRAM EVALUATION.—The agency and the office shall:

(d) Jointly submit by March 1, ~~2009, and~~ annually ~~thereafter~~, a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides the information specified in paragraphs (a)-(c) and recommendations relating to the successful implementation and administration of the program.

Reviser's note.—Amended to delete obsolete language.

Section 53. Paragraph (a) of subsection (2) of section 409.1754, Florida Statutes, is amended to read:

409.1754 Commercial sexual exploitation of children; screening and assessment; training; multidisciplinary staffings; service plans.—

(2) MULTIDISCIPLINARY STAFFINGS AND SERVICE PLANS.—

(a) The department, or a sheriff's office acting under s. 39.3065, shall conduct a multidisciplinary staffing for each child <u>who</u> ~~that~~ is a suspected or verified victim of commercial

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sexual exploitation. The department or sheriff's office shall coordinate the staffing and invite individuals involved in the child's care, including, but not limited to, the child, if appropriate; the child's family or legal guardian; the child's guardian ad litem; Department of Juvenile Justice staff; school district staff; local health and human services providers; victim advocates; and any other persons who may be able to assist the child.

Reviser's note.—Amended to confirm the editorial substitution of the word "who" for the word "that."

Section 54. Paragraph (b) of subsection (1) and subsection (26) of section 409.906, Florida Statutes, are amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(1) ADULT DENTAL SERVICES.—

(b) ~~Beginning July 1, 2006,~~ The agency may pay for full or partial dentures, the procedures required to seat full or partial dentures, and the repair and reline of full or partial dentures, provided by or under the direction of a licensed dentist, for a recipient who is 21 years of age or older.

(26) HOME AND COMMUNITY-BASED SERVICES FOR AUTISM SPECTRUM DISORDER AND OTHER DEVELOPMENTAL DISABILITIES.—The agency is authorized to seek federal approval through a Medicaid waiver or a state plan amendment for the provision of occupational therapy, speech therapy, physical therapy, behavior analysis, and behavior assistant services to individuals who are 5 years of age and under and have a diagnosed developmental disability as defined in s. 393.063, autism spectrum disorder as defined in s. 627.6686, or Down syndrome, a genetic disorder caused by the presence of extra chromosomal material on chromosome 21. Causes of the syndrome may include Trisomy 21, Mosaicism, Robertsonian Translocation, and other duplications of a portion of chromosome 21. Coverage for such services shall be limited to $36,000 annually and may not exceed $108,000 in total lifetime benefits. The agency shall submit an annual report ~~beginning~~ on January 1~~, 2009,~~ to the President of the Senate, the Speaker of the House of Representatives, and the relevant committees of the Senate and the House of Representatives regarding progress on obtaining

federal approval and recommendations for the implementation of these home and community-based services. The agency may not implement this subsection without prior legislative approval.

Reviser's note.—Amended to delete obsolete language.

Section 55. Section 409.913, Florida Statutes, is amended to read:

409.913 Oversight of the integrity of the Medicaid program.—The agency shall operate a program to oversee the activities of Florida Medicaid recipients, and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate. ~~Beginning January 1, 2003, and~~ Each January 1 ~~year thereafter~~, the agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs shall submit a joint report to the Legislature documenting the effectiveness of the state's efforts to control Medicaid fraud and abuse and to recover Medicaid overpayments during the previous fiscal year. The report must describe the number of cases opened and investigated each year; the sources of the cases opened; the disposition of the cases closed each year; the amount of overpayments alleged in preliminary and final audit letters; the number and amount of fines or penalties imposed; any reductions in overpayment amounts negotiated in settlement agreements or by other means; the amount of final agency determinations of overpayments; the amount deducted from federal claiming as a result of overpayments; the amount of overpayments recovered each year; the amount of cost of investigation recovered each year; the average length of time to collect from the time the case was

opened until the overpayment is paid in full; the amount determined as uncollectible and the portion of the uncollectible amount subsequently reclaimed from the Federal Government; the number of providers, by type, that are terminated from participation in the Medicaid program as a result of fraud and abuse; and all costs associated with discovering and prosecuting cases of Medicaid overpayments and making recoveries in such cases. The report must also document actions taken to prevent overpayments and the number of providers prevented from enrolling in or reenrolling in the Medicaid program as a result of documented Medicaid fraud and abuse and must include policy recommendations necessary to prevent or recover overpayments and changes necessary to prevent and detect Medicaid fraud. All policy recommendations in the report must include a detailed fiscal analysis, including, but not limited to, implementation costs, estimated savings to the Medicaid program, and the return on investment. The agency must submit the policy recommendations and fiscal analyses in the report to the appropriate estimating conference, pursuant to s. 216.137, by February 15 of each year. The agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs each must include detailed unit-specific performance standards, benchmarks, and metrics in the report, including projected cost savings to the state Medicaid program during the following fiscal year.

(1) For the purposes of this section, the term:

(a) "Abuse" means:

1. Provider practices that are inconsistent with generally accepted business or medical practices and that result in an unnecessary cost to the Medicaid program or in reimbursement for

goods or services that are not medically necessary or that fail to meet professionally recognized standards for health care.

2. Recipient practices that result in unnecessary cost to the Medicaid program.

(b) "Complaint" means an allegation that fraud, abuse, or an overpayment has occurred.

(c) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception results in unauthorized benefit to herself or himself or another person. The term includes any act that constitutes fraud under applicable federal or state law.

(d) "Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice. For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.

(e) "Overpayment" includes any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake.

(f) "Person" means any natural person, corporation,

partnership, association, clinic, group, or other entity, whether or not such person is enrolled in the Medicaid program or is a provider of health care.

(2) The agency shall conduct, or cause to be conducted by contract or otherwise, reviews, investigations, analyses, audits, or any combination thereof, to determine possible fraud, abuse, overpayment, or recipient neglect in the Medicaid program and shall report the findings of any overpayments in audit reports as appropriate. At least 5 percent of all audits shall be conducted on a random basis. As part of its ongoing fraud detection activities, the agency shall identify and monitor, by contract or otherwise, patterns of overutilization of Medicaid services based on state averages. The agency shall track Medicaid provider prescription and billing patterns and evaluate them against Medicaid medical necessity criteria and coverage and limitation guidelines adopted by rule. Medical necessity determination requires that service be consistent with symptoms or confirmed diagnosis of illness or injury under treatment and not in excess of the patient's needs. The agency shall conduct reviews of provider exceptions to peer group norms and shall, using statistical methodologies, provider profiling, and analysis of billing patterns, detect and investigate abnormal or unusual increases in billing or payment of claims for Medicaid services and medically unnecessary provision of services.

(3) The agency may conduct, or may contract for, prepayment review of provider claims to ensure cost-effective purchasing; to ensure that billing by a provider to the agency is in accordance with applicable provisions of all Medicaid rules, regulations, handbooks, and policies and in accordance with

federal, state, and local law; and to ensure that appropriate care is rendered to Medicaid recipients. Such prepayment reviews may be conducted as determined appropriate by the agency, without any suspicion or allegation of fraud, abuse, or neglect, and may last for up to 1 year. Unless the agency has reliable evidence of fraud, misrepresentation, abuse, or neglect, claims shall be adjudicated for denial or payment within 90 days after receipt of complete documentation by the agency for review. If there is reliable evidence of fraud, misrepresentation, abuse, or neglect, claims shall be adjudicated for denial of payment within 180 days after receipt of complete documentation by the agency for review.

(4) Any suspected criminal violation identified by the agency must be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General for investigation. The agency and the Attorney General shall enter into a memorandum of understanding, which must include, but need not be limited to, a protocol for regularly sharing information and coordinating casework. The protocol must establish a procedure for the referral by the agency of cases involving suspected Medicaid fraud to the Medicaid Fraud Control Unit for investigation, and the return to the agency of those cases where investigation determines that administrative action by the agency is appropriate. Offices of the Medicaid program integrity program and the Medicaid Fraud Control Unit of the Department of Legal Affairs, shall, to the extent possible, be collocated. The agency and the Department of Legal Affairs shall periodically conduct joint training and other joint activities designed to increase communication and coordination in recovering

overpayments.

(5) A Medicaid provider is subject to having goods and services that are paid for by the Medicaid program reviewed by an appropriate peer-review organization designated by the agency. The written findings of the applicable peer-review organization are admissible in any court or administrative proceeding as evidence of medical necessity or the lack thereof.

(6) Any notice required to be given to a provider under this section is presumed to be sufficient notice if sent to the address last shown on the provider enrollment file. It is the responsibility of the provider to furnish and keep the agency informed of the provider's current address. United States Postal Service proof of mailing or certified or registered mailing of such notice to the provider at the address shown on the provider enrollment file constitutes sufficient proof of notice. Any notice required to be given to the agency by this section must be sent to the agency at an address designated by rule.

(7) When presenting a claim for payment under the Medicaid program, a provider has an affirmative duty to supervise the provision of, and be responsible for, goods and services claimed to have been provided, to supervise and be responsible for preparation and submission of the claim, and to present a claim that is true and accurate and that is for goods and services that:

(a) Have actually been furnished to the recipient by the provider prior to submitting the claim.

(b) Are Medicaid-covered goods or services that are medically necessary.

(c) Are of a quality comparable to those furnished to the

general public by the provider's peers.

(d) Have not been billed in whole or in part to a recipient or a recipient's responsible party, except for such copayments, coinsurance, or deductibles as are authorized by the agency.

(e) Are provided in accord with applicable provisions of all Medicaid rules, regulations, handbooks, and policies and in accordance with federal, state, and local law.

(f) Are documented by records made at the time the goods or services were provided, demonstrating the medical necessity for the goods or services rendered. Medicaid goods or services are excessive or not medically necessary unless both the medical basis and the specific need for them are fully and properly documented in the recipient's medical record.

The agency shall deny payment or require repayment for goods or services that are not presented as required in this subsection.

(8) The agency shall not reimburse any person or entity for any prescription for medications, medical supplies, or medical services if the prescription was written by a physician or other prescribing practitioner who is not enrolled in the Medicaid program. This section does not apply:

(a) In instances involving bona fide emergency medical conditions as determined by the agency;

(b) To a provider of medical services to a patient in a hospital emergency department, hospital inpatient or outpatient setting, or nursing home;

(c) To bona fide pro bono services by preapproved non-Medicaid providers as determined by the agency;

(d) To prescribing physicians who are board-certified

specialists treating Medicaid recipients referred for treatment by a treating physician who is enrolled in the Medicaid program;

(e) To prescriptions written for dually eligible Medicare beneficiaries by an authorized Medicare provider who is not enrolled in the Medicaid program;

(f) To other physicians who are not enrolled in the Medicaid program but who provide a medically necessary service or prescription not otherwise reasonably available from a Medicaid-enrolled physician; or

(9) A Medicaid provider shall retain medical, professional, financial, and business records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for a period of 5 years after the date of furnishing such services or goods. The agency may investigate, review, or analyze such records, which must be made available during normal business hours. However, 24-hour notice must be provided if patient treatment would be disrupted. The provider must keep the agency informed of the location of the provider's Medicaid-related records. The authority of the agency to obtain Medicaid-related records from a provider is neither curtailed nor limited during a period of litigation between the agency and the provider.

(10) Payments for the services of billing agents or persons participating in the preparation of a Medicaid claim shall not be based on amounts for which they bill nor based on the amount a provider receives from the Medicaid program.

(11) The agency shall deny payment or require repayment for inappropriate, medically unnecessary, or excessive goods or services from the person furnishing them, the person under whose supervision they were furnished, or the person causing them to

be furnished.

(12) The complaint and all information obtained pursuant to an investigation of a Medicaid provider, or the authorized representative or agent of a provider, relating to an allegation of fraud, abuse, or neglect are confidential and exempt from the provisions of s. 119.07(1):

(a) Until the agency takes final agency action with respect to the provider and requires repayment of any overpayment, or imposes an administrative sanction;

(b) Until the Attorney General refers the case for criminal prosecution;

(c) Until 10 days after the complaint is determined without merit; or

(d) At all times if the complaint or information is otherwise protected by law.

(13) The agency shall terminate participation of a Medicaid provider in the Medicaid program and may seek civil remedies or impose other administrative sanctions against a Medicaid provider, if the provider or any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, has been convicted of a criminal offense under federal law or the law of any state relating to the practice of the provider's profession, or a criminal offense listed under s. 408.809(4), s. 409.907(10), or s. 435.04(2). If the agency determines that the provider did not participate or acquiesce in the offense, termination will not be imposed. If the agency effects a termination under this subsection, the agency shall take final agency action.

(14) If the provider has been suspended or terminated from participation in the Medicaid program or the Medicare program by the Federal Government or any state, the agency must immediately suspend or terminate, as appropriate, the provider's participation in this state's Medicaid program for a period no less than that imposed by the Federal Government or any other state, and may not enroll such provider in this state's Medicaid program while such foreign suspension or termination remains in effect. The agency shall also immediately suspend or terminate, as appropriate, a provider's participation in this state's Medicaid program if the provider participated or acquiesced in any action for which any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, was suspended or terminated from participating in the Medicaid program or the Medicare program by the Federal Government or any state. This sanction is in addition to all other remedies provided by law.

(15) The agency shall seek a remedy provided by law, including, but not limited to, any remedy provided in subsections (13) and (16) and s. 812.035, if:

(a) The provider's license has not been renewed, or has been revoked, suspended, or terminated, for cause, by the licensing agency of any state;

(b) The provider has failed to make available or has refused access to Medicaid-related records to an auditor, investigator, or other authorized employee or agent of the agency, the Attorney General, a state attorney, or the Federal Government;

(c) The provider has not furnished or has failed to make available such Medicaid-related records as the agency has found necessary to determine whether Medicaid payments are or were due and the amounts thereof;

(d) The provider has failed to maintain medical records made at the time of service, or prior to service if prior authorization is required, demonstrating the necessity and appropriateness of the goods or services rendered;

(e) The provider is not in compliance with provisions of Medicaid provider publications that have been adopted by reference as rules in the Florida Administrative Code; with provisions of state or federal laws, rules, or regulations; with provisions of the provider agreement between the agency and the provider; or with certifications found on claim forms or on transmittal forms for electronically submitted claims that are submitted by the provider or authorized representative, as such provisions apply to the Medicaid program;

(f) The provider or person who ordered, authorized, or prescribed the care, services, or supplies has furnished, or ordered or authorized the furnishing of, goods or services to a recipient which are inappropriate, unnecessary, excessive, or harmful to the recipient or are of inferior quality;

(g) The provider has demonstrated a pattern of failure to provide goods or services that are medically necessary;

(h) The provider or an authorized representative of the provider, or a person who ordered, authorized, or prescribed the goods or services, has submitted or caused to be submitted false or a pattern of erroneous Medicaid claims;

(i) The provider or an authorized representative of the

provider, or a person who has ordered, authorized, or prescribed the goods or services, has submitted or caused to be submitted a Medicaid provider enrollment application, a request for prior authorization for Medicaid services, a drug exception request, or a Medicaid cost report that contains materially false or incorrect information;

(j) The provider or an authorized representative of the provider has collected from or billed a recipient or a recipient's responsible party improperly for amounts that should not have been so collected or billed by reason of the provider's billing the Medicaid program for the same service;

(k) The provider or an authorized representative of the provider has included in a cost report costs that are not allowable under a Florida Title XIX reimbursement plan after the provider or authorized representative had been advised in an audit exit conference or audit report that the costs were not allowable;

(l) The provider is charged by information or indictment with fraudulent billing practices or an offense referenced in subsection (13). The sanction applied for this reason is limited to suspension of the provider's participation in the Medicaid program for the duration of the indictment unless the provider is found guilty pursuant to the information or indictment;

(m) The provider or a person who ordered, authorized, or prescribed the goods or services is found liable for negligent practice resulting in death or injury to the provider's patient;

(n) The provider fails to demonstrate that it had available during a specific audit or review period sufficient quantities of goods, or sufficient time in the case of services, to support

the provider's billings to the Medicaid program;

(o) The provider has failed to comply with the notice and reporting requirements of s. 409.907;

(p) The agency has received reliable information of patient abuse or neglect or of any act prohibited by s. 409.920; or

(q) The provider has failed to comply with an agreed-upon repayment schedule.

A provider is subject to sanctions for violations of this subsection as the result of actions or inactions of the provider, or actions or inactions of any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, in which the provider participated or acquiesced.

(16) The agency shall impose any of the following sanctions or disincentives on a provider or a person for any of the acts described in subsection (15):

(a) Suspension for a specific period of time of not more than 1 year. Suspension precludes participation in the Medicaid program, which includes any action that results in a claim for payment to the Medicaid program for furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

(b) Termination for a specific period of time ranging from more than 1 year to 20 years. Termination precludes participation in the Medicaid program, which includes any action that results in a claim for payment to the Medicaid program for furnishing, supervising a person who is furnishing, or causing a

person to furnish goods or services.

(c) Imposition of a fine of up to $5,000 for each violation. Each day that an ongoing violation continues, such as refusing to furnish Medicaid-related records or refusing access to records, is considered a separate violation. Each instance of improper billing of a Medicaid recipient; each instance of including an unallowable cost on a hospital or nursing home Medicaid cost report after the provider or authorized representative has been advised in an audit exit conference or previous audit report of the cost unallowability; each instance of furnishing a Medicaid recipient goods or professional services that are inappropriate or of inferior quality as determined by competent peer judgment; each instance of knowingly submitting a materially false or erroneous Medicaid provider enrollment application, request for prior authorization for Medicaid services, drug exception request, or cost report; each instance of inappropriate prescribing of drugs for a Medicaid recipient as determined by competent peer judgment; and each false or erroneous Medicaid claim leading to an overpayment to a provider is considered a separate violation.

(d) Immediate suspension, if the agency has received information of patient abuse or neglect or of any act prohibited by s. 409.920. Upon suspension, the agency must issue an immediate final order under s. 120.569(2)(n).

(e) A fine, not to exceed $10,000, for a violation of paragraph (15)(i).

(f) Imposition of liens against provider assets, including, but not limited to, financial assets and real property, not to exceed the amount of fines or recoveries sought, upon entry of

an order determining that such moneys are due or recoverable.

(g) Prepayment reviews of claims for a specified period of time.

(h) Comprehensive followup reviews of providers every 6 months to ensure that they are billing Medicaid correctly.

(i) Corrective-action plans that remain in effect for up to 3 years and that are monitored by the agency every 6 months while in effect.

(j) Other remedies as permitted by law to effect the recovery of a fine or overpayment.

If a provider voluntarily relinquishes its Medicaid provider number or an associated license, or allows the associated licensure to expire after receiving written notice that the agency is conducting, or has conducted, an audit, survey, inspection, or investigation and that a sanction of suspension or termination will or would be imposed for noncompliance discovered as a result of the audit, survey, inspection, or investigation, the agency shall impose the sanction of termination for cause against the provider. The agency's termination with cause is subject to hearing rights as may be provided under chapter 120. The Secretary of Health Care Administration may make a determination that imposition of a sanction or disincentive is not in the best interest of the Medicaid program, in which case a sanction or disincentive may not be imposed.

(17) In determining the appropriate administrative sanction to be applied, or the duration of any suspension or termination, the agency shall consider:

(a) The seriousness and extent of the violation or violations.

(b) Any prior history of violations by the provider relating to the delivery of health care programs which resulted in either a criminal conviction or in administrative sanction or penalty.

(c) Evidence of continued violation within the provider's management control of Medicaid statutes, rules, regulations, or policies after written notification to the provider of improper practice or instance of violation.

(d) The effect, if any, on the quality of medical care provided to Medicaid recipients as a result of the acts of the provider.

(e) Any action by a licensing agency respecting the provider in any state in which the provider operates or has operated.

(f) The apparent impact on access by recipients to Medicaid services if the provider is suspended or terminated, in the best judgment of the agency.

The agency shall document the basis for all sanctioning actions and recommendations.

(18) The agency may take action to sanction, suspend, or terminate a particular provider working for a group provider, and may suspend or terminate Medicaid participation at a specific location, rather than or in addition to taking action against an entire group.

(19) The agency shall establish a process for conducting followup reviews of a sampling of providers who have a history

of overpayment under the Medicaid program. This process must consider the magnitude of previous fraud or abuse and the potential effect of continued fraud or abuse on Medicaid costs.

(20) In making a determination of overpayment to a provider, the agency must use accepted and valid auditing, accounting, analytical, statistical, or peer-review methods, or combinations thereof. Appropriate statistical methods may include, but are not limited to, sampling and extension to the population, parametric and nonparametric statistics, tests of hypotheses, and other generally accepted statistical methods. Appropriate analytical methods may include, but are not limited to, reviews to determine variances between the quantities of products that a provider had on hand and available to be purveyed to Medicaid recipients during the review period and the quantities of the same products paid for by the Medicaid program for the same period, taking into appropriate consideration sales of the same products to non-Medicaid customers during the same period. In meeting its burden of proof in any administrative or court proceeding, the agency may introduce the results of such statistical methods as evidence of overpayment.

(21) When making a determination that an overpayment has occurred, the agency shall prepare and issue an audit report to the provider showing the calculation of overpayments. The agency's determination must be based solely upon information available to it before issuance of the audit report and, in the case of documentation obtained to substantiate claims for Medicaid reimbursement, based solely upon contemporaneous records. The agency may consider addenda or modifications to a note that was made contemporaneously with the patient care

episode if the addenda or modifications are germane to the note.

(22) The audit report, supported by agency work papers, showing an overpayment to a provider constitutes evidence of the overpayment. A provider may not present or elicit testimony on direct examination or cross-examination in any court or administrative proceeding, regarding the purchase or acquisition by any means of drugs, goods, or supplies; sales or divestment by any means of drugs, goods, or supplies; or inventory of drugs, goods, or supplies, unless such acquisition, sales, divestment, or inventory is documented by written invoices, written inventory records, or other competent written documentary evidence maintained in the normal course of the provider's business. A provider may not present records to contest an overpayment or sanction unless such records are contemporaneous and, if requested during the audit process, were furnished to the agency or its agent upon request. This limitation does not apply to Medicaid cost report audits. This limitation does not preclude consideration by the agency of addenda or modifications to a note if the addenda or modifications are made before notification of the audit, the addenda or modifications are germane to the note, and the note was made contemporaneously with a patient care episode. Notwithstanding the applicable rules of discovery, all documentation to be offered as evidence at an administrative hearing on a Medicaid overpayment or an administrative sanction must be exchanged by all parties at least 14 days before the administrative hearing or be excluded from consideration.

(23)(a) In an audit or investigation of a violation committed by a provider which is conducted pursuant to this

section, the agency is entitled to recover all investigative, legal, and expert witness costs if the agency's findings were not contested by the provider or, if contested, the agency ultimately prevailed.

(b) The agency has the burden of documenting the costs, which include salaries and employee benefits and out-of-pocket expenses. The amount of costs that may be recovered must be reasonable in relation to the seriousness of the violation and must be set taking into consideration the financial resources, earning ability, and needs of the provider, who has the burden of demonstrating such factors.

(c) The provider may pay the costs over a period to be determined by the agency if the agency determines that an extreme hardship would result to the provider from immediate full payment. Any default in payment of costs may be collected by any means authorized by law.

(24) If the agency imposes an administrative sanction pursuant to subsection (13), subsection (14), or subsection (15), except paragraphs (15)(e) and (o), upon any provider or any principal, officer, director, agent, managing employee, or affiliated person of the provider who is regulated by another state entity, the agency shall notify that other entity of the imposition of the sanction within 5 business days. Such notification must include the provider's or person's name and license number and the specific reasons for sanction.

(25)(a) The agency shall withhold Medicaid payments, in whole or in part, to a provider upon receipt of reliable evidence that the circumstances giving rise to the need for a withholding of payments involve fraud, willful

misrepresentation, or abuse under the Medicaid program, or a crime committed while rendering goods or services to Medicaid recipients. If it is determined that fraud, willful misrepresentation, abuse, or a crime did not occur, the payments withheld must be paid to the provider within 14 days after such determination. Amounts not paid within 14 days accrue interest at the rate of 10 percent per year, beginning after the 14th day.

(b) The agency shall deny payment, or require repayment, if the goods or services were furnished, supervised, or caused to be furnished by a person who has been suspended or terminated from the Medicaid program or Medicare program by the Federal Government or any state.

(c) Overpayments owed to the agency bear interest at the rate of 10 percent per year from the date of final determination of the overpayment by the agency, and payment arrangements must be made within 30 days after the date of the final order, which is not subject to further appeal.

(d) The agency, upon entry of a final agency order, a judgment or order of a court of competent jurisdiction, or a stipulation or settlement, may collect the moneys owed by all means allowable by law, including, but not limited to, notifying any fiscal intermediary of Medicare benefits that the state has a superior right of payment. Upon receipt of such written notification, the Medicare fiscal intermediary shall remit to the state the sum claimed.

(e) The agency may institute amnesty programs to allow Medicaid providers the opportunity to voluntarily repay overpayments. The agency may adopt rules to administer such

programs.

(26) The agency may impose administrative sanctions against a Medicaid recipient, or the agency may seek any other remedy provided by law, including, but not limited to, the remedies provided in s. 812.035, if the agency finds that a recipient has engaged in solicitation in violation of s. 409.920 or that the recipient has otherwise abused the Medicaid program.

(27) When the Agency for Health Care Administration has made a probable cause determination and alleged that an overpayment to a Medicaid provider has occurred, the agency, after notice to the provider, shall:

(a) Withhold, and continue to withhold during the pendency of an administrative hearing pursuant to chapter 120, any medical assistance reimbursement payments until such time as the overpayment is recovered, unless within 30 days after receiving notice thereof the provider:

1. Makes repayment in full; or

2. Establishes a repayment plan that is satisfactory to the Agency for Health Care Administration.

(b) Withhold, and continue to withhold during the pendency of an administrative hearing pursuant to chapter 120, medical assistance reimbursement payments if the terms of a repayment plan are not adhered to by the provider.

(28) Venue for all Medicaid program integrity cases lies in Leon County, at the discretion of the agency.

(29) Notwithstanding other provisions of law, the agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs may review a provider's Medicaid-related and non-Medicaid-related records in order to determine the total output

of a provider's practice to reconcile quantities of goods or services billed to Medicaid with quantities of goods or services used in the provider's total practice.

(30) The agency shall terminate a provider's participation in the Medicaid program if the provider fails to reimburse an overpayment or pay an agency-imposed fine that has been determined by final order, not subject to further appeal, within 30 days after the date of the final order, unless the provider and the agency have entered into a repayment agreement.

(31) If a provider requests an administrative hearing pursuant to chapter 120, such hearing must be conducted within 90 days following assignment of an administrative law judge, absent exceptionally good cause shown as determined by the administrative law judge or hearing officer. Upon issuance of a final order, the outstanding balance of the amount determined to constitute the overpayment and fines is due. If a provider fails to make payments in full, fails to enter into a satisfactory repayment plan, or fails to comply with the terms of a repayment plan or settlement agreement, the agency shall withhold reimbursement payments for Medicaid services until the amount due is paid in full.

(32) Duly authorized agents and employees of the agency shall have the power to inspect, during normal business hours, the records of any pharmacy, wholesale establishment, or manufacturer, or any other place in which drugs and medical supplies are manufactured, packed, packaged, made, stored, sold, or kept for sale, for the purpose of verifying the amount of drugs and medical supplies ordered, delivered, or purchased by a provider. The agency shall provide at least 2 business days'

prior notice of any such inspection. The notice must identify the provider whose records will be inspected, and the inspection shall include only records specifically related to that provider.

(33) In accordance with federal law, Medicaid recipients convicted of a crime pursuant to 42 U.S.C. s. 1320a-7b may be limited, restricted, or suspended from Medicaid eligibility for a period not to exceed 1 year, as determined by the agency head or designee.

(34) To deter fraud and abuse in the Medicaid program, the agency may limit the number of Schedule II and Schedule III refill prescription claims submitted from a pharmacy provider. The agency shall limit the allowable amount of reimbursement of prescription refill claims for Schedule II and Schedule III pharmaceuticals if the agency or the Medicaid Fraud Control Unit determines that the specific prescription refill was not requested by the Medicaid recipient or authorized representative for whom the refill claim is submitted or was not prescribed by the recipient's medical provider or physician. Any such refill request must be consistent with the original prescription.

(35) The Office of Program Policy Analysis and Government Accountability shall provide a report to the President of the Senate and the Speaker of the House of Representatives on a biennial basis, beginning January 31, 2006, on the agency's efforts to prevent, detect, and deter, as well as recover funds lost to, fraud and abuse in the Medicaid program.

(36) The agency may provide to a sample of Medicaid recipients or their representatives through the distribution of explanations of benefits information about services reimbursed

by the Medicaid program for goods and services to such recipients, including information on how to report inappropriate or incorrect billing to the agency or other law enforcement entities for review or investigation, information on how to report criminal Medicaid fraud to the Medicaid Fraud Control Unit's toll-free hotline number, and information about the rewards available under s. 409.9203. The explanation of benefits may not be mailed for Medicaid independent laboratory services as described in s. 409.905(7) or for Medicaid certified match services as described in ss. 409.9071 and 1011.70.

(37) The agency shall post on its website a current list of each Medicaid provider, including any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, who has been terminated for cause from the Medicaid program or sanctioned under this section. The list must be searchable by a variety of search parameters and provide for the creation of formatted lists that may be printed or imported into other applications, including spreadsheets. The agency shall update the list at least monthly.

(38) In order to improve the detection of health care fraud, use technology to prevent and detect fraud, and maximize the electronic exchange of health care fraud information, the agency shall:

(a) Compile, maintain, and publish on its website a detailed list of all state and federal databases that contain health care fraud information and update the list at least biannually;

(b) Develop a strategic plan to connect all databases that contain health care fraud information to facilitate the electronic exchange of health information between the agency, the Department of Health, the Department of Law Enforcement, and the Attorney General's Office. The plan must include recommended standard data formats, fraud identification strategies, and specifications for the technical interface between state and federal health care fraud databases;

(c) Monitor innovations in health information technology, specifically as it pertains to Medicaid fraud prevention and detection; and

(d) Periodically publish policy briefs that highlight available new technology to prevent or detect health care fraud and projects implemented by other states, the private sector, or the Federal Government which use technology to prevent or detect health care fraud.

Reviser's note.—Amended to delete obsolete language.

Section 56. Subsection (7) of section 420.609, Florida Statutes, is amended to read:

420.609 Affordable Housing Study Commission.—Because the Legislature firmly supports affordable housing in Florida for all economic classes:

(7) By July 15 of each year ~~beginning in 2001~~, the commission shall prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report detailing its findings and making specific program, legislative, and funding recommendations and any other recommendations it deems appropriate.

Reviser's note.—Amended to delete obsolete language.

Section 57. Subsection (4) of section 429.52, Florida Statutes, is amended to read:

429.52 Staff training and educational programs; core educational requirement.—

(4) ~~Effective January 1, 2004,~~ A new facility administrator must complete the required training and education, including the competency test, within a reasonable time after being employed as an administrator, as determined by the department. Failure to do so is a violation of this part and subjects the violator to an administrative fine as prescribed in s. 429.19. Administrators licensed in accordance with part II of chapter 468 are exempt from this requirement. Other licensed professionals may be exempted, as determined by the department by rule.

Reviser's note.—Amended to delete obsolete language.

Section 58. Subsection (3) of section 429.75, Florida Statutes, is amended to read:

429.75 Training and education programs.—

(3) ~~Effective January 1, 2004,~~ Providers must complete the training and education program within a reasonable time determined by the department. Failure to complete the training and education program within the time set by the department is a violation of this part and subjects the provider to revocation of the license.

Reviser's note.—Amended to delete obsolete language.

Section 59. Paragraph (a) of subsection (7) of section 455.219, Florida Statutes, is amended to read:

455.219 Fees; receipts; disposition; periodic management reports.—

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

(7)(a) The department, or a board thereunder, shall waive the initial licensing fee for a member of the Armed Services of the United States who ~~that~~ has served on active duty, the spouse of a member of the Armed Services of the United States who was married to the member during a period of active duty, the surviving spouse of a member of the Armed Services of the United States who at the time of death was serving on active duty, or a low-income individual upon application by the individual in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation as required by the department. For purposes of this subsection, the term "low-income individual" means a person whose household income, before taxes, is at or below 130 percent of the federal poverty guidelines prescribed for the family's household size by the United States Department of Health and Human Services, proof of which may be shown through enrollment in a state or federal public assistance program that requires participants to be at or below 130 percent of the federal poverty guidelines to qualify.

Reviser's note.—Amended to confirm the editorial substitution of the word "who" for the word "that."

Section 60. Paragraph (a) of subsection (1) of section 456.013, Florida Statutes, is amended to read:

456.013 Department; general licensing provisions.—

(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department. The application form must be available on the

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

World Wide Web and the department may accept electronically submitted applications ~~beginning July 1, 2001~~. The application shall require the social security number of the applicant, except as provided in paragraphs (b) and (c). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

Reviser's note.—Amended to delete obsolete language.

Section 61. Subsection (6) of section 456.017, Florida Statutes, is amended to read:

456.017 Examinations.—

(6) In addition to meeting any other requirements for licensure by examination or by endorsement, and notwithstanding the provisions in paragraph (1)(c), an applicant may be required

by a board, or the department when there is no board, to certify competency in state laws and rules relating to the applicable practice act. ~~Beginning October 1, 2001,~~ All laws and rules examinations shall be administered electronically unless the laws and rules examination is administered concurrently with another written examination for that profession or unless the electronic administration would be substantially more expensive.

Reviser's note.—Amended to delete obsolete language.

Section 62. Paragraphs (a) and (b) of subsection (1) of section 456.041, Florida Statutes, are amended to read:

456.041 Practitioner profile; creation.—

(1)(a) The Department of Health shall compile the information submitted pursuant to s. 456.039 into a practitioner profile of the applicant submitting the information, except that the Department of Health shall develop a format to compile uniformly any information submitted under s. 456.039(4)(b). ~~Beginning July 1, 2001,~~ The Department of Health may compile the information submitted pursuant to s. 456.0391 into a practitioner profile of the applicant submitting the information. The protocol submitted pursuant to s. 464.012(3) must be included in the practitioner profile of the advanced registered nurse practitioner.

(b) ~~Beginning July 1, 2005,~~ The department shall verify the information submitted by the applicant under s. 456.039 concerning disciplinary history and medical malpractice claims at the time of initial licensure and license renewal using the National Practitioner Data Bank. The physician profiles shall reflect the disciplinary action and medical malpractice claims as reported by the National Practitioner Data Bank, and shall

include information relating to liability and disciplinary actions obtained as a result of a search of the National Practitioner Data Bank.

Reviser's note.—Amended to delete obsolete language.

Section 63. Subsection (1) of section 462.18, Florida Statutes, is amended to read:

462.18 Educational requirements.—

(1) At the time each licensee shall renew her or his license as otherwise provided in this chapter, each licensee, ~~beginning with the license renewal due May 1, 1944,~~ in addition to the payment of the regular renewal fee, shall furnish to the department satisfactory evidence that, in the year preceding each such application for renewal, the licensee has attended the 2-day educational program as promulgated and conducted by the Florida Naturopathic Physicians Association, Inc., or, as a substitute therefor, the equivalent of that program as approved by the department. The department shall send a written notice to this effect to every person holding a valid license to practice naturopathy within this state at least 30 days prior to May 1 in each even-numbered ~~biennial~~ year, directed to the last known address of such licensee, and shall enclose with the notice proper blank forms for application for annual license renewal. All of the details and requirements of the aforesaid educational program shall be adopted and prescribed by the department. In the event of national emergencies, or for sufficient reason, the department shall have the power to excuse the naturopathic physicians as a group or as individuals from taking this postgraduate course.

Reviser's note.—Amended to delete obsolete language.

Section 64. Paragraph (h) of subsection (2) of section 471.003, Florida Statutes, is amended to read:

471.003 Qualifications for practice; exemptions.—

(2) The following persons are not required to be licensed under the provisions of this chapter as a licensed engineer:

(h) Any electrical, plumbing, air-conditioning, or mechanical contractor whose practice includes the design and fabrication of electrical, plumbing, air-conditioning, or mechanical systems, respectively, which she or he installs by virtue of a license issued under chapter 489, under former part I of chapter 553, Florida Statutes 2001, or under any special act or ordinance when working on any construction project which:

1. Requires an electrical or plumbing or air-conditioning and refrigeration system with a value of $125,000 or less; and

2.a. Requires an aggregate service capacity of 600 amperes (240 volts) or less on a residential electrical system or 800 amperes (240 volts) or less on a commercial or industrial electrical system;

b. Requires a plumbing system with fewer than 250 fixture units; or

c. Requires a heating, ventilation, and air-conditioning system not to exceed a 15-ton-per-system capacity, or if the project is designed to accommodate 100 or fewer persons.

Reviser's note.—Amended to reflect the repeal of former part I of chapter 553, Florida Statutes 2001, relating to plumbing, by s. 68, ch. 98-287, Laws of Florida, as amended by s. 108, ch. 2000-141, s. 39, ch. 2001-186, and s. 8, ch. 2001-372, Laws of Florida.

Section 65. Subsection (8) of section 475.451, Florida

Statutes, is amended to read:

475.451 Schools teaching real estate practice.—

(8) ~~Beginning October 1, 2006,~~ Each person, school, or institution permitted under this section is required to keep registration records, course rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years subsequent to the beginning of each course and make them available to the department for inspection and copying upon request.

Reviser's note.—Amended to delete obsolete language.

Section 66. Paragraph (j) of subsection (1) of section 475.611, Florida Statutes, is amended to read:

475.611 Definitions.—

(1) As used in this part, the term:

(j) "Board" means the Florida Real Estate Appraisal Board established under s. 475.613 ~~this section~~.

Reviser's note.—Amended to facilitate correct interpretation.

The Florida Real Estate Appraisal Board is established under s. 475.613.

Section 67. Section 477.014, Florida Statutes, is amended to read:

477.014 Qualifications for practice.~~—On and after January 1, 1979,~~ No person other than a duly licensed cosmetologist shall practice cosmetology or use the name or title of cosmetologist.

Reviser's note.—Amended to delete obsolete language.

Section 68. Subsection (4) of section 487.2071, Florida Statutes, is amended to read:

487.2071 Penalties against violators; worker relief;

monitoring complaints of retaliation.—

~~(4) The department shall monitor all complaints of retaliation that it receives and report its findings to the President of the Senate and the Speaker of the House of Representatives on or before October 1, 2008. The report shall include the number of such complaints received, the circumstances surrounding the complaints, and the actions taken concerning the complaints.~~

Reviser's note.—Amended to delete obsolete language.

Section 69. Section 489.529, Florida Statutes, is amended to read:

489.529 Alarm verification calls required.—All residential or commercial intrusion/burglary alarms that have central monitoring must have a central monitoring verification call made to a telephone number associated with the premises generating the alarm signal, before alarm monitor personnel contact ~~contacting~~ a law enforcement agency for alarm dispatch. The central monitoring station must employ call-verification methods for the premises generating the alarm signal if the first call is not answered. However, verification calling is not required if:

(1) The intrusion/burglary alarm has a properly operating visual or auditory sensor that enables the monitoring personnel to verify the alarm signal; or

(2) The intrusion/burglary alarm is installed on a premises that is used for the storage of firearms or ammunition by a person who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition, provided the customer notifies the alarm monitoring company that

he or she holds such license and would like to bypass the two-call verification protocol. Upon initiation of a new alarm monitoring service contract, the alarm monitoring company shall make reasonable efforts to inform a customer who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition of his or her right to opt out of the two-call verification protocol.

Reviser's note.—Amended to confirm the editorial substitution of the word "contact" for the word "contacting."

Section 70. Subsection (8) of section 490.012, Florida Statutes, is amended to read:

490.012 Violations; penalties; injunction.—

(8) ~~Effective October 1, 2000,~~ A person may not practice juvenile sexual offender therapy in this state, as the practice is defined in s. 490.0145, for compensation, unless the person holds an active license issued under this chapter and meets the requirements to practice juvenile sexual offender therapy. An unlicensed person may be employed by a program operated by or under contract with the Department of Juvenile Justice or the Department of Children and Families if the program employs a professional who is licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 who manages or supervises the treatment services.

Reviser's note.—Amended to delete obsolete language.

Section 71. Subsection (5) of section 497.140, Florida Statutes, is amended to read:

497.140 Fees.—

(5) The department shall charge a fee not to exceed $25 for the certification of a public record. The fee shall be

determined by rule of the department. The department shall assess a fee for duplication of a public record as provided in s. 119.07(4) ~~119.07(1)(a) and (c)~~.

Reviser's note.—Amended to correct a cross-reference. Provisions relating to fees were moved from s. 119.07(1) to s. 119.07(4) by s. 7, ch. 2004-335, Laws of Florida.

Section 72. Subsection (9) of section 497.282, Florida Statutes, is amended to read:

497.282 Disclosure of information to public.—A licensee offering to provide burial rights, merchandise, or services to the public shall:

(9) ~~Effective October 1, 2006,~~ Display in its offices for free distribution to all potential customers, and provide to all customers at the time of sale, a brochure explaining how and by whom cemeteries and preneed sales are regulated; summarizing consumer rights under the law; and providing the name, address, and phone number of the department's consumer affairs division. The format and content of the brochure shall be as prescribed by rule. The licensing authority may cause the publication of such brochures and by rule establish requirements that cemetery and preneed licensees purchase and make available such brochures as so published, in the licensee's offices, to all potential customers.

Reviser's note.—Amended to delete obsolete language.

Section 73. Subsection (8) of section 497.468, Florida Statutes, is amended to read:

497.468 Disclosure of information to the public.—A preneed licensee offering to provide burial rights, merchandise, or services to the public shall:

(8) ~~Effective October 1, 2006,~~ Display in its offices for free distribution to all potential customers, and provide to all customers at the time of sale, a brochure explaining how and by whom preneed sales are regulated, summarizing consumer rights under the law, and providing the name, address, and phone number of the department's consumer affairs division. The format and content of the brochure shall be as prescribed by rule. The licensing authority may cause the publication of such brochures and by rule require that preneed licensees purchase and make available such brochures as so published, in the licensee's offices, to all potential customers.

Reviser's note.—Amended to delete obsolete language.

Section 74. Section 497.552, Florida Statutes, is amended to read:

497.552 Required facilities.—~~Effective January 1, 2006,~~ A monument establishment shall at all times have and maintain a full-service place of business at a specific street address or location in Florida complying with the following requirements:

(1) It shall include an office for the conduct of its business including the reception of customers.

(2) It shall include a display area in which is displayed a selection of monuments, markers, and related products for inspection by customers prior to sale.

(3) Its office and display area shall normally be open to the public weekdays during normal business hours.

(4) It shall have facilities on site for inscribing monuments and equipment to deliver and install markers and monuments.

(5) It shall comply with any local government zoning

regulations and may not be located on tax-exempt property.

Reviser's note.—Amended to delete obsolete language.

Section 75. Subsections (2), (3), (4), and (5) of section 497.553, Florida Statutes, are amended to read:

497.553 Regulation of monument establishments.—

(2) ~~Commencing January 1, 2006,~~ All retail sales by monument establishments shall be on a sales agreement form filed by the monument establishment with and approved by the licensing authority. Sales agreement forms must provide a complete description of any monument, marker, or related product to be delivered, and shall prominently and clearly specify the agreed date for delivery and installation. Procedures for submission and approval of such forms shall be established by rule.

(3) ~~Commencing January 1, 2006,~~ All monument establishments shall have written procedures for the receipt, investigation, and disposition of customer complaints, and shall ensure that their staff who receive or process such complaints are familiar with and follow such procedures.

(4) ~~Commencing January 1, 2006,~~ All monument establishments shall maintain for inspection by the department records of written complaints received by the monument establishment. Such complaint records shall include a chronological log of written complaints received, in which the name and address of each complainant and date of complaint is entered consecutively within 10 business days of receipt of each complaint. The licensing authority may by rule establish requirements regarding the format of complaint logs, including whether they may be maintained electronically or shall be maintained by pen and ink on paper; the licensing authority may by order direct a licensee

to maintain complaint logs by pen and ink in writing. The original or complete copy of each written complaint received by a monument establishment, and all subsequent correspondence related to such complaint, shall be maintained by the monument establishment, for inspection by the department, for the longer of 24 months or 12 months after the most recent department inspection during which the complaint was in the monument establishment's complaint records and available for the department's review.

(5) ~~Commencing January 1, 2006,~~ The failure of a monument establishment to deliver and install a purchased monument or marker by the date agreed in the sales agreement shall entitle the customer to a full refund of all amounts paid by the customer for the monument and its delivery and installation, unless the monument establishment has obtained a written agreement from the customer extending the delivery date. Such refund shall be made within 30 days after receipt by the monument establishment of the customer's written request for a refund. This subsection does not preclude the purchase and installation of a new monument from any other registered monument establishment or licensee.

Reviser's note.—Amended to delete obsolete language.

Section 76. Subsection (2) of section 497.608, Florida Statutes, is amended to read:

497.608 Liability for unintentional commingling of the residue of the cremation process.—

(2) The operator of a cinerator facility shall establish written procedures for the removal of cremated remains, to the extent possible, resulting from the cremation of a human body

and the postcremation processing, shipping, packing, or identifying of those remains. The operator of a cinerator facility shall file its written procedures, and any revisions to those written procedures, with the licensing authority for its approval, and ~~effective January 1, 2006,~~ the cremation facility shall not be operated unless it has and follows such written procedures approved by the licensing authority; provided, the licensing authority may adopt by rule standard uniform procedures for the removal of such cremated remains, which may be adopted by any cinerator facility in lieu of promulgating, filing, and obtaining approval of procedures. A cinerator facility choosing to utilize standard uniform procedures specified by rule shall file notice of its choice with the licensing authority pursuant to procedures and forms specified by rule.

Reviser's note.—Amended to delete obsolete language.

Section 77. Paragraph (d) of subsection (9) of section 499.012, Florida Statutes, is amended to read:

499.012 Permit application requirements.—

(9)

(d) For purposes of applying for renewal of a permit under subsection (8) or certification under subsection (15) ~~(16)~~, a person may submit the following in lieu of satisfying the requirements of paragraphs (a), (b), and (c):

1. A photograph of the individual taken within 180 days; and

2. A copy of the personal information statement form most recently submitted to the department and a certification under oath, on a form specified by the department, that the individual

has reviewed the previously submitted personal information statement form and that the information contained therein remains unchanged.

Reviser's note.—Amended to reflect the renumbering of former subsection (16) as subsection (15) by s. 7, ch. 2016-212, Laws of Florida.

Section 78. Paragraphs (a) and (b) of subsection (2) of section 499.01211, Florida Statutes, are amended to read:

499.01211 Drug Wholesale Distributor Advisory Council.—

(2) The Secretary of Business and Professional Regulation or his or her designee and the Secretary of Health Care Administration or her or his designee shall be members of the council. The Secretary of Business and Professional Regulation shall appoint 10 additional members to the council who shall be appointed to a term of 4 years each, as follows:

(a) Three persons, each of whom is employed by a different prescription drug wholesale distributor permitted under this part which operates nationally ~~and is a primary wholesale distributor~~ as defined in s. 499.003.

(b) One person employed by a prescription drug wholesale distributor permitted under this part ~~which is a secondary wholesale distributor,~~ as defined in s. 499.003.

Reviser's note.—Amended to conform to the fact that s. 2, ch. 2016-212, Laws of Florida, deleted the definitions for "primary wholesale distributor" and "secondary wholesale distributor" in s. 499.003, but retained the definition for "wholesale distributor."

Section 79. Paragraph (b) of subsection (6) of section 509.049, Florida Statutes, is amended to read:

509.049 Food service employee training.—

(6)

(b) ~~Effective January 1, 2005,~~ Each third-party provider shall provide the following information on each employee upon certification and recertification: the name of the certified food service employee, the employee's date of birth, the employing food service establishment, the name of the certified food manager who conducted the training, the training date, and the certification expiration date. This information shall be reported electronically to the division, in a format prescribed by the division, within 30 days of certification or recertification. The division shall compile the information into an electronic database that is not directly or indirectly owned, maintained, or installed by any nongovernmental provider of food service training. A public food service establishment that trains its employees using its own in-house, proprietary food safety training program approved by the division, and which uses its own employees to provide this training, shall be exempt from the electronic reporting requirements of this paragraph, and from the card or certificate requirement of paragraph (a).

Reviser's note.—Amended to delete obsolete language.

Section 80. Subsection (6) of section 520.68, Florida Statutes, is amended to read:

520.68 Persons not required to be licensed.—No home improvement finance seller's or seller's license shall be required under this act of any person when acting in any capacity or type of transaction set forth in this section:

(6) Retail establishments, including employees thereof, which are licensed under part III ~~II~~ of this chapter and which

engage in home improvements as an incidental part of their business. However, such retail establishments and their employees shall be governed by all other provisions contained in this act.

Reviser's note.—Amended to conform to the redesignation of part II of chapter 520 as part III by s. 5, ch. 2017-118, Laws of Florida.

Section 81. Paragraph (c) of subsection (2) of section 554.115, Florida Statutes, is amended to read:

554.115 Disciplinary proceedings.—

(2) The department may deny, refuse to renew, suspend, or revoke a certificate of competency upon proof that:

(c) The boiler inspector:

1. Gave false or forged information to the department, to an authorized inspection agency, or to another boiler inspector for the purpose of obtaining a certificate of operation; or

2. Inspected any boiler regulated under this chapter without having obtained a valid certificate of competency.

Reviser's note.—Amended to confirm the editorial insertion of the word "to" to provide clarity.

Section 82. Section 559.11, Florida Statutes, is amended to read:

559.11 Budget planning prohibited.—No person, firm, corporation, or association~~,~~ shall ~~after June 17, 1959,~~ engage in the business of budget planning as defined in s. 559.10; provided, the provisions of this part shall not be construed to affect any contract for services to facilitate accelerated payment of a mortgage loan.

Reviser's note.—Amended to delete obsolete language and improve

clarity.

Section 83. Paragraph (dd) 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:

(dd) *Life insurance limitations based on past foreign travel experiences or future foreign travel plans.*—

1. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences.

2. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful travel plans unless the insurer can demonstrate and the Office of Insurance Regulation determines that:

a. Individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel; and

b. Such risk classification is based upon sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.

3. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this paragraph and

may provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy.

4. Each market conduct examination of a life insurer conducted pursuant to s. 624.3161 shall include a review of every application under which such insurer refused to issue life insurance; refused to continue life insurance; or limited the amount, extent, or kind of life insurance issued, based upon future lawful travel plans.

5. The administrative fines provided in s. 624.4211(2) and (3) shall be trebled for violations of this paragraph.

6. The Office of Insurance Regulation shall report to the President of the Senate and the Speaker of the House of Representatives by March 1, ~~2007, and on the same date~~ annually ~~thereafter~~, on the implementation of this paragraph. The report shall include, but not be limited to, the number of applications under which life insurance was denied, continuance was refused, or coverage was limited based on future travel plans; the number of insurers taking such action; and the reason for taking each such action.

Reviser's note.—Amended to delete obsolete language.

Section 84. Subsection (4) of section 627.066, Florida Statutes, is amended to read:

627.066 Excessive profits for motor vehicle insurance prohibited.—

(4) Each insurer group shall also file a schedule of Florida private passenger automobile loss and loss adjustment experience for each of the 3 most recent accident years. The

incurred losses and loss adjustment expenses shall be valued as of March 31 of the year following the close of the accident year, developed to an ultimate basis, and at two 12-month intervals thereafter, each developed to an ultimate basis, so that a total of three evaluations will be provided for each accident year. ~~The first year to be so reported shall be accident year 1976, so that the reporting of 3 accident years will not take place until accident years 1977 and 1978 have become available.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 85. Section 627.285, Florida Statutes, is amended to read:

627.285 Independent actuarial peer review of workers' compensation rating organization.—The Financial Services Commission shall at least once every other year contract for an independent actuarial peer review and analysis of the ratemaking processes of any licensed rating organization that makes rate filings for workers' compensation insurance, and the rating organization shall fully cooperate in the peer review. The contract shall require submission of a final report to the commission, the President of the Senate, and the Speaker of the House of Representatives by February 1. ~~The first report shall be submitted by February 1, 2004.~~ The costs of the independent actuarial peer review shall be paid from the Workers' Compensation Administration Trust Fund.

Reviser's note.—Amended to delete obsolete language.

Section 86. Paragraph (b) of subsection (1) of section 627.748, Florida Statutes, is amended to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

Reviser's note.—Amended to confirm the editorial insertion of the word "in."

Section 87. Paragraph (h) of subsection (1) of section 663.532, Florida Statutes, is amended to read:

663.532 Qualification.—

(1) To qualify as a qualified limited service affiliate under this part, a proposed qualified 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:

(h) Disclosure of any instance occurring within the prior 10 years when the proposed qualified limited service affiliate's director, executive officer, principal shareholder, manager, managing member, or equivalent position was:

1. Arrested for, charged with, or convicted of, or ~~who~~ pled guilty or nolo contendere to, regardless of adjudication, any offense that is punishable by imprisonment for a term exceeding

1 year, or to any offense that involves money laundering, currency transaction reporting, tax evasion, facilitating or furthering terrorism, fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, dishonesty, breach of trust, breach of fiduciary duty, or moral turpitude, or that is otherwise related to the operation of a financial institution;

2. Fined or sanctioned as a result of a complaint to the office or any other state or federal regulatory agency; or

3. Ordered to pay a fine or penalty in a proceeding initiated by a federal, state, foreign, or local law enforcement agency or an international agency related to money laundering, currency transaction reporting, tax evasion, facilitating or furthering terrorism, fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, dishonesty, breach of trust, breach of fiduciary duty, or moral turpitude, or that is otherwise related to the operation of a financial institution.

The proposed qualified limited service affiliate may provide additional information in the form of exhibits when attempting to satisfy any of the qualification requirements. All information that the proposed qualified limited service affiliate desires to present to support the written notice must be submitted with the notice.

Reviser's note.—Amended to confirm the editorial deletion of the word "who."

Section 88. Subsection (5) of section 741.0306, Florida Statutes, is amended to read:

741.0306 Creation of a family law handbook.—

~~(5) The existing family law handbook shall be reviewed and a report provided to the Legislature by October 1, 2008, or as soon thereafter as practicable, with recommendations for updating the handbook.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 89. Paragraph (d) of subsection (2) of section 744.331, Florida Statutes, is amended to read:

744.331 Procedures to determine incapacity.—

(2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.—

(d) ~~Effective January 1, 2007,~~ An attorney seeking to be appointed by a court for incapacity and guardianship proceedings must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement for an attorney who has served as a court-appointed attorney in incapacity proceedings or as an attorney of record for guardians for not less than 3 years. ~~The education requirement of this paragraph does not apply to the office of criminal conflict and civil regional counsel until July 1, 2008.~~

Reviser's note.—Amended to delete obsolete language.

Section 90. Subsection (1) of section 796.04, Florida Statutes, is amended to read:

796.04 Forcing, compelling, or coercing another to become a prostitute.—

(1) ~~After May 1, 1943,~~ It shall be unlawful for anyone to force, compel, or coerce another to become a prostitute.

Reviser's note.—Amended to delete obsolete language.

Section 91. Subsection (1) of section 817.311, Florida Statutes, is amended to read:

817.311 Unlawful use of badges, etc.—

(1) ~~From and after May 9, 1949,~~ Any person who shall wear or display a badge, button, insignia or other emblem, or shall use the name of or claim to be a member of any benevolent, fraternal, social, humane, or charitable organization, which organization is entitled to the exclusive use of such name and such badge, button, insignia or emblem either in the identical form or in such near resemblance thereto as to be a colorable imitation thereof, unless such person is entitled so to do under the laws, rules and regulations of such organization, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Reviser's note.—Amended to delete obsolete language.

Section 92. Paragraph (c) of subsection (2) of section 817.625, Florida Statutes, is amended to read:

817.625 Use of scanning device, skimming device, or reencoder to defraud; possession of skimming device; penalties.—

(2)

(c) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for a person to knowingly possess, sell, or deliver a skimming device. This paragraph does not apply to the following individuals while acting within the scope of their ~~his or her~~ official duties:

1. An employee, officer, or agent of:

a. A law enforcement agency or criminal prosecuting authority for the state or the Federal Government;

b. The state courts system as defined in s. 25.382 or the federal court system; or

c. An executive branch agency in this state.

2. A financial or retail security investigator employed by a merchant.

Reviser's note.—Amended to confirm the editorial substitution of the word "their" for the words "his or her."

Section 93. Section 876.24, Florida Statutes, is amended to read:

876.24 Membership in subversive organization; penalty.—It shall be unlawful for any person ~~after the effective date of this law~~ to become or ~~after July 1, 1953,~~ to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person convicted of violating this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Reviser's note.—Amended to delete obsolete language.

Section 94. Subsection (1) of section 905.37, Florida Statutes, is amended to read:

905.37 List of prospective jurors; impanelment; composition of jury; compensation.—

(1) ~~On or before July 15, 1973, and~~ Not later than the first week in December of each year ~~thereafter~~, the chief judge of each judicial circuit shall cause to be compiled a list of persons called and certified for jury duty in each of the several counties in the circuit. From the lists of persons certified for jury duty in each of the several counties in his or her judicial circuit, the chief judge shall select by lot and at random a list of eligible prospective grand jurors from each county. The number of prospective statewide grand jurors to be

selected from each county shall be determined on the basis of 3 such jurors for each 3,000 residents, or fraction thereof, in each county. When such lists are compiled, the chief judge of each judicial circuit shall cause the lists to be submitted to the state courts administrator ~~on or before August 15, 1973, and~~ not later than February 15 of each year ~~thereafter~~.

Reviser's note.—Amended to delete obsolete language.

Section 95. Subsection (2) of section 943.0311, Florida Statutes, is amended to read:

943.0311 Chief of Domestic Security; duties of the department with respect to domestic security.—

(2) The chief shall conduct or cause to be conducted by the personnel and with the resources of the state agency, state university, or community college that owns or leases a building, facility, or structure, security assessments of buildings, facilities, and structures owned or leased by state agencies, state universities, and community colleges using methods and instruments made available by the department. Each entity making such an assessment shall prioritize its security needs based on the findings of its assessment. Each state agency, state university, and community college shall cooperate with the department and provide the assistance of employees within existing resources to provide to the chief information in the format requested by the chief. The chief must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives if any state agency, state university, or community college substantially fails to cooperate with the chief in making a security assessment of the buildings, facilities, and structures of the state agency, state

university, or community college.

~~(a) The initial assessment of each building, facility, or structure owned or leased by a state agency, state university, or community college shall be completed by the state agency, state university, or community college and shall be provided to the chief no later than November 1, 2004.~~

~~(b)~~ Assessments of any building, facility, or structure owned or leased by a state agency, state university, or community college not previously provided to the chief ~~under paragraph (a)~~ must be completed by the state agency, state university, or community college and provided to the chief before occupying or substantially modifying such building, facility, or structure. The chief may request additional assessments to ensure that the security assessments of buildings, facilities, and structures, owned or leased by state agencies, state universities, and community colleges, remain reasonably current and valid.

Reviser's note.—Paragraph (a) is amended to delete an obsolete provision. Paragraph (b) is amended to conform to the deletion of paragraph (a).

Section 96. Section 944.48, Florida Statutes, is amended to read:

944.48 Service of sentence.—Whenever any prisoner is convicted under the provisions of ss. 944.44-944.47, ~~944.41-944.47~~ the punishment of imprisonment imposed shall be served consecutively to any former sentence imposed upon any prisoner convicted hereunder.

Reviser's note.—Amended to correct a cross-reference and to improve clarity. Section 944.41 was repealed by s. 177, ch. 71-355, Laws of Florida; s. 944.42 was repealed by s. 7, ch. 96-293, Laws of Florida; and s. 944.43 was repealed by s. 1, ch. 81-88, Laws of Florida. The first section in the range is now s. 944.44.

Section 97. Paragraph (l) of subsection (1) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

(l)1. Submit to random testing as directed by the probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.

2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correctional ~~correction~~ system, the conditions must include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the probation officer.

Reviser's note.—Amended to confirm the editorial substitution of the word "correctional" for the word "correction" to conform to context.

Section 98. Subsection (2) of section 1000.06, Florida Statutes, is amended to read:

1000.06 Display of flags.—

(2) Each public K-20 educational institution that is provided or authorized by the Constitution and laws of Florida shall display daily in each classroom the flag of the United States. The flag must be made in the United States, must be at least 2 feet by 3 feet, and must be properly displayed in accordance with Title 4 U.S.C. Each educational institution shall acquire the necessary number of flags to implement the provisions of this subsection. The principal, director, or president of each educational institution shall attempt to acquire the flags through donations or fundraising for 1 year prior to securing other funding sources or allocating funds for the purchase of flags. The president of each state university or Florida College System institution must present to the governing board of the institution the results of donations and fundraising activities relating to the acquisition of flags prior to requesting the governing board to approve a funding source for the purchase of flags. ~~A flag must be displayed in each classroom pursuant to this subsection no later than August 1, 2005~~.

Reviser's note.—Amended to delete obsolete language.

Section 99. Subsection (3) of section 1001.215, Florida Statutes, is amended to read:

1001.215 Just Read, Florida! Office.—There is created in the Department of Education the Just Read, Florida! Office. The office is fully accountable to the Commissioner of Education and shall:

(3) Work with the Lastinger Center for Learning at the University of Florida to develop training for K-12 teachers,

reading coaches, and school principals on effective content-area-specific reading strategies; the integration of content-rich curriculum from other core subject areas into reading instruction; and evidence-based reading strategies identified in subsection (8) ~~(7)~~ to improve student reading performance. For secondary teachers, emphasis shall be on technical text. These strategies must be developed for all content areas in the K-12 curriculum.

Reviser's note.—Amended to confirm the editorial substitution of a reference to subsection (8) for a reference to subsection (7) to conform to context. Subsection (7) relates to implementation of a comprehensive reading plan; subsection (8) relates to identification of evidence-based reading instructional and intervention programs.

Section 100. Subsection (18) of section 1001.42, Florida Statutes, is reenacted to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—Maintain a system of school improvement and education accountability as provided by statute and State Board of Education rule. This system of school improvement and education accountability shall be consistent with, and implemented through, the district's continuing system of planning and budgeting required by this section and ss. 1008.385, 1010.01, and 1011.01. This system of school improvement and education accountability shall comply with the provisions of ss. 1008.33, 1008.34, 1008.345, and 1008.385 and include the following:

(a) *School improvement plans.*—The district school board shall annually approve and require implementation of a new, amended, or continuation school improvement plan for each school in the district which has a school grade of "D" or "F"; has a significant gap in achievement on statewide, standardized assessments administered pursuant to s. 1008.22 by one or more student subgroups, as defined in the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C. s. 6311(b)(2)(C)(v)(II); has not significantly increased the percentage of students passing statewide, standardized assessments; has not significantly increased the percentage of students demonstrating Learning Gains, as defined in s. 1008.34 and as calculated under s. 1008.34(3)(b), who passed statewide, standardized assessments; or has significantly lower graduation rates for a subgroup when compared to the state's graduation rate. The improvement plan of a school that meets the requirements of this paragraph shall include strategies for improving these results. The state board shall adopt rules establishing thresholds and for determining compliance with this paragraph.

(b) *Early warning system.*—

1. A school that serves any students in kindergarten through grade 8 shall implement an early warning system to identify students in such grades who need additional support to improve academic performance and stay engaged in school. The early warning system must include the following early warning indicators:

a. Attendance below 90 percent, regardless of whether absence is excused or a result of out-of-school suspension.

b. One or more suspensions, whether in school or out of school.

c. Course failure in English Language Arts or mathematics during any grading period.

d. A Level 1 score on the statewide, standardized assessments in English Language Arts or mathematics or, for students in kindergarten through grade 3, a substantial reading deficiency under s. 1008.25(5)(a).

A school district may identify additional early warning indicators for use in a school's early warning system. The system must include data on the number of students identified by the system as exhibiting two or more early warning indicators, the number of students by grade level who exhibit each early warning indicator, and a description of all intervention strategies employed by the school to improve the academic performance of students identified by the early warning system.

2. A school-based team responsible for implementing the requirements of this paragraph shall monitor the data from the early warning system. The team may include a school psychologist. When a student exhibits two or more early warning indicators, the team, in consultation with the student's parent, shall determine appropriate intervention strategies for the student unless the student is already being served by an intervention program at the direction of a school-based, multidisciplinary team. Data and information relating to a student's early warning indicators must be used to inform any intervention strategies provided to the student.

(c) *Public disclosure.*—The district school board shall

provide information regarding the performance of students and educational programs as required pursuant to ss. 1008.22 and 1008.385 and implement a system of school reports as required by statute and State Board of Education rule which shall include schools operating for the purpose of providing educational services to students in Department of Juvenile Justice programs, and for those schools, report on the elements specified in s. 1003.52(17). Annual public disclosure reports shall be in an easy-to-read report card format and shall include the school's grade, high school graduation rate calculated without high school equivalency examinations, disaggregated by student ethnicity, and performance data as specified in state board rule.

(d) *School improvement funds.*—The district school board shall provide funds to schools for developing and implementing school improvement plans. Such funds shall include those funds appropriated for the purpose of school improvement pursuant to s. 24.121(5)(c).

Reviser's note.—Section 38, ch. 2017-116, Laws of Florida, purported to amend subsection (18), but did not publish paragraphs (c) and (d). Absent affirmative evidence of legislative intent to repeal them, paragraphs (c) and (d) are reenacted to confirm the omission was not intended.

Section 101. Subsection (7) of section 1002.61, Florida Statutes, is amended to read:

1002.61 Summer prekindergarten program delivered by public schools and private prekindergarten providers.—

(7) Notwithstanding ss. 1002.55(3)(f) and 1002.63(7), each prekindergarten class in the summer prekindergarten program,

regardless of whether the class is a public school's or private prekindergarten provider's class, must be composed of at least 4 students but may not exceed 12 students ~~beginning with the 2009 summer session~~. In order to protect the health and safety of students, each public school or private prekindergarten provider must also provide appropriate adult supervision for students at all times. This subsection does not supersede any requirement imposed on a provider under ss. 402.301-402.319.

Reviser's note.—Amended to delete obsolete language.

Section 102. Subsection (10) of section 1003.4282, Florida Statutes, is amended to read:

1003.4282 Requirements for a standard high school diploma.—

(10) STUDENTS WITH DISABILITIES.—Beginning with students entering grade 9 in the 2014-2015 school year, this subsection applies to a student with a disability.

(a) A parent of the student with a disability shall, in collaboration with the individual education plan (IEP) team during the transition planning process pursuant to s. 1003.5716, declare an intent for the student to graduate from high school with either a standard high school diploma or a certificate of completion. A student with a disability who does not satisfy the standard high school diploma requirements pursuant to this section shall be awarded a certificate of completion.

(b) The following options, in addition to the other options specified in this section, may be used to satisfy the standard high school diploma requirements, as specified in the student's individual education plan:

1. For a student with a disability for whom the IEP team has determined that the Florida Alternate Assessment is the most

appropriate measure of the student's skills:

a. A combination of course substitutions, assessments, industry certifications, other acceleration options, or occupational completion points appropriate to the student's unique skills and abilities that meet the criteria established by State Board of Education rule.

b. A portfolio of quantifiable evidence that documents a student's mastery of academic standards through rigorous metrics established by State Board of Education rule. A portfolio may include, but is not limited to, documentation of work experience, internships, community service, and postsecondary credit.

2. For a student with a disability for whom the IEP team has determined that mastery of academic and employment competencies is the most appropriate way for a student to demonstrate his or her skills:

a. Documented completion of the minimum high school graduation requirements, including the number of course credits prescribed by rules of the State Board of Education.

b. Documented achievement of all annual goals and short-term objectives for academic and employment competencies, industry certifications, and occupational completion points specified in the student's transition plan. The documentation must be verified by the IEP team.

c. Documented successful employment for the number of hours per week specified in the student's transition plan, for the equivalent of 1 semester, and payment of a minimum wage in compliance with the requirements of the federal Fair Labor Standards Act.

d. Documented mastery of the academic and employment competencies, industry certifications, and occupational completion points specified in the student's transition plan. The documentation must be verified by the IEP team, the employer, and the teacher. The transition plan must be developed and signed by the student, parent, teacher, and employer before placement in employment and must identify the following:

(I) The expected academic and employment competencies, industry certifications, and occupational completion points;

(II) The criteria for determining and certifying mastery of the competencies;

(III) The work schedule and the minimum number of hours to be worked per week; and

(IV) A description of the supervision to be provided by the school district.

3. Any change to the high school graduation option specified in the student's IEP must be approved by the parent and is subject to verification for appropriateness by an independent reviewer selected by the parent as provided in s. 1003.572.

(c) A student with a disability who meets the standard high school diploma requirements in this section may defer the receipt of a standard high school diploma if the student:

1. Has an individual education plan that prescribes special education, transition planning, transition services, or related services through age 21; and

2. Is enrolled in accelerated college credit instruction pursuant to s. 1007.27, industry certification courses that lead to college credit, a collegiate high school program, courses

necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or preapprenticeship program.

(d) A student with a disability who receives a certificate of completion and has an individual education plan that prescribes special education, transition planning, transition services, or related services through 21 years of age may continue to receive the specified instruction and services.

(e) Any waiver of the statewide, standardized assessment requirements by the individual education plan team, pursuant to s. 1008.22(3)(c), must be approved by the parent and is subject to verification for appropriateness by an independent reviewer selected by the parent as provided for in s. 1003.572.

The State Board of Education shall adopt rules under ss. 120.536(1) and 120.54 to implement this subsection ~~paragraph~~, including rules that establish the minimum requirements for students described in this subsection ~~paragraph~~ to earn a standard high school diploma. The State Board of Education shall adopt emergency rules pursuant to ss. 120.536(1) and 120.54.

Reviser's note.—Amended to confirm the editorial substitution of a reference to "subsection" for a reference to "paragraph" to conform to context. The flush left language following paragraph (e) is a part of subsection (10) and not any single paragraph.

Section 103. Paragraphs (e) and (f) of subsection (3) of section 1003.491, Florida Statutes, are amended to read:

1003.491 Florida Career and Professional Education Act.—The Florida Career and Professional Education Act is created to provide a statewide planning partnership between the business

and education communities in order to attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.

(3) The strategic 3-year plan developed jointly by the local school district, local workforce development boards, economic development agencies, and state-approved postsecondary institutions shall be constructed and based on:

(e) Strategies to provide personalized student advisement, including a parent-participation component, and coordination with middle grades to promote and support career-themed courses and education planning ~~as required under s. 1003.4156~~;

(f) Alignment of requirements for middle school career planning ~~under s. 1003.4156(1)(e)~~, middle and high school career and professional academies or career-themed courses leading to industry certification or postsecondary credit, and high school graduation requirements;

Reviser's note.—Amended to conform to the deletion of s. 1003.4156(1)(e) by s. 2, ch. 2017-55, Laws of Florida, and s. 60, ch. 2017-116, Laws of Florida. Section 1003.4156(1)(e) related to career and education planning to be completed in 6th, 7th, or 8th grade.

Section 104. Paragraph (j) of subsection (2) of section 1003.621, Florida Statutes, is amended to read:

1003.621 Academically high-performing school districts.—It is the intent of the Legislature to recognize and reward school districts that demonstrate the ability to consistently maintain or improve their high-performing status. The purpose of this section is to provide high-performing school districts with flexibility in meeting the specific requirements in statute and

rules of the State Board of Education.

(2) COMPLIANCE WITH STATUTES AND RULES.—Each academically high-performing school district shall comply with all of the provisions in chapters 1000-1013, and rules of the State Board of Education which implement these provisions, pertaining to the following:

(j) Those statutes relating to instructional materials, except that s. 1006.37, relating to the requisition of state-adopted materials from the depository under contract with the publisher, and s. 1006.40(3)(b) ~~1006.40(3)(a)~~, relating to the use of 50 percent of the instructional materials allocation, shall be eligible for exemption.

Reviser's note.—Amended to correct a cross-reference. Section 1006.40(3)(b) relates to the use of 50 percent of the annual allocation; s. 1006.40(3)(a) provides that the annual allocation may be used only for the purchase of instructional materials that align with state standards and are included on the state-adopted list, except as expressly provided.

Section 105. Paragraph (c) of subsection (1) of section 1004.34, Florida Statutes, is amended to read:

1004.34 The University of South Florida Sarasota/Manatee.—

(1) The Sarasota/Manatee campus of the University of South Florida is established and shall be known as the "University of South Florida Sarasota/Manatee."

~~(c) As soon as possible, but no later than July 1, 2002, the President of the University of South Florida shall begin the process of application to the Commission on Colleges of the Southern Association of Colleges and Schools for separate~~

~~accreditation of the University of South Florida Sarasota/Manatee. If the application is not approved or is provisionally approved, the University of South Florida shall correct any identified deficiencies and shall continue to work for accreditation.~~

Reviser's note.—Amended to delete an obsolete provision and conform to the fact that the accreditation has taken place. The Southern Association of Colleges and Schools Commission on Colleges website identifies the University of South Florida Sarasota-Manatee as being initially accredited on January 1, 2011, and reaffirmed in 2016.

Section 106. Paragraph (f) of subsection (1) of section 1004.4473, Florida Statutes, is amended to read:

1004.4473 Industrial hemp pilot projects.—

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

(f) "Qualified project partner" means a public, nonprofit, or private entity that:

1. Has a principal place of business ~~is~~ in this state.

2. Has access to a grow site and research facility located in this state which is acceptable for the cultivation, processing, and manufacturing of industrial hemp and hemp products, as determined by the department.

3. Submits a comprehensive business or research plan acceptable to the partnering university.

4. Provides proof of prior experience in or knowledge of, or demonstrates an interest in and commitment to, the cultivation, processing, manufacturing, or research of industrial hemp, as determined by the department.

Reviser's note.—Amended to confirm the editorial deletion of the

word "is" to improve clarity.

Section 107. Paragraph (b) of subsection (4) of section 1006.735, Florida Statutes, is amended to read:

1006.735 Complete Florida Plus Program.—The Complete Florida Plus Program is created at the University of West Florida.

(4) STATEWIDE ONLINE STUDENT ADVISING SERVICES AND SUPPORT.—The Complete Florida Plus Program shall make available on a statewide basis online services and support, including:

(b) A K-20 statewide computer-assisted student advising system which shall support career and education planning for the K-12 system and the process of advising, registering, and certifying postsecondary students for graduation and which shall include a degree audit and an articulation component. Florida College System institutions and state universities shall interface institutional advising systems with the statewide computer-assisted student advising system. At a minimum, the statewide computer-assisted student advising system shall:

1. Allow a student to access the system at any time.

2. Support K-12 career and education planning ~~required by s. 1003.4156(1)(c)~~.

3. Allow a student to search public postsecondary education institutions and identify course options that will meet the requirements of a selected path toward a degree.

4. Audit transcripts of students enrolled in a public postsecondary education institution to assess current academic standing, the requirements for a student to transfer to another institution, and all requirements necessary for graduation.

5. Serve as the official statewide repository for the

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common prerequisite manual, admissions information for transferring programs, foreign language requirements, residency requirements, and statewide articulation agreements.

6. Provide information relating to career descriptions and corresponding educational requirements, admissions requirements, and available sources of student financial assistance.

7. Provide the admissions application for transient students pursuant to paragraph (a) which must include the electronic transfer and receipt of information and records for:

a. Admissions and readmissions.

b. Financial aid.

c. Transfer of credit awarded by the institution offering the course to the transient student's degree-granting institution.

Reviser's note.—Amended to conform to the deletion of s. 1003.4156(1)(e) by s. 2, ch. 2017-55, Laws of Florida, and s. 60, ch. 2017-116, Laws of Florida. Section 1003.4156(1)(e) related to career and education planning to be completed in 6th, 7th, or 8th grade.

Section 108. Paragraph (i) of subsection (3) of section 1007.01, Florida Statutes, is amended to read:

1007.01 Articulation; legislative intent; purpose; role of the State Board of Education and the Board of Governors; Articulation Coordinating Committee.—

(3) The Commissioner of Education, in consultation with the Chancellor of the State University System, shall establish the Articulation Coordinating Committee, which shall make recommendations related to statewide articulation policies and issues regarding access, quality, and reporting of data

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maintained by the K-20 data warehouse, established pursuant to ss. 1001.10 and 1008.31, to the Higher Education Coordination Council, the State Board of Education, and the Board of Governors. The committee shall consist of two members each representing the State University System, the Florida College System, public career and technical education, K-12 education, and nonpublic postsecondary education and one member representing students. The chair shall be elected from the membership. The Office of K-20 Articulation shall provide administrative support for the committee. The committee shall:

~~(i) Make recommendations regarding the cost and requirements to develop and implement an online system for collecting and analyzing data regarding requests for transfer of credit by postsecondary education students. The online system, at a minimum, must collect information regarding the total number of credit transfer requests denied and the reason for each denial. Recommendations shall be reported to the President of the Senate and the Speaker of the House of Representatives on or before January 31, 2015.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 109. Paragraph (a) of subsection (1) of section 1008.34, Florida Statutes, is reenacted to read:

1008.34 School grading system; school report cards; district grade.—

(1) DEFINITIONS.—For purposes of the statewide, standardized assessment program and school grading system, the following terms are defined:

(a) "Achievement level," "student achievement," or "achievement" describes the level of content mastery a student

has acquired in a particular subject as measured by a statewide, standardized assessment administered pursuant to s. 1008.22(3)(a) and (b). There are five achievement levels. Level 1 is the lowest achievement level, level 5 is the highest achievement level, and level 3 indicates satisfactory performance. A student passes an assessment if the student achieves a level 3, level 4, or level 5. For purposes of the Florida Alternate Assessment administered pursuant to s. 1008.22(3)(c), the state board shall provide, in rule, the number of achievement levels and identify the achievement levels that are considered passing.

Reviser's note.—Reenacted to publish the correct text of paragraph (1)(a) and to correct an input error made in the compilation of the statutes.

Section 110. Subsection (2) of section 1011.67, Florida Statutes, is amended to read:

1011.67 Funds for instructional materials.—

(2) Annually by July 1 and before the release of instructional materials funds, each district school superintendent shall certify to the Commissioner of Education that the district school board has approved a comprehensive staff development plan that supports fidelity of implementation of instructional materials programs, including verification that training was provided; that the materials are being implemented as designed; and, beginning July 1, 2021, for core reading materials and reading intervention materials used in kindergarten through grade 5, that the materials meet the requirements of s. 1001.215(8) ~~1001.215(7)~~. This subsection does not preclude school districts from purchasing or using other

materials to supplement reading instruction and provide additional skills practice.

Reviser's note.—Amended to conform to the redesignation of s. 1001.215(7) as s. 1001.215(8) by s. 16, ch. 2017-116, Laws of Florida.

Section 111. Subsection (1) of section 1011.71, Florida Statutes, is amended to read:

1011.71 District school tax.—

(1) If the district school tax is not provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act, each district school board desiring to participate in the state allocation of funds for current operation as prescribed by s. 1011.62(16) ~~1011.62(15)~~ shall levy on the taxable value for school purposes of the district, exclusive of millage voted under s. 9(b) or s. 12, Art. VII of the State Constitution, a millage rate not to exceed the amount certified by the commissioner as the minimum millage rate necessary to provide the district required local effort for the current year, pursuant to s. 1011.62(4)(a)1. In addition to the required local effort millage levy, each district school board may levy a nonvoted current operating discretionary millage. The Legislature shall prescribe annually in the appropriations act the maximum amount of millage a district may levy.

Reviser's note.—Amended to conform to the redesignation of s. 1011.62(15) as s. 1011.62(16) by s. 4, ch. 2017-116, Laws of Florida.

Section 112. Paragraph (b) of subsection (6) of section 1013.64, Florida Statutes, is amended to read:

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1013.64 Funds for comprehensive educational plant needs; construction cost maximums for school district capital projects.—Allocations from the Public Education Capital Outlay and Debt Service Trust Fund to the various boards for capital outlay projects shall be determined as follows:

(6)

(b)1. A district school board may not use funds from the following sources: Public Education Capital Outlay and Debt Service Trust Fund; School District and Community College District Capital Outlay and Debt Service Trust Fund; Classrooms First Program funds provided in s. 1013.68; nonvoted 1.5-mill levy of ad valorem property taxes provided in s. 1011.71(2); Classrooms for Kids Program funds provided in s. 1013.735; District Effort Recognition Program funds provided in s. 1013.736; or High Growth District Capital Outlay Assistance Grant Program funds provided in s. 1013.738 for any new construction of educational plant space with a total cost per student station, including change orders, that equals more than:

a. $17,952 for an elementary school,

b. $19,386 for a middle school, or

c. $25,181 for a high school,

(January 2006) as adjusted annually to reflect increases or decreases in the Consumer Price Index.

2. School districts shall maintain accurate documentation related to the costs of all new construction of educational plant space reported to the Department of Education pursuant to paragraph (d). The Auditor General shall review the documentation maintained by the school districts and verify

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compliance with the limits under this paragraph during its scheduled operational audits of the school district. The department shall make the final determination on district compliance based on the recommendation of the Auditor General.

~~3. The Office of Economic and Demographic Research, in consultation with the department, shall conduct a study of the cost per student station amounts using the most recent available information on construction costs. In this study, the costs per student station should represent the costs of classroom construction and administrative offices as well as the supplemental costs of core facilities, including required media centers, gymnasiums, music rooms, cafeterias and their associated kitchens and food service areas, vocational areas, and other defined specialty areas, including exceptional student education areas. The study must take into account appropriate cost-effectiveness factors in school construction and should include input from industry experts. The Office of Economic and Demographic Research must provide the results of the study and recommendations on the cost per student station to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31, 2017.~~

~~4. The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a study of the State Requirements for Education Facilities (SREF) to identify current requirements that can be eliminated or modified in order to decrease the cost of construction of educational facilities while ensuring student safety. OPPAGA must provide the results of the study, and an overall recommendation as to whether SREF should be retained, to the Governor, the President of the~~

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~~Senate, and the Speaker of the House of Representatives no later than January 31, 2017.~~

3.~~5.~~ Effective July 1, 2017, in addition to the funding sources listed in subparagraph 1., a district school board may not use funds from any sources for new construction of educational plant space with a total cost per student station, including change orders, which equals more than the current adjusted amounts provided in sub-subparagraphs 1.a.-c. which shall subsequently be adjusted annually to reflect increases or decreases in the Consumer Price Index. However, if a contract has been executed for architectural and design services or for construction management services before July 1, 2017, a district school board may use funds from any source for the new construction of educational plant space and such funds are exempt from the total cost per student station requirements.

4.~~6.~~ A district school board must not use funds from the Public Education Capital Outlay and Debt Service Trust Fund or the School District and Community College District Capital Outlay and Debt Service Trust Fund for any new construction of an ancillary plant that exceeds 70 percent of the average cost per square foot of new construction for all schools.

Reviser's note.—Amended to delete provisions that have served their purposes.

Section 113. This act shall take effect on the 60th day after adjournment sine die of the session of the Legislature in which enacted.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1344
INTRODUCER:	Senator Benacquisto
SUBJECT:	Florida Statutes
DATE:	February 28, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pollitz (DLRI)	Phelps	RC	**Favorable**

I. Summary:

The Division of Law Revision and Information of the Office of Legislative Services is required, by statute, to conduct a systematic and continuing study of the Florida Statutes. The purpose of this study is to recommend to the Legislature changes that will remove inconsistencies, redundancies, and unnecessary repetition from the statutes; improve clarity and facilitate correct interpretation; correct grammatical and typographical errors; and delete obsolete, repealed, or superseded provisions. These recommendations are submitted to the Legislature in the form of technical, nonsubstantive reviser's bills. A reviser's bill cannot be amended except to delete a bill section.

This bill deletes statutes provisions that have been repealed by a noncurrent (past-year) session of the Legislature where that repeal or expiration date has now occurred, rendering the provision of no effect (an example would be a repeal set for October 1, 2017, by the 2016 Regular Session of the Legislature).

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: amends ss. 39.001, 161.143, 212.08, 216.292, 259.105, 272.136, 296.37, 322.03, 328.76, 339.135, 375.075, 380.507, 393.065, 394.462, 403.7095, 409.1666, 420.5087, 420.9072, 663.01, 663.532, 893.055, and 1008.34, F.S.; repeals ss. 39.0011, 193.1552, 218.417, 218.418, 218.421, 218.422, 327.4105, 408.0436, 430.82, 663.041, and 1012.341, F.S.

II. Present Situation:

The Division of Law Revision and Information, under the authority and requirements of s. 11.242(5)(b) and (i), Florida Statutes, must remove repealed statutory provisions from the statutes text where the repeal was voted by the Legislature sitting in the current year; sections effectively repealed but where that repeal was passed by a past-year session of the Legislature can only be omitted from the statutes text through a reviser's bill pursuant to s. 11.242(5)(i)

III. Effect of Proposed Changes:

This bill will delete sections that have already been repealed by the Legislature by substantive legislation that the Division of Law Revision and Information could not remove from the statutes text without the required inclusion in a reviser's bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: ss. 39.001, 161.143, 212.08, 216.292, 259.105, 272.136, 296.37, 322.03, 328.76, 339.135, 375.075, 380.507, 393.065, 394.462, 403.7095, 409.1666, 420.5087, 420.9072, 663.01, 663.532, 893.055, and 1008.34, F.S.
This bill creates the following sections of the Florida Statutes: None.
This bill repeals the following sections of the Florida Statutes: ss. 39.0011, 193.1552, 218.417, 218.418, 218.421, 218.422, 327.4105, 408.0436, 430.82, 663.041, and 1012.341, F.S.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Benacquisto

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A reviser's bill to be entitled

An act relating to the Florida Statutes; repealing ss. 39.0011, 161.143(5)(e), 193.1552, 216.292(8), 218.417, 218.418, 218.421, 218.422, 259.105(3)(m), 272.136(7), 296.37(3), 322.03(1)(c), 327.4105, 328.76(1)(e) and (f), 339.135(4)(i) and (j) and (5)(b) and (c), 375.075(4), 380.507(2)(h), 393.065(8), 403.7095(3), 408.0436, 420.5087(10), 420.9072(10), 430.82, 663.01(9), 663.041, 893.055(17), 1008.34(7), and 1012.341, F.S., and amending ss. 212.08(7)(jjj) and 394.462, F.S., to delete provisions which have become inoperative by noncurrent repeal or expiration and, pursuant to s. 11.242(5)(b) and (i), F.S., may be omitted from the 2018 Florida Statutes only through a reviser's bill duly enacted by the Legislature; amending ss. 39.001, 409.1666, and 663.532, F.S., to conform cross-references; providing an effective date.

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

Section 1. Section 39.0011, Florida Statutes, is repealed.

Reviser's note.—The cited section, which authorizes establishment of a direct-support organization relating to promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect, was repealed pursuant to its own terms, effective October 1, 2017.

Section 2. Paragraph (e) of subsection (5) of section 161.143, Florida Statutes, is repealed.

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Reviser's note.—The cited paragraph, which relates to the amount allocated for inlet management funding for the 2016-2017 fiscal year only, was repealed pursuant to its own terms, effective July 1, 2017.

Section 3. Section 193.1552, Florida Statutes, is repealed.

Reviser's note.—The cited section, which relates to assessment of properties affected by imported or domestic drywall, was repealed pursuant to its own terms, effective July 1, 2017.

Section 4. Paragraph (jjj) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this

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subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(jjj) *Certain machinery and equipment.*—

1. Industrial machinery and equipment purchased by eligible manufacturing businesses which is used at a fixed location in this state for the manufacture, processing, compounding, or production of items of tangible personal property for sale is exempt from the tax imposed by this chapter. If, at the time of purchase, the purchaser furnishes the seller with a signed certificate certifying the purchaser's entitlement to exemption pursuant to this paragraph, the seller is not required to collect the tax on the sale of such items, and the department shall look solely to the purchaser for recovery of the tax if it determines that the purchaser was not entitled to the exemption.

2. For purposes of this paragraph, the term:

a. "Eligible manufacturing business" means any business whose primary business activity at the location where the industrial machinery and equipment is located is within the industries classified under NAICS codes 31, 32, 33, and 423930.

b. "Eligible postharvest activity business" means a business whose primary business activity, at the location where the postharvest machinery and equipment is located, is within the industries classified under NAICS code 115114.

c. "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of

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the President.

d. "Primary business activity" means an activity representing more than 50 percent of the activities conducted at the location where the industrial machinery and equipment or postharvest machinery and equipment is located.

e. "Industrial machinery and equipment" means tangible personal property or other property that has a depreciable life of 3 years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale. The term includes tangible personal property or other property that has a depreciable life of 3 years or more which is used as an integral part in the recycling of metals for sale. A building and its structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The term includes parts and accessories for industrial machinery and equipment only to the extent that the parts and accessories are purchased before the date the machinery and equipment are placed in service.

f. "Postharvest activities" means services performed on crops, after their harvest, with the intent of preparing them

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for market or further processing. Postharvest activities include, but are not limited to, crop cleaning, sun drying, shelling, fumigating, curing, sorting, grading, packing, and cooling.

g. "Postharvest machinery and equipment" means tangible personal property or other property with a depreciable life of 3 years or more which is used primarily for postharvest activities. A building and its structural components are not postharvest industrial machinery and equipment unless the building or structural component is so closely related to the postharvest machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the postharvest machinery and equipment is replaced. Heating and air conditioning systems are not postharvest machinery and equipment unless the sole justification for their installation is to meet the requirements of the postharvest activities process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonpostharvest activities.

3. Postharvest machinery and equipment purchased by an eligible postharvest activity business which is used at a fixed location in this state is exempt from the tax imposed by this chapter. All labor charges for the repair of, and parts and materials used in the repair of and incorporated into, such postharvest machinery and equipment are also exempt. If, at the time of purchase, the purchaser furnishes the seller with a signed certificate certifying the purchaser's entitlement to exemption pursuant to this subparagraph, the seller is not required to collect the tax on the sale of such items, and the

department shall look solely to the purchaser for recovery of the tax if it determines that the purchaser was not entitled to the exemption.

~~4. A mixer drum affixed to a mixer truck which is used at any location in this state to mix, agitate, and transport freshly mixed concrete in a plastic state for sale is exempt from the tax imposed by this chapter. Parts and labor required to affix a mixer drum exempt under this subparagraph to a mixer truck are also exempt. If, at the time of purchase, the purchaser furnishes the seller with a signed certificate certifying the purchaser's entitlement to exemption pursuant to this subparagraph, the seller is not required to collect the tax on the sale of such items, and the department shall look solely to the purchaser for recovery of the tax if it determines that the purchaser was not entitled to the exemption. This subparagraph is repealed April 30, 2017.~~

Reviser's note.—Amended to delete subparagraph 4., to conform to repeal of that subparagraph pursuant to its own terms.

Section 5. Subsection (8) of section 216.292, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which relates to authorization of a transfer of funds for the 2016-2017 fiscal year only, expired pursuant to its own terms, effective July 1, 2017.

Section 6. Sections 218.417, 218.418, 218.421, and 218.422, Florida Statutes, are repealed.

Reviser's note.—Section 218.417, which created the Fund B Surplus Funds Trust Fund, provides that the "trust fund shall be terminated upon self-liquidation, if not

terminated sooner by law." The fund has self-liquidated.

Section 11, ch. 2008-59, Laws of Florida, provides for expiration of ss. 218.418, 218.421, and 218.422, which relate to the trust fund, "at the time the Fund B Surplus Funds Trust Fund is terminated by law or self-liquidates as determined and announced by the executive director of the State Board of Administration, whichever occurs first." Since the sections were not repealed by a "current session" of the Legislature, they may be omitted from the 2018 Florida Statutes only through a reviser's bill duly enacted by the Legislature. See s. 11.242(5)(b) and (i).

Section 7. Paragraph (m) of subsection (3) of section 259.105, Florida Statutes, is repealed.

Reviser's note.—The cited paragraph, which relates to distribution of proceeds for the 2016-2017 fiscal year only, expired pursuant to its own terms, effective July 1, 2017.

Section 8. Subsection (7) of section 272.136, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which provided for an exemption from open government requirements for certain identifying information relating to a direct-support organization for the Florida Historic Capitol Museum, was repealed pursuant to its own terms, effective October 2, 2017.

Section 9. Subsection (3) of section 296.37, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which relates to contributions for maintenance and support from residents of

veterans' nursing homes, was repealed pursuant to its own terms, effective July 1, 2017.

Section 10. Paragraph (c) of subsection (1) of section 322.03, Florida Statutes, is repealed.

Reviser's note.—The cited paragraph, which relates to licenses issued to part-time residents under s. 322.03(1)(b) as it existed before November 1, 2009, expired pursuant to its own terms, effective June 30, 2017.

Section 11. Section 327.4105, Florida Statutes, is repealed.

Reviser's note.—The cited section, which relates to a pilot program for regulation of mooring vessels outside of public mooring fields, expired pursuant to its own terms, effective July 1, 2017.

Section 12. Paragraphs (e) and (f) of subsection (1) of section 328.76, Florida Statutes, are repealed.

Reviser's note.—The cited paragraphs, which relate to specific transfers of funds after all administrative costs are funded and distributions in paragraphs (a)-(d) have been made, expired pursuant to their own terms, effective July 1, 2017.

Section 13. Paragraphs (i) and (j) of subsection (4) and paragraphs (b) and (c) of subsection (5) of section 339.135, Florida Statutes, are repealed.

Reviser's note.—The cited paragraphs, which relate to specified use of funds for the 2016-2017 fiscal year only, expired pursuant to their own terms, effective July 1, 2017.

Section 14. Subsection (4) of section 375.075, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which relates to specified use of funds for the 2016-2017 fiscal year only, expired pursuant to its own terms, effective July 1, 2017.

Section 15. Paragraph (h) of subsection (2) of section 380.507, Florida Statutes, is repealed.

Reviser's note.—The cited paragraph, which relates to projects providing for accessibility, availability, or adaptability of conservation and recreation lands for individuals with unique abilities, expired pursuant to its own terms, effective July 1, 2017.

Section 16. Subsection (8) of section 393.065, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which relates to waivers for individuals with developmental disabilities in Category 6 during the 2016-2017 fiscal year, was repealed by s. 41, ch. 2016-62, Laws of Florida, effective July 1, 2017. Since the subsection was not repealed by a "current session" of the Legislature, it may be omitted from the 2018 Florida Statutes only through a reviser's bill duly enacted by the Legislature. See s. 11.242(5)(b) and (i).

Section 17. Section 394.462, Florida Statutes, is amended to read:

394.462 Transportation.—A transportation plan shall be developed and implemented by each county ~~by July 1, 2017,~~ in collaboration with the managing entity in accordance with this section. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the counties shall

notify the managing entity and provide it with a copy of the agreement. The transportation plan shall describe methods of transport to a facility within the designated receiving system for individuals subject to involuntary examination under s. 394.463 or involuntary admission under s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6811, and may identify responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan may rely on emergency medical transport services or private transport companies, as appropriate. The plan shall comply with the transportation provisions of this section and ss. 397.6772, 397.6795, 397.6822, and 397.697.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the appropriate facility within the designated receiving system pursuant to a transportation plan ~~or an exception under subsection (4), or to the nearest receiving facility if neither apply~~.

(b)1. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

a. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and

b. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

2. The entity providing transportation may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From a private or public third-party payor, if the person receiving the transportation has applicable coverage.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(c) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transport of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(d) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of patients.

(e) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(f) When a member of a mental health overlay program or a

mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 or s. 397.675 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(g) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination pursuant to s. 394.463, the law enforcement officer shall transport the person to the appropriate facility within the designated receiving system pursuant to a transportation plan ~~or an exception under subsection (4), or to the nearest receiving facility if neither apply~~. Persons who meet the statutory guidelines for involuntary admission pursuant to s. 397.675 may also be transported by law enforcement officers to the extent resources are available and as otherwise provided by law. Such persons shall be transported to an appropriate facility within the designated receiving system pursuant to a transportation plan ~~or an exception under subsection (4), or to the nearest facility if neither apply~~.

(h) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person must first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the appropriate facility within

the designated receiving system pursuant to a transportation plan ~~or an exception under subsection (4), or to the nearest receiving facility if neither apply~~. The receiving facility shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide examination and treatment to the person where he or she is held.

(i) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(j) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(k) The appropriate facility within the designated receiving system pursuant to a transportation plan ~~or an exception under subsection (4), or the nearest receiving facility if neither apply,~~ must accept persons brought by law enforcement officers, or an emergency medical transport service or a private transport company authorized by the county, for involuntary examination pursuant to s. 394.463.

(l) The appropriate facility within the designated receiving system pursuant to a transportation plan ~~or an exception under subsection (4), or the nearest receiving~~

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~~facility if neither apply,~~ must provide persons brought by law enforcement officers, or an emergency medical transport service or a private transport company authorized by the county, pursuant to s. 397.675, a basic screening or triage sufficient to refer the person to the appropriate services.

(m) Each law enforcement agency designated pursuant to paragraph (a) shall establish a policy that reflects a single set of protocols for the safe and secure transportation and transfer of custody of the person. Each law enforcement agency shall provide a copy of the protocols to the managing entity.

(n) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to facilities within the designated receiving system, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(o) This section may not be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the transportation plan established by the governing board of the county or counties must specify how the hospitalized patient will be transported to, from, and between

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facilities in a safe and dignified manner.

(b) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(c) A company that contracts with one or more counties to transport patients in accordance with this section shall comply with the applicable rules of the department to ensure the safety and dignity of patients.

(d) County or municipal law enforcement and correctional personnel and equipment may not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

~~(4) EXCEPTIONS.—An exception to the requirements of this section may be granted by the secretary of the department for the purposes of improving service coordination or better meeting the special needs of individuals. A proposal for an exception must be submitted to the department after being approved by the governing boards of any affected counties.~~

~~(a) A proposal for an exception must identify the specific provision from which an exception is requested; describe how the~~

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~~proposal will be implemented by participating law enforcement agencies and transportation authorities; and provide a plan for the coordination of services.~~

~~(b) The exception may be granted only for:~~

~~1. An arrangement centralizing and improving the provision of services within a district, which may include an exception to the requirement for transportation to the nearest receiving facility;~~

~~2. An arrangement by which a facility may provide, in addition to required psychiatric or substance use disorder services, an environment and services which are uniquely tailored to the needs of an identified group of persons with special needs, such as persons with hearing impairments or visual impairments, or elderly persons with physical frailties; or~~

~~3. A specialized transportation system that provides an efficient and humane method of transporting patients to receiving facilities, among receiving facilities, and to treatment facilities.~~

~~The exceptions provided in this subsection shall expire on June 30, 2017, and no new exceptions shall be granted after that date. After June 30, 2017, the transport of a patient to a facility that is not the nearest facility must be made pursuant to a plan as provided in this section.~~

Reviser's note.—Amended to conform to the expiration of subsection (4) pursuant to its own terms, effective June 30, 2017.

Section 18. Subsection (3) of section 403.7095, Florida

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Statutes, is repealed.

Reviser's note.—The cited subsection, which awarded $3 million in grants in the 2016-2017 fiscal year equally to counties having fewer than 110,000 persons for waste tire and litter prevention, recycling education, and general solid waste programs, expired pursuant to its own terms, effective July 1, 2017.

Section 19. Section 408.0436, Florida Statutes, is repealed.

Reviser's note.—The cited section, which relates to a limitation on nursing home certificates of need, was repealed pursuant to its own terms, effective July 1, 2017.

Section 20. Subsection (10) of section 420.5087, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which relates to reservation of funds for tenant groups for the 2016-2017 fiscal year relating to the State Apartment Incentive Loan Program, expired pursuant to its own terms, effective July 1, 2017.

Section 21. Subsection (10) of section 420.9072, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which relates to funds for rental assistance and subsidies for the 2016-2017 fiscal year relating to the State Housing Initiatives Partnership Program, expired pursuant to its own terms, effective July 1, 2017.

Section 22. Section 430.82, Florida Statutes, is repealed.

Reviser's note.—The cited section, which establishes a direct-support organization to provide assistance to the

Department of Elderly Affairs, was repealed pursuant to its own terms, effective October 1, 2017.

Section 23. Subsection (9) of section 663.01, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which defines the term "international trust entity" for purposes of part I of chapter 663, was repealed by s. 3, ch. 2016-192, Laws of Florida, effective July 1, 2017. Since the subsection was not repealed by a "current session" of the Legislature, it may be omitted from the 2018 Florida Statutes only through a reviser's bill duly enacted by the Legislature. See s. 11.242(5)(b) and (i).

Section 24. Section 663.041, Florida Statutes, is repealed.

Reviser's note.—The cited section, which relates to a moratorium on enforcement of licensing requirements for international trust entities, was repealed by s. 3, ch. 2016-192, Laws of Florida, effective July 1, 2017. Since the section was not repealed by a "current session" of the Legislature, it may be omitted from the 2018 Florida Statutes only through a reviser's bill duly enacted by the Legislature. See s. 11.242(5)(b) and (i).

Section 25. Subsection (17) of section 893.055, Florida Statutes, is repealed.

Reviser's note.—The cited subsection, which relates to use of state funds appropriated in the 2016-2017 General Appropriations Act to administer the prescription drug monitoring program for the 2016-2017 fiscal year only, expired pursuant to its own terms, effective July 1, 2017.

Section 26. Subsection (7) of section 1008.34, Florida

Statutes, is repealed.

Reviser's note.—The cited subsection, which relates to transition provisions relating to school improvement ratings and school grades, was repealed pursuant to its own terms, effective July 1, 2017.

Section 27. Section 1012.341, Florida Statutes, is repealed.

Reviser's note.—The cited section, which provides an exemption for the Hillsborough County School District from performance evaluation system and compensation and salary schedule requirements, was repealed pursuant to its own terms, effective August 1, 2017.

Section 28. Paragraph (c) of subsection (9) of section 39.001, Florida Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(9) OFFICE OF ADOPTION AND CHILD PROTECTION.—

(c) The office is authorized and directed to:

1. Oversee the preparation and implementation of the state plan established under subsection (10) and revise and update the state plan as necessary.

2. Provide for or make available continuing professional education and training in the prevention of child abuse and neglect.

3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and other public and private sources in order to ensure that sufficient funds are available for the promotion of adoption, support of adoptive families, and child abuse prevention

efforts.

4. Make recommendations pertaining to agreements or contracts for the establishment and development of:

a. Programs and services for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

b. Training programs for the prevention of child abuse and neglect.

c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.

d. Efforts to promote adoption.

e. Postadoptive services to support adoptive families.

5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January 1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the head of each state agency affected by the report, and the appropriate substantive committees of the Legislature. The report shall include:

a. A summary of the activities of the office.

b. A summary of the adoption data collected and reported to the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) and the federal Administration for Children and Families.

c. A summary of the child abuse prevention data collected

and reported to the National Child Abuse and Neglect Data System (NCANDS) and the federal Administration for Children and Families.

d. A summary detailing the timeliness of the adoption process for children adopted from within the child welfare system.

e. Recommendations, by state agency, for the further development and improvement of services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

f. Budget requests, adoption promotion and support needs, and child abuse prevention program needs by state agency.

~~6. Work with the direct-support organization established under s. 39.0011 to receive financial assistance.~~

Reviser's note.—Amended to conform to the repeal of s. 39.0011 by this act to ratify the repeal of that section by its own terms, effective October 1, 2017.

Section 29. Section 409.1666, Florida Statutes, is amended to read:

409.1666 Annual adoption achievement awards.—Each year, the Governor shall select and recognize one or more individuals, families, or organizations that make significant contributions to enabling this state's foster children to achieve permanency through adoption. The department shall define appropriate categories for the achievement awards and seek nominations for potential recipients in each category from individuals and organizations knowledgeable about foster care and adoption.

~~(1)~~ The award shall recognize persons whose contributions involve extraordinary effort or personal sacrifice in order to

provide caring and permanent homes for foster children.

~~(2) A direct-support organization established in accordance with s. 39.0011 by the Office of Adoption and Child Protection within the Executive Office of the Governor may accept donations of products or services from private sources to be given to the recipients of the adoption achievement awards. The direct-support organization may also provide suitable plaques, framed certificates, pins, and other tokens of recognition.~~

Reviser's note.—Amended to conform to the repeal of s. 39.0011 by this act to ratify the repeal of the section by its own terms, effective October 1, 2017.

Section 30. Subsection (6) of section 663.532, Florida Statutes, is amended to read:

663.532 Qualification.—

(6) No later than March 31, 2018, a person or entity that previously qualified under the moratorium in former 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 former 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.

Reviser's note.—Amended to conform to the repeal of s. 663.041 by this act to ratify the repeal of that section effective July 1, 2017, by s. 3, ch. 2016-192, Laws of Florida.

Section 31. This act shall take effect on the 60th day after adjournment sine die of the session of the Legislature in which enacted.

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 1346
INTRODUCER:	Senator Benacquisto
SUBJECT:	Florida Statutes
DATE:	February 28, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pollitz (DLRI)	Phelps	RC	**Favorable**

I. Summary:

The Division of Law Revision and Information of the Office of Legislative Services is required, by statute, to conduct a systematic and continuing study of the Florida Statutes. The purpose of this study is to recommend to the Legislature changes that will remove inconsistencies, redundancies, and unnecessary repetition from the statutes; improve clarity and facilitate correct interpretation; correct grammatical and typographical errors; and delete obsolete, repealed, or superseded provisions. These recommendations are submitted to the Legislature in the form of technical, nonsubstantive reviser's bills.

Section 9, ch. 2012-116, Laws of Florida, created s. 11.242(5)(j), Florida Statutes, requiring the Division of Law Revision and Information to omit statutory provisions granting duplicative, redundant, or unused rulemaking authority from the Florida Statutes as part of the reviser's bill process for each regular session.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: amends ss. 20.2551, 101.5614, 101.6952, 102.141, 102.166, 122.34, 201.02, 394.907, 395.602, 395.603, and 395.604, F.S.

II. Present Situation:

Section 9, ch. 2012-116, Laws of Florida, created s. 11.242(5)(j), Florida Statutes, requiring the Division of Law Revision and Information to prepare reviser's bills each regular session to omit all statutory provisions granting duplicative, redundant, or unused rulemaking authority from the Florida Statutes. Rulemaking authority is deemed unused if the statutory provision "has been in effect for more than 5 years and no rule has been promulgated in reliance thereon."

III. Effect of Proposed Changes:

The bill revises Florida Statutes text to conform to the directive in s. 9, ch. 2012-116, Laws of Florida, codified as s. 11.242(5)(j), Florida Statutes, to omit statutory provisions granting duplicative, redundant, or unused rulemaking authority from the Florida Statutes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: ss. 20.2551, 101.5614, 101.6952, 102.141, 102.166, 122.34, 201.02, 394.907, 395.602, 395.603, and 395.604, F.S.
This bill creates the following sections of the Florida Statutes: None.
This bill repeals the following sections of the Florida Statutes: None.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Benacquisto

27-00783-18 20181346__

A reviser's bill to be entitled

An act relating to the Florida Statutes; amending ss. 20.2551, 101.5614, 122.34, 201.02, 394.907, 395.602, 395.603, and 395.604, F.S., to conform to the directive of the Legislature in section 9 of chapter 2012-116, Laws of Florida, codified as section 11.242(5)(j), Florida Statutes, to prepare a reviser's bill to omit all statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority; amending ss. 101.6952, 102.141, and 102.166, F.S., to conform cross-references; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 20.2551, Florida Statutes, is amended to read:

20.2551 Citizen support organizations; use of property; audit; public records; partnerships.—

(2) USE OF PROPERTY.—

(b) The department may prescribe ~~by rule~~ any condition with which a citizen support organization shall comply in order to use fixed property or facilities of the department.

Section 2. Subsection (2) of section 101.5614, Florida Statutes, is amended to read:

101.5614 Canvass of returns.—

~~(2) The Department of State shall, in accordance with s. 101.015, adopt rules that provide safeguards for the counting of votes at a precinct and at a central or regional location.~~

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

27-00783-18 20181346__

Section 3. Paragraph (c) of subsection (1) of section 122.34, Florida Statutes, is amended to read:

122.34 Special provisions for certain sheriffs and full-time deputy sheriffs.—

(1)

~~(c) The department shall make such rules as are necessary for the effective administration of the intent of this section.~~

Section 4. Paragraph (c) of subsection (10) of section 201.02, Florida Statutes, is amended to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(10)

~~(c) The department may adopt rules to administer the method for reporting tax due under this subsection.~~

Section 5. Subsection (8) of section 394.907, Florida Statutes, is amended to read:

394.907 Community mental health centers; quality assurance programs.—

~~(8) The department, in consultation with the agency, shall adopt rules to carry out this section.~~

Section 6. Subsection (4) of section 395.602, Florida Statutes, is amended to read:

395.602 Rural hospitals.—

~~(4) RULEMAKING AUTHORITY.—The department may adopt all necessary rules pertaining to the standards of care applicable to rural hospital swing-beds and the criteria whereby swing-bed stays of longer than 30 days shall be authorized. The latter length-of-stay criteria shall include, but not be limited to, the medical needs of the patient, the county of residence of the~~

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

~~patient and patient's family, patient preference, proximity to relatives and friends, and distance to available nursing home beds, if any.~~

Section 7. Subsection (1) of section 395.603, Florida Statutes, is amended to read:

395.603 Deactivation of general hospital beds; rural hospital impact statement.—

(1) ~~The agency shall establish, by rule, a process by which a rural hospital, as defined in s. 395.602, that seeks licensure as a rural primary care hospital or as an emergency care hospital, or becomes a certified rural health clinic as defined in Pub. L. No. 95-210, or becomes a primary care program such as a county health department, community health center, or other similar outpatient program that provides preventive and curative services, may deactivate general hospital beds.~~ Rural primary care hospitals and emergency care hospitals shall maintain the number of actively licensed general hospital beds necessary for the facility to be certified for Medicare reimbursement. Hospitals that discontinue inpatient care to become rural health care clinics or primary care programs shall deactivate all licensed general hospital beds. All hospitals, clinics, and programs with inactive beds shall provide 24-hour emergency medical care by staffing an emergency room. Providers with inactive beds shall be subject to the criteria in s. 395.1041. ~~The agency shall specify in rule requirements for making 24-hour emergency care available.~~ Inactive general hospital beds shall be included in the acute care bed inventory, maintained by the agency for certificate-of-need purposes, for 10 years from the date of deactivation of the beds. After 10 years have elapsed,

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inactive beds shall be excluded from the inventory. The agency shall, at the request of the licensee, reactivate the inactive general beds upon a showing by the licensee that licensure requirements for the inactive general beds are met.

Section 8. Subsection (3) of section 395.604, Florida Statutes, is amended to read:

395.604 Other rural hospital programs.—

~~(3) The agency may adopt licensure rules for rural primary care hospitals and essential access community hospitals. Such rules must conform to s. 395.1055.~~

Section 9. Paragraph (b) of subsection (3) of section 101.6952, Florida Statutes, is amended to read:

101.6952 Vote-by-mail ballots for absent uniformed services and overseas voters.—

(3)

(b) A federal write-in absentee ballot may not be canvassed until 7 p.m. on the day of the election. A federal write-in absentee ballot from an overseas voter in a presidential preference primary or general election may not be canvassed until the conclusion of the 10-day period specified in subsection (5). Each federal write-in absentee ballot received by 7 p.m. on the day of the election shall be canvassed pursuant to ss. 101.5614(4) ~~101.5614(5)~~ and 101.68, unless the elector's official vote-by-mail ballot is received by 7 p.m. on election day. Each federal write-in absentee ballot from an overseas voter in a presidential preference primary or general election received by 10 days after the date of the election shall be canvassed pursuant to ss. 101.5614(4) ~~101.5614(5)~~ and 101.68, unless the overseas voter's official vote-by-mail ballot is

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

received by 10 days after the date of the election. If the elector's official vote-by-mail ballot is received by 7 p.m. on election day, or, for an overseas voter in a presidential preference primary or general election, no later than 10 days after the date of the election, the federal write-in absentee ballot is invalid and the official vote-by-mail ballot shall be canvassed. The time shall be regulated by the customary time in standard use in the county seat of the locality.

Section 10. Paragraph (a) of subsection (4) and paragraph (a) of subsection (7) of section 102.141, Florida Statutes, are amended to read:

102.141 County canvassing board; duties.—

(4)(a) The supervisor of elections shall upload into the county's election management system by 7 p.m. on the day before the election the results of all early voting and vote-by-mail ballots that have been canvassed and tabulated by the end of the early voting period. Pursuant to ss. 101.5614(8) ~~101.5614(9)~~, 101.657, and 101.68(2), the tabulation of votes cast or the results of such uploads may not be made public before the close of the polls on election day.

(7) If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary

of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made.

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(4) ~~101.5614(5)~~. Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of

the error.

Section 11. Paragraph (b) of subsection (5) of section 102.166, Florida Statutes, is amended to read:

102.166 Manual recounts of overvotes and undervotes.—

(5) Procedures for a manual recount are as follows:

(b) Each duplicate ballot prepared pursuant to s. 101.5614(4) ~~101.5614(5)~~ or s. 102.141(7) shall be compared with the original ballot to ensure the correctness of the duplicate.

Reviser's note.—Amends or repeals provisions of the Florida Statutes pursuant to the directive of the Legislature in s. 9, ch. 2012-116, Laws of Florida, codified as s. 11.242(5)(j), Florida Statutes, to prepare a reviser's bill to omit all statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority.

Section 12. This act shall take effect on the 60th day after adjournment sine die of the session of the Legislature in which enacted.

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 7008
INTRODUCER:	Rules Committee; and Communications, Energy, and Public Utilities Committee
SUBJECT:	OGSR/Local Government Electric Utility
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Wiehle	Caldwell		**CU Submitted as Committee Bill**
1.	Brown	Caldwell	GO	**Favorable**
2.	Wiehle	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7008 removes the scheduled repeal of the public records exemption for proprietary confidential business information held by a local government electric utility, thus continuing the exemption from disclosure requirements under the public records laws. It also narrows the information that is considered proprietary confidential by removing the phrase "but not limited to" and clarifies the meaning of the term "trade secrets" in existing law.

The bill takes effect on October 1, 2018.

II. Present Situation:

Public Records Law

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

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(a).

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

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

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[12] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature.

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

[4] Public records laws are found throughout the Florida Statutes.

[5] Section 119.01(1), F.S.

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

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

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

[9] FLA. CONST., art. I, s. 24(c).

[10] FLA. CONST., art. I, s. 24(c).

[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

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

Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[13]

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.[14] 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.[15] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[16] 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;[17]
- 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;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] 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.[21] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

[13] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[14] 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.
[15] Section 119.15(3), F.S.
[16] Section 119.15(6)(b), F.S.
[17] Section 119.15(6)(b)1., F.S.
[18] Section 119.15(6)(b)2., F.S.
[19] Section 119.15(6)(b)3., F.S.
[20] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[21] FLA. CONST. art. I, s. 24(c).

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[22]

Section 119.0713(4), F.S. – Exemption of Proprietary Confidential Business Information Held by a Local Government Electric Utility

In 2013, the Legislature created s. 119.0713(4), F.S., to exempt from the public record requirements proprietary confidential business information held by a local government electric utility in conjunction with a due diligence review of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The term "proprietary confidential business information" means information, regardless of form or characteristics, which:

- is held by an electric utility that is subject to chapter 119, F.S.;
- is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations; and
- has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public.

The term "proprietary confidential business information" includes, but is not limited to:

- Trade secrets.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

This public record exemption stands repealed on October 2, 2018, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, F.S.).

Open Government Sunset Review of Exemption

Accordingly, in the summer of 2017, Senate and House committee staff conducted a survey of Florida local government electric utilities relating to their use of the exemption. Six entities responded: JEA (previously Jacksonville Electric Authority), Orlando Utilities Commission (OUC), Kissimmee Utility Authority (KUA), Lakeland Electric (LE), City of Leesburg Electric Department (LED), and Florida Municipal Power Agency (FMPA).[23, 24]

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[22] Section 119.15(7), F.S.

[23] Responses are on file with the Senate Committee on Communications, Energy, and Public Utilities.

[24] While there are 34 municipal electric utilities, only 13 of these utilities generate electricity. Florida Public Service Commission, *2017 Facts and Figures of the Florida Utilities Industry*, page 11 http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/March%202017.pdf
Also, the projects that this public records exemption addresses involve the acquisition of large scale facilities, are very expensive, and don't happen often. Finally, the FMPA represents the collective interests of 13 municipal electric utilities, and

The statute applies to a local government electric utility that holds proprietary confidential business information in conjunction with either a due diligence review[25] of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. An electric project includes:

- Any plant, works, system, facilities, and real property and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, which is located within or without the state and which is used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.
- Any interest in, or right to, the use, services, output, or capacity of any such plant, works, system, or facilities.
- Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determine the legality and financial and engineering feasibility of any project referred to above. [26]

Types of projects include construction, acquisition, maintenance, or upgrading of electricity generating facilities, transmission or distribution power lines, operating systems, or storage facilities. Projects may involve traditional fuels or new sources, such as solar; traditional forms of transmission, distribution, and metering equipment or new equipment, such as smart meters and components of a smart grid; and new storage technologies, such as Li-Ion batteries and Vanadium Flow battery systems. Project goals may include: producing and delivering electricity to meet increased demands; increasing efficiency and cutting costs; or improving technologies to obtain purely economic or socioeconomic advantages.

A business may provide project proposals and related information to a municipal utility either pursuant to a utility announcement of a project and issuance of a Request for Proposals, or through an unsolicited business proposal. These proposals may be made by other electric utilities or designers or manufacturers of equipment or systems. Typically proposals include:

- Technical specifications, data, plans, drawings, and design information about the equipment, technology, and systems being proposed; and
- Terms and conditions, including identification and quantification of benefits to be provided and pricing information.

Much of this information is either patented, proprietary, or confidential.

The Legislature enacted the exemption statute based on a finding that it was a public necessity that this information be made confidential and exempt from public records requirements because the disclosure of this information could injure the provider in the marketplace by giving its competitors detailed insight into its financial status and strategic plans, thereby putting the

its response is considered a response for all 13 utilities. Collectively, then, 19 municipal utilities responded. Amy Zubaly, email to Diana Caldwell (September 6, 2017).

[25] A due diligence review is an investigation and review of the business seeking the contract and of their financial and technical resources to fulfill the contract, of the proposal itself, and of the costs associated with the proposal, including ratepayer impacts.

[26] Section 163.01(3)(d), F.S.

provider at a competitive disadvantage. Without this exemption, providers might be unwilling to enter into discussions with the electric utility regarding the feasibility of future contracting. This could, in turn, limit opportunities the electric utility might otherwise have for finding cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. This would put public providers of electric utility services at a competitive disadvantage by limiting their ability to optimize services to their customers and adversely affecting the customers of those utilities by depriving them of opportunities for rate reductions or other improvements in services. The Legislature also found that the public and private harm in disclosing such proprietary confidential business information significantly outweighed any public benefit derived from disclosure of the information and that the exemption would enhance the ability of electric utilities to optimize their performance, thereby benefiting ratepayers.

The survey responses reflect that these findings are borne out in these utilities' operations. Prior to enactment of the exemption, some of the responding utilities were able to enter into contracts by using a due diligence process in which no documents came into the utility's possession, using third party providers of due diligence services, or using detailed nondisclosure agreements. They note, however, that businesses have become more willing to make proposals and enter into agreements since the exemption was enacted, particularly with new or emerging technology such as solar energy and battery storage. Respondents also stated that the protected information could not be readily obtained by alternative means and that it was not protected by any other exemption. As such, all recommend retaining the exemption in its current form.

Based on this information, the exemption both protects confidential business information related to competitiveness and allows these governmental utilities to effectively and efficiently produce and deliver electricity to their customers, and these services would be significantly impaired without the exemption. The purpose appears sufficient to override public policy favoring open government, and could not be accomplished without the exemption.

III. Effect of Proposed Changes:

The bill amends s. 119.0713(4), F.S., to remove the scheduled repeal of the public records exemption for proprietary confidential business information held by a local government electric utility. As a result, these records will remain exempt from disclosure requirements under public records law.

The bill also narrows and clarifies the information that is considered proprietary confidential. First, it removes the phrase "but not limited to" in the context of the list of types of information included in the phrase "proprietary confidential business information." Second, the bill clarifies the meaning of the term "trade secrets" by referencing s. 688.002, F.S., in existing law.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemption allows business entities to propose and negotiate projects with municipal utilities without the risk of disclosure of proprietary confidential business information, which allows these entities to increase their business activities.

The exemption allows municipal utility customers to benefit from anticipated improvements to utility infrastructure and systems.

C. Government Sector Impact:

The exemption allows the municipal utilities to increase the size and efficiency of their electricity generation and delivery infrastructure, utilize newer technologies, and reduce costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The First Amendment Foundation conducted its annual review of exemptions from public records subject to review during the 2018 legislative session. It concluded that the public record

exemption which this bill maintains "is sufficiently narrow and the Foundation does not object to its reenactment as currently worded."[27]

VIII. Statutes Affected:

This bill substantially amends section 119.0713 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Rules on March 1, 2018:

The CS:

- Strikes the current language "but not limited to" from the list of types of information that are included in the term "proprietary confidential business information," which will narrow this term to include only the types of information in the list; and
- Clarifies the definition of the term "trade secrets" by referencing the applicable statutory definition.

B. Amendments:

None.

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

[27] Letter from Barbara A. Peterson, President, First Amendment Foundation, to Senator Dennis Baxley, Chair, Senate Committee on Government Oversight and Accountability (Aug. 17, 2017) (on file with the Senate Governmental Oversight and Accountability Committee).

417470

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete line 28
and insert:
1. Trade secrets, as defined in s. 688.002.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 7
and insert:

417470

utility; clarifying the meaning of the term "trade secret"; removing the scheduled repeal of the

263700

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Substitute for Amendment (417470) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) of section 119.0713, Florida Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(4)(a) Proprietary confidential business information means information, regardless of form or characteristics, which is

263700

held by an electric utility that is subject to this chapter ~~119~~, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes~~, but is not limited to~~:

1. Trade secrets, as defined in s. 688.002.

2. Internal auditing controls and reports of internal auditors.

3. Security measures, systems, or procedures.

4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.

5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(b) Proprietary confidential business information held by an electric utility that is subject to this chapter ~~119~~ in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after

263700

the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

~~(d) This subsection 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.~~

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0713, F.S., which provides an exemption from public records requirements for proprietary confidential business information held by a local government electric utility; conforming a cross-reference; redefining the term "proprietary confidential business information" to narrow the exemption; defining the term "trade secrets"; removing the scheduled repeal of the exemption; providing an effective date.

By the Committee on Communications, Energy, and Public Utilities

579-01381-18 20187008__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0713, F.S., relating to an exemption from public records requirements for proprietary confidential business information held by a local government electric utility; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (4) of section 119.0713, Florida Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(4)(a) Proprietary confidential business information means information, regardless of form or characteristics, which is held by an electric utility that is subject to this chapter ~~119~~, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

1. Trade secrets.

2. Internal auditing controls and reports of internal

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

579-01381-18 20187008__

auditors.

3. Security measures, systems, or procedures.

4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.

5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(b) Proprietary confidential business information held by an electric utility that is subject to this chapter ~~119~~ in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

~~(d) This subsection 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.~~

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

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: February 5, 2018

I respectfully request that **Senate Bill # 7008**, relating to OGSR/Local Government Electric Utility, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

7008
Bill Number (if applicable)

Topic OGSR / Local Government Electric Utility

263700
Amendment Barcode (if applicable)

Name Suzanne Goss

Job Title Government Relations Specialist

Address 21 W. Church
Street

Phone 904 665-8331

Jacksonville FL 32202
City *State* *Zip*

Email gossSE@jea.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing JEA (electric, water + sewer)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

7008
Bill Number (if applicable)

263700
Amendment Barcode (if applicable)

Topic OGSR/ Muni elections

Name Ryan Matthews

Job Title

Address PO Box 10930
Street

Phone 850 294 8591

Tallahassee FL 32302
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL Municipal Electric 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)

3/1/18
Meeting Date

7008
Bill Number (if applicable)

Topic OGSR/Muni electric utilities

Amendment Barcode (if applicable)

Name Ryan Matthews

Job Title

Address po Box 10930
Street

Phone 850-294-8591

Tallahassee
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL Municipal Electric Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 7008
Bill Number (if applicable)

Topic OGSR/Local Government Electric Utility
Amendment Barcode (if applicable)

Name Suzanne Goss

Job Title Government Relations Specialist

Address 21 W. Church St.
Street

Phone 904 665-8331

Jacksonville FL 32202
City *State* *Zip*

Email gossSE@jea.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing JEA (electric, water + sewer)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

7008
Bill Number (if applicable)

Topic OGSR/ LOCAL GOVERNMENT ELECTRIC UTILITY

Amendment Barcode (if applicable)

Name KEVIN NOONAN

Job Title DIRECTOR, LEGISLATIVE AFFAIRS

Address 100 W. ANDERSON ST.
Street

Phone 407.466.1287

ORLANDO FL 32801
City *State* *Zip*

Email KNOONAN@OUC.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ORLANDO UTILITIES COMMISSION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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 7010
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	OGSR/Payment Instrument Transaction Information/Office of Financial Regulation
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Billmeier	Knudson		**BI Submitted as Committee Bill**
1.	Brown	Caldwell	GO	**Favorable**
2.	Billmeier	Phelps	RC	**Favorable**

I. Summary:

SB 7010 is based on an Open Government Sunset Review (OGSR) of a public records exemption for certain information contained in the check cashing database maintained by the Office of Financial Regulation (OFR). Check cashers licensed by the OFR must enter certain information about transactions that exceed $1,000 into a check cashing database.

The exemption upon which the OGSR is based makes confidential and exempt payment instrument transaction information held by the OFR which identifies a licensee, payor, payee, or conductor. The public necessity statement of the original exemption provides as justification for the exemption that disclosure of the information would reveal sensitive personal financial information including paycheck amounts, salaries, and business activities. Additionally, without the exemption, disclosure of the information could reveal business information that is traditionally private. The justification upon which the exemption is based remains valid. For this reason, the bill deletes the scheduled repeal of the exemption.

The bill requires a majority vote for passage. If the bill passes, the exemption would be permanent.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business

[1] FLA. CONST., art. I, s. 24(a).

of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

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

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

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

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[2] FLA. CONST., art. I, s. 24(a).
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).
[11] *Halifax Hosp. Medical Center v. New-Journal Corp.,* 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[12] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[14] 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.[15] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[16] 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;[17]
- 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;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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

[13] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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

[15] Section 119.15(3), F.S.

[16] Section 119.15(6)(b), F.S.

[17] Section 119.15(6)(b)1., F.S.

[18] Section 119.15(6)(b)2., F.S.

[19] Section 119.15(6)(b)3., F.S.

[20] Section 119.15(6)(a), F.S. The specified questions are:

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[21] 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.[22]

The Office of Financial Regulation (OFR) Check Cashing Database

The Office of Financial Regulation (OFR) licenses and regulates check cashers pursuant to chapter 560, F.S. In 2013, the OFR was directed to issue a competitive solicitation for "a statewide, real time, online check cashing database to combat fraudulent check cash activity."[23] The OFR launched the database on October 1, 2015.[24] Florida law imposes various requirements on check cashers. A licensee must maintain copies of each payment instrument cashed.[25] If the payment instrument exceeds $1,000, the following additional information must be maintained:

- Customer files, as prescribed by rule, on all customers who cash corporate payment instruments that exceed $1,000;
- Copies of personal identification with a photograph of each customer used as identification and presented by the customer;
- Thumbprints of each customer taken by the licensee when the payment instrument is presented for negotiation or payment.[26]

The licensee must enter the following information into the check cashing database before cashing a payment instrument in excess of $1,000:

- Transaction date;
- Payor name as displayed on the payment instrument;
- Payee name as displayed on the payment instrument;
- Conductor name, if different from the payee name;
- Amount of the payment instrument;
- Amount of currency provided;
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument;
- Amount of the fee charged for cashing of the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and identification number presented by the payee or conductor; and
- Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business.[27]

- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[21] FLA. CONST. art. I, s. 24(c).
[22] Section 119.15(7), F.S.
[23] Section 560.310(4), F.S.; Chapter 2013-139, Laws of Florida.
[24] Office of Financial Regulation, *Florida Office of Financial Regulation Announces New Tool to Combat Financial Fraud* (Sept. 3, 2015), available at https://www.flofr.com/PressReleaseDetail.aspx?id=4562 (last visited Jan. 24, 2018).
[25] Section 560.310(1), F.S.
[26] Section 560.310(2)(a)-(c), F.S.
[27] Section 560.310(2)(d), F.S.

The Legislature provided for the creation of the database as a tool to combat workers' compensation insurance premium fraud.[28] A common fraud scheme works as follows. A "facilitator" creates a shell company and purchases a minimal workers' compensation insurance policy[29] in the name of the shell company. The facilitator then allows an uninsured subcontractor to use the shell company name and workers' compensation insurance policy, for a fee, to obtain work from general contractors. After the subcontractor completes work, the general contractor pays the subcontractor wages with a company check made payable to the shell company. The facilitator cashes the check at a check cashing business, collects a fee for providing the insurance policy, and pays the subcontractor in cash. The subcontractor benefits because it has been able to operate using a minimal insurance policy and does not have to pay the full premium for workers' compensation coverage. The costs of these fraudulent schemes are absorbed by contractors and subcontractors who do not commit fraud.

The Department of Financial Services (DFS) uses the check cashing database and workers' compensation premium information held by the DFS to investigate insurance fraud. For example, the DFS could contrast information on the check cashing database showing a company cashed checks for $50,000 with workers' compensation insurance filings that the company only reported $10,000 in payroll. The DFS would investigate the company for compliance with workers' compensation laws and for insurance fraud. Additionally, the money service business could be alerted of the inconsistency, and refuse the check at the time it is presented.[30] Without the "real time" information obtained from the check cashing database, some fraud schemes might not be discovered until the OFR examines a licensee during its routine 5 year examination. The "shell" companies used to perpetrate the fraud scheme may only exist for a few months before the facilitator creates another company. Therefore, the ability of the OFR to access timely information is critical.

The DFS recently made an arrest in a workers' compensation fraud case. The DFS alleges that the defendant attempted to avoid payment workers' compensation insurance premium by underreporting the number of staff employed, the company's payroll, and the company's scope of work. In this case the defendant claimed that his company's annual payroll was $273,786 and was quoted a workers' compensation insurance premium of $25,311. DFS investigators determined the defendant cashed at least 620 checks worth nearly $6.5 million at various check cashing businesses throughout Florida. If the defendant had accurately reported his payroll, his premium would have exceeded $1 million.[31]

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[28] Committee on Appropriations, The Florida Senate, *Bill Analysis and Fiscal Impact Statement of CS/SB 410*, April 25, 2013, at p. 1

[29] The facilitator typically obtains a policy covering a small number of workers in a low risk occupation so the premium paid to the insurer is minimal. Once the facilitator obtains a certificate of insurance, the facilitator can allow multiple contractors or subcontractors to use it and can charge a fee much less than the cost of workers' compensation coverage.

[30] Office of Financial Regulation, Department of Financial Services, *A Report by Money Service Business Facilitated-Workers' Compensation Fraud Work Group* at p. 11 (available at https://www.myfloridacfo.com/siteDocs/MoneyServiceBusiness/WC_MSBReport-Rec.pdf (last visited Jan. 24, 2018).

[31] Office of Financial Regulation, Department of Financial Services, *$1 Million Workers' Comp Scam Leads to Arrest of Construction Company Owner,* (Nov. 3, 2017); available at https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=4939 (last visited Jan. 24, 2018).

The DFS has investigated 86 cases involving "shell" companies and premium fraud since July 2016, and identified over $196 million in transactions believed to be fraudulent. Twenty four people were arrested in various cases during fiscal year 2015-2016.[32]

Confidential and Exempt Information from the Check Cashing Database

Section 560.312, F.S., provides that payment instrument transaction information held by the OFR pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor is confidential and exempt from disclosure. The Legislature made such information confidential and exempt because disclosure would "reveal sensitive personal financial information about payees and conductors" including "paycheck amounts, salaries, and business activities."[33] The Legislature further found that public disclosure of licensees or payors would reveal business information that is traditionally private.[34] While information that identifies licensees, payors, payees, or conductors is confidential and exempt, other information is not.

Concerns Over Allowing Identifying Information to be Made Public

Staff with the OFR express concern that if identifying information were to be made public, persons or entities identified could be targets of crime. For example, the check cashing database contains information revealing the number of transactions over $1,000 at a specific location on specific dates. If criminals were to access the database and learn that a certain location cashed a large number of checks on a certain day each month, that location or the persons conducting business at that location could face a higher risk of robbery.

In addition, the exemption applies to all persons who may use a check cashing business. For example, an individual without a bank account may choose to cash his or her paycheck at a check cashing business. The Legislature has specifically found that sensitive financial information such as paychecks and salary amounts is traditionally private.[35] If the exemption were to be repealed, many traditionally private transactions would be subject to public review.

Questions for the Legislature to Consider

Section 119.15, F.S., provides that an exemption shall be maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would jeopardize the safety of such individuals. However, in exemptions

[32] Department of Financial Services Memorandum from the Bureau Chief of Worker's Compensation Fraud to the Director of the Investigative and Forensic Services Division dated October 13, 2017 (on file with the Committee on Governmental Oversight and Accountability and the Committee on Banking and Insurance).
[33] Chapter 2013-155, L.O.F.
[34] *Id*.
[35] *Id*.

under this subparagraph, only information that would identify the individuals may be exempted; or

- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.[36]

If the Legislature finds an identifiable public purpose, it must also find that the purpose is sufficiently compelling to override the strong public policy of open government and that the purpose cannot be accomplished without the exemption.

III. Effect of Proposed Changes:

This bill is based on an Open Government Sunset Review of a public records exemption for certain information contained in the check cashing database maintained by the Office of Financial Regulation. Check cashers licensed by the OFR must enter certain information about transactions that exceed $1,000 into a check cashing database.

The exemption upon which the OGSR is based makes confidential and exempt payment instrument transaction information held by the OFR which identifies a licensee, payor, payee, or conductor. The public necessity statement of the original exemption provides as justification for the exemption that disclosure of the information would reveal sensitive personal financial information including paycheck amounts, salaries, and business activities. Additionally, without the exemption, disclosure of the information could reveal business information that is traditionally private. The justification upon which the exemption is based remains valid. For this reason, the bill deletes the scheduled repeal of the exemption.

The bill requires a majority vote for passage. If the bill passes, the exemption would be permanent.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

The bill continues a current exemption but does not expand the scope of an existing exemption. Therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

[36] Section 119.15(6)(b), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Maintaining the exemption will allow the private sector to continue to maintain the confidentiality of financial information, such as the identity of persons who cash checks in amounts of $1,000 or greater, which has historically been confidential.

Preserving the ability of the OFR to timely investigate and prosecute fraud will maintain a more level playing field for legitimate contractors.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 560.312 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Banking and Insurance

597-01994-18 20187010__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 560.312, F.S., relating to an exemption from public records requirements for certain payment instrument transaction information held by the Office of Financial Regulation; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 560.312, Florida Statutes, is amended to read:

560.312 Database of payment instrument transactions; confidentiality.—

(1) Payment instrument transaction information held by the office pursuant to s. 560.310 which identifies a licensee, payor, payee, or conductor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) A licensee may access information that it submits to the office for inclusion in the database.

(b) The office, to the extent permitted by state and federal law, may enter into information-sharing agreements with the department, law enforcement agencies, and other governmental agencies and, in accordance with such agreements, may provide the department, law enforcement agencies, and other governmental agencies with access to information contained in the database for use in detecting and deterring financial crimes and workers' compensation violations, pursuant to chapter 440. Any department

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

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or agency that receives confidential information from the office under this paragraph must maintain the confidentiality of the information, unless, and only to the extent that, a court order compels production of the information to a specific party or parties.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

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

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 15, 2018

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Senator Benacquisto,

I respectfully request that the following OSGR bills which include: SB7008, SB7010, SB7012, SB7016, SB7018 and SB7020 be heard in your next available Rules Committee.

I appreciate your consideration.

Onward & Upward,

Dennis K Baxley

Senator Dennis Baxley
Senate District 12

THANKS!
— THESE ARE REALLY OUR COMMITTEE RESPONSIBILITIES!
— DENNIS

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

7010
Bill Number (if applicable)

Topic Waiving in Support of SB 7010

Amendment Barcode (if applicable)

Name Jamie Mongiovi (MON-JOE-VEE) or Courtney Larkin

Job Title Dir., Communications & Govt. Relations

Address FL Office of Financial Regulation Phone 850-559-7003
Street

Tallahassee FL 32399 Email jamie.mongiovi@flofr.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL 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

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 7012
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	OGSR/Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Matiyow	Knudson		**BI Submitted as Committee Bill**
1.	Brown	Caldwell	GO	**Favorable**
2.	Matiyow	Phelps	RC	**Favorable**

I. Summary:

SB 7012 provides an Open Government Sunset Review of a public records exemption that makes confidential and exempt proprietary business information provided by participating insurers to the Citizens Property Insurance Corporation's clearinghouse program (clearinghouse). The proprietary business information is shared with the clearinghouse to facilitate placing risks with participating private market insurers instead of Citizens when applicants or current Citizens policyholders seek new or renewal property insurance coverage from Citizens. Participating insurers use their own proprietary business information in the identification and selection of risks within the program before an offer of coverage is made.

The original public necessity statement upon which the public records exemption is based provides as justification for the exemption that public disclosure of the detailed data required for the program from participating insurers could result in a substantial chilling effect on insurer participation and, ultimately undermine the success of the program.

Justification for the public records exemption remains valid. Therefore, the bill deletes the repeal of the public records exemption.

The bill requires passage by a simple majority vote of each chamber.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Law

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

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

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

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

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[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(a).
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).
[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[12] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[13]

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.[14] 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.[15] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[16] 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;[17]
- 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;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

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

[13] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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

[15] Section 119.15(3), F.S.

[16] Section 119.15(6)(b), F.S.

[17] Section 119.15(6)(b)1., F.S.

[18] Section 119.15(6)(b)2., F.S.

[19] Section 119.15(6)(b)3., F.S.

[20] Section 119.15(6)(a), F.S. The specified questions are:

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[21] 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.[22]

Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program (clearinghouse)

The Legislature established the Citizens Property Insurance Corporation policyholder eligibility clearinghouse program (clearinghouse) in 2013.[23] The program identifies private-market property insurance options for homeowners who believe Citizens may be their only choice for property insurance. When an applicant applies for coverage with Citizens, the Citizens agent enters information from the application into the clearinghouse. Participating private-market companies review the information in determining whether to offer coverage. If so, the agent provides the applicant with a quote sheet that includes a side-by-side list of offers received. The quote sheet indicates which offers are comparable to Citizens and whether any of the offers falls within the threshold of no more than 15 percent greater than Citizens current rate for new policies and 0 percent of Citizens current rate for renewal policies. If an offer from a participating private market insurer falls within these thresholds, the applicant is ineligible for coverage with Citizens.[24] Renewal applicants made ineligible for coverage due to a private market offer through the clearinghouse can reapply and be rated as a renewal if, within the first 3 years of leaving Citizens, their private market rate increased by greater than 10 percent in one year.[25]

To date, a total of 15 private market insurers participate in the clearinghouse.[26] Since its launch in 2014, thru December 12, 2017, a total of 45,835 new policies and $13.56 billion in Coverage A has been channeled away from Citizens. [27] Additionally, during this same time frame, 8,880

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[21] FLA. CONST. art. I, s. 24(c).
[22] Section 119.15(7), F.S.
[23] Chapter 2013-60, L.O.F.
[24] Sections 627.3518(5), and 627.351(6)(n)6., F.S.
[25] *Id*.
[26] Citizens Property Insurance Corporation, *Clearinghouse*, available at: https://www.citizensfla.com/clearinghouse (Last visited Jan. 25, 2018).
[27] Citizens Property Insurance Corporation, *Citizens Market Accountability and Advisory Committee Depopulation and Clearinghouse Update*, Dec, 12, 2017, available at: https://www.citizensfla.com/documents/20702/6045232/20171212+05+Depopulation+and+Clearinghouse+Update.pdf/4f2151bc-a9fb-4bc6-874a-4c01072b58be (Last visited Jan. 25, 2018).

renewal policies consisting of $1.55 billion in Coverage A has also been channeled out of Citizens and into the private market.[28]

Public Records Exemption for Proprietary Business Information

In addition to establishing the clearinghouse, the 2013 Legislature provided a public records exemption for proprietary business information submitted to the clearinghouse.[29] Specifically, the exemption made confidential and exempt proprietary business information provided to the clearinghouse by insurers, which is used to identify and select risks for an offer of coverage.

Proprietary business information, for purposes of the public records exemption, is information, regardless of form or characteristics, owned or controlled by an insurer which:

- Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and
- Includes, but is not limited to:
  - Trade secrets.
  - Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks for an offer of coverage through the program and are shared with the clearinghouse to facilitate the shopping of risks by participating insurers.[30]

The clearinghouse may, however, disclose confidential and exempt proprietary business information:

- If the insurer to which it pertains gives prior written consent;
- If required by a court order; or
- If given to another state agency in this or another state or a federal agency provided the recipient agrees in writing to maintain the confidential and exempt status of the information.

As justification for the public records exemption, the public necessity statement provides, in part:

> Obtaining offers of coverage from authorized insurers through the clearinghouse will provide more choices for consumers and reduce the corporation's exposure and potential for imposing assessments on its policyholders and policyholders in the private market. In order for the program to efficiently determine whether there are authorized insurers interested in making an offer of coverage for a particular risk, a substantial amount of detailed data from participating insurers must be

[28] *Id.*
[29] Chapter 2013-61, L.O.F.; Section 627.3518(11), F.S. Chapter 2013-61, L.O.F., originally placed the public records exemption in subsection (10) of s. 627.3518, F.S., but it has subsequently been renumbered.
[30] Section 627.3518(11)(a), F.S.

> provided … . Public disclosure of the detailed data could result in a substantial chilling effect on insurer participation in the program and thereby undermine the program's success.[31]

III. Effect of Proposed Changes:

The bill provides an Open Government Sunset Review (OGSR) of a public records exemption that makes confidential and exempt proprietary business information provided by participating insurers to the Citizens clearinghouse program. The proprietary business information is shared with the clearinghouse to facilitate placing risks with participating private market insurers instead of Citizens when applicants or current Citizens policyholders seek new or renewal property insurance coverage from Citizens. Participating insurers use their own proprietary business information in the identification and selection of risks within the program before an offer of coverage is made.

The original public necessity statement upon which the public records exemption is based provides as justification for the exemption that public disclosure of the detailed data required for the program from participating insurers could result in a substantial chilling effect on insurer participation and, ultimately undermine the success of the program.

Justification for the public records exemption remains valid. Therefore, the bill deletes the repeal of the public records exemption.

The bill requires passage by a simple majority vote of each chamber.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill complies with the requirement of article I, section 24 of the State Constitution that a public records exemption created by the Legislature may only contain exemptions from the constitutional public access requirements and shall relate to one subject.

C. Trust Funds Restrictions:

None.

[31] Chapter 2013-61, L.O.F.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the exemption is repealed, insurers may stop participating in the clearinghouse program and Citizens efforts to depopulate could be negatively impacted.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.3518 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By the Committee on Banking and Insurance

597-01997-18 20187012__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 627.3518, F.S., relating to an exemption from public records requirements for certain proprietary business information provided by insurers to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (11) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(11) Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause

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harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes, but is not limited to:

a. Trade secrets.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

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

~~(c) This subsection 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.~~

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

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

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

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

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 15, 2018

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Senator Benacquisto,

I respectfully request that the following OSGR bills which include: SB7008, SB7010, SB7012, SB7016, SB7018 and SB7020 be heard in your next available Rules Committee.

I appreciate your consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

THANKS!
— THESE ARE REALLY OUR COMMITTEE RESPONSIBILITIES!
— DENNIS

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 702
Bill Number (if applicable)

Topic OGSR - Citizens Property Insurance

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief - Communications, Legislative + External Affairs

Address 2101 Maryland Circle
Street

Tallahassee FL
City *State* *Zip*

Phone (850) 513.3757

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Citizens Property Insurance Corp.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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 7018
INTRODUCER:	Ethics and Elections Committee
SUBJECT:	OGSR/Agency Investigations
DATE:	February 28, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Carlton	Ulrich		**EE Submitted as Committee Bill**
1.	Peacock	Caldwell	GO	**Favorable**
2.	Carlton	Phelps	RC	**Favorable**

I. Summary:

SB 7018 is based on an Open Government Sunset Review of a public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct. The bill removes the scheduled October 2, 2018, repeal date.

Since the bill does not create or expand an exemption to public records law, the bill requires a majority vote of each house of the Legislature for passage.

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

II. Present Situation:

Public Records Law

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

[1] FLA. CONST., Art. I, s. 24(a).
[2] *Id*.

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

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

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[12] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature.

---

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

[4] Public records laws are found throughout the Florida Statutes.

[5] Section 119.01(1), F.S.

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

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

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

[9] FLA. CONST., Art. I, s. 24(c).

[10] *Id*.

[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

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

Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[13]

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.[14] 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.[15] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[16] 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;[17]
- 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;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the Legislature expands an exemption, a public necessity statement and a two-thirds vote for passage are required.[21] 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

[13] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[14] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[15] Section 119.15(3), F.S.
[16] Section 119.15(6)(b), F.S.
[17] Section 119.15(6)(b)1., F.S.
[18] Section 119.15(6)(b)2., F.S.
[19] Section 119.15(6)(b)3., F.S.
[20] Section 119.15(6)(a), F.S. The specified questions are:
•What specific records or meetings are affected by the exemption?
•Whom does the exemption uniquely affect, as opposed to the general public?
•What is the identifiable public purpose or goal of the exemption?
•Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
•Is the record or meeting protected by another exemption?
•Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?
[21] FLA. CONST. Art. I, s. 24(c).

not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[22]

Public Record Exemption under Review

Current law requires that complaints of misconduct filed with an agency[23] against an agency employee be kept confidential and exempt[24] from public records requirements.[25] If an agency investigates such a complaint, the information obtained from the investigation is also confidential and exempt.[26] The complaint and the investigative information remain confidential and exempt until either the investigation ceases to be active or the agency provides written notice to the employee who is the subject of the complaint.[27] The written notice may be delivered personally or by mail and must state that the agency has concluded the investigation with a finding to proceed with disciplinary action or file charges[28] or not to proceed.[29]

The 2013 public necessity statement[30] for the exemption provides the following policy rationale for its enactment:

> The disclosure of information, such as the nature of the complaint against an agency employee and testimony and evidence given in the investigation of the complaint, could injure an individual and deter that person from providing information pertaining to internal investigations, thus impairing the ability of an agency to conduct an investigation that is fair and reasonable. In the performance of its lawful duties and responsibilities, an agency may need to obtain information for the purpose of determining an administrative action. Without an exemption from public record requirements to protect information of a sensitive personal nature provided to an agency in the course of an internal investigation, such information becomes a public record when received and must be divulged upon request. Disclosure of information obtained during an internal investigation conducted by an agency inhibits voluntary participation of individuals during internal investigations and makes it difficult if not impossible to determine the truth.[31]

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[22] Section 119.15(7), F.S.
[23] *See supra* note 6.
[24] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems 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, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683 (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 statute. (*See* Attorney General Opinion 85-62, August 1, 1985).
[25] Section 119.071(2)(k)1., F.S.
[26] *Id.*
[27] *Id.*
[28] Section 119.071(2)(k)1.b., F.S.
[29] Section 119.071(2)(k)1.a., F.S.
[30] Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity statement justifying" its existence.
[31] Chapter 2013-248, L.O.F.

The public records exemption regarding complaints of misconduct filed with a state agency against an agency employee will repeal on October 2, 2018, unless reenacted by the Legislature.

Open Government Sunset Review Results

During the 2017 interim, staff with the Senate Committee on Ethics and Elections sent a questionnaire to every state agency, county, city, sheriff's office, public defender's office, and state attorney's office. In all, 62 questionnaire responses were received.[32] A majority of respondents recommended that the exemption be reenacted without changes and no respondents recommended letting the exemption repeal. Many respondents reported that their agency had received public record requests for the exempt information. The most common rationale offered for maintaining the exemption was that the temporary confidentiality it afforded the agency allowed it to maintain the fairness and integrity of the investigation that in turn encouraged all parties involved to be candid and forthcoming.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(2), F.S., to remove the scheduled repeal date of October 2, 2018, in the public records exemption.

Effectively, the bill permits the public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct to continue as it currently exists.

Section 2 provides an effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

The bill reenacts an existing public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint. The bill complies with the requirements of article I, s. 24(c) of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

[32] The questionnaire and responses are on file with the Senate Committee on Ethics and Elections.

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.

By the Committee on Ethics and Elections

582-02645-18 20187018__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for complaints of misconduct filed with an agency against an agency employee, and all information obtained pursuant to an agency investigation of such complaints; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (k) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

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

(2) AGENCY INVESTIGATIONS.—

(k)~~1.~~ A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

1.~~a.~~ Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or

2.~~b.~~ Concluded the investigation with a finding to proceed with disciplinary action or file charges.

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

582-02645-18 20187018__

~~2. Subparagraph 1. 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.~~

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

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

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

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

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 15, 2018

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Senator Benacquisto,

I respectfully request that the following OSGR bills which include: SB7008, SB7010, SB7012, SB7016, SB7018 and SB7020 be heard in your next available Rules Committee.

I appreciate your consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

THANKS!
— THESE ARE REALLY OUR COMMITTEE RESPONSIBILITIES!
— DENNIS

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1500
INTRODUCER:	Senator Baxley
SUBJECT:	Direct-support Organization of the Florida Commission on Community Service
DATE:	February 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Favorable**
2.	Shettle	Hansen	AP	**Favorable**
3.	Peacock	Phelps	RC	**Favorable**

I. Summary:

SB 1500 removes the scheduled repeal date of October 1, 2018, for the Florida Commission on Community Service's direct support organization, the Volunteer Florida Foundation.

The bill has no impact on state revenues or expenditures.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Citizen Support Organizations and Direct-support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.[1] Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:[2]

- The name, mailing address, telephone number, and website address of the organization;

[1] Chapter 2014-96, Laws of Fla.
[2] Section 20.058(1), F.S.

- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).[3]

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.[4] Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.[5] If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO or DSO.[6]

By August 15 of each year, each agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and Office of Program Policy Analysis and Government Accountability the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.[7]

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation of or authorization for the CSO or DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.[8]

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records.[9] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.

Additionally, the Auditor General may conduct audits or other engagements of the accounts and records of the CSO or DSO, pursuant to his or her own authority, or at the direction of the

[3] The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.
[4] Section 20.058(2), F.S.
[5] Section 20.058(4), F.S.
[6] *Id.*
[7] Section 20.058(3), F.S.
[8] Section 20.058(5), F.S.
[9] The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is $300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

Legislative Auditing Committee.[10] The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.[11]

CSO and DSO Ethics Code Requirements

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.[12]

Florida Volunteer and Community Service Act of 2001

The Legislature passed HB 47 (2001), the Florida Volunteer and Community Service Act of 2001 (Act) "to promote the development of better communities by fostering greater civic responsibility through volunteerism and service to the community."[13] The Act directed the Executive Office of the Governor to "establish policies and procedures which provide for the expenditure of funds to develop and facilitate initiatives by public agencies, scholastic institutions, private institutions, and individuals that establish and implement programs that encourage and reward volunteerism."[14] The programs and initiatives developed pursuant to the Act must have the following purposes and objectives:

- To place increased priority on citizen participation and volunteerism as a means of addressing the increasingly complex problems facing Florida's communities.
- To encourage local community leaders to implement strategies that expand civic participation.
- To promote the concept and practice of corporate citizenship.
- To build the enthusiasm, dedication, and combined expertise of individual citizens and public and private systems to find new and creative ways to effectively use volunteerism and community service.
- To foster the alignment of community volunteer resources with the goals of the state.
- To implement policy and administrative changes that encourage and enable individuals to participate in volunteer and community service activities.
- To encourage nonprofit agencies to interweave volunteers into the fabric of their service delivery as a means of increasing the effectiveness and efficiency of their services.
- To support and promote volunteer service to all citizens as an effective means to address community needs and foster a collective commitment to lifelong community service.
- To recognize National Volunteer Week as a time to encourage all citizens of Florida to participate in local service projects.
- To recognize the value of individual volunteers and volunteer and service organizations and programs and to honor and celebrate the success of volunteers.

[10] Section 11.45(3)(d), F.S.
[11] *Id*.
[12] Section 112.3251, F.S.
[13] Chapter 2001-84, L.O.F. and s. 14.295(2), F.S.
[14] *Id*.

- To encourage volunteer and service efforts to point children in the right direction and to endow them with the character and competence they need to achieve success in life.[15]

The Florida Commission on Community Service

The Florida Commission on Community Service (Commission),[16] administratively housed within the Executive Office of the Governor, serves as an advisory board to the Governor, the Cabinet,[17] the Legislature, and appropriate state agencies and entities on matters relating to volunteerism and community service.[18] The Commission is required to consist of no less than 15 and no more than 25 voting members,[19] which are appointed on a bipartisan basis by the Governor and confirmed by the Senate.[20] Voting members may represent one, or any combination of the following categories, so long as each of the respective categories is represented:

- A representative of a community-based agency or organization.
- The Commissioner of Education or designee thereof.
- A representative of local labor organizations.
- A representative of local government.
- A representative of business.
- An individual between the ages of 16 and 25, inclusive, who is a participant in or a supervisor of a service program for school-age youth, or of a campus-based or national service program.
- A representative of a national service program.
- An individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth.
- An individual with experience in promoting service and volunteerism among older adults.[21]

Members of the Commission serve without compensation[22] for terms of 3 years[23] and meet at the call of its chair or at the request of a majority of its total voting membership, but shall meet at least biannually.[24] A majority of the total voting membership shall constitute a quorum, and the affirmative vote of a majority of a quorum is necessary to take official action.[25] The Commission is required to:

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[15] Section 14.295(3), F.S.
[16] The Commission is also known as Volunteer Florida. *See* About Us and History, VOLUNTEER FLORIDA, https://www.volunteerflorida.org/about/ (last visited on Jan. 24, 2018).
[17] Section 20.03(1), F.S., defines the term "Cabinet" to mean collectively the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, as specified in the s. 4, Art. IV of the State Constitution.
[18] Section 14.29(2), F.S. Any number of nonvoting members may be appointed by the Governor.
[19] Section 14.29(3)(a), F.S. Also, no more than 50 percent plus one of the voting members of the Commission may be aligned with the same political party. *See* Section 14.29(3)(b), F.S.
[20] Section 14.29(3)(a), F.S.
[21] *Id*. Other members may include educators, experts in the delivery of human educational, environmental, or public safety services, representatives of Indian tribes, out-of-school or at-risk youth, and representatives of programs that are administered by or receive assistance from the Domestic Volunteer Service Act of 1973, as amended.
[22] Section 14.29(6), F.S. Voting members may must be reimbursed for per diem and travel expenses in accordance with s. 112.061, F.S.
[23] Section 14.29(4), F.S.
[24] Section 14.29(5), F.S.
[25] *Id*.

- Annually elect a chair and a vice chair. To be eligible to serve as chair, an individual must be a voting member of the Commission.
- Employ an executive director, who shall be initially designated by the Governor, to carry out the provisions of this section. The executive director shall report directly to the Commission. The executive director shall be the chief administrative officer of the Commission.
- Prepare an annual report detailing its activities during the preceding year and, to the extent possible, compile and synthesize any reports that it accepted on behalf of the Governor. The Commission's report shall be presented to the Governor no later than January 15, with copies to the President of the Senate and the Speaker of the House of Representatives. The report shall also include specific recommendations for any necessary legislation, administrative, or regulatory reform, and the Commission's assessment of the state of volunteerism in Florida.[26]

The Commission is permitted, but not required, to perform the following actions:[27]

- Secure assistance from all state departments and agencies in order for the Commission to avail itself of expertise at minimal cost.
- Procure information and assistance from the state or any political subdivision, municipal corporation, public officer, or governmental department or agency thereof.
- Apply for and accept funds, grants, gifts, and services from local, state, or federal government, or from any of their agencies, or any other public or private source and is authorized to use funds derived from these sources to defray administrative costs, implement programs as may be necessary to carry out the Commission's charge, and assist agencies, institutions, and individuals in the implementation of programs pursuant to the Act. The Commission may also authorize Volunteer Florida Foundation, Inc., the Commission's nonprofit DSO, to assist in securing training, technical assistance, and other support needed to accomplish the intent and purposes of the Act.
- Contract for necessary goods and services.

The Commission administers $31.7 million in federal, state and local funding for national service and volunteer programs across the state."[28] The Commission administers national service programs like AmeriCorps, which offers Floridians the opportunity to engage in intensive service to their communities while increasing capacity for nonprofits and other service organizations. The Commission's grantees include schools, educational foundations, nonprofits, faith-based organizations, and other community organizations. The Commission is also the lead agency for coordinating volunteers and donations for the Florida Division of Emergency Management.[29]

DSO for the Florida Commission on Community Service

The Commission is authorized to create a DSO that is:

- A Florida corporation, not for profit, incorporated under the provisions of Chapter 617, F.S., and approved by the Secretary of State;
- Organized and operated exclusively to receive, hold, invest, and administer property and funds and to make expenditures to or for the benefit of the program; and

[26] Section 14.29(7), F.S.
[27] Section 14.29(8), F.S.
[28] *See* About Us, VOLUNTEER FLORIDA, https://www.volunteerflorida.org/about/ (last visited on Jan. 24, 2018).
[29] *Id*. *See* History, VOLUNTEER FLORIDA.

- An organization that the Commission, after review, has certified to be operating in a manner consistent with the goals of the program and in the best interests of the state.[30]

The DSO is required to operate under a written contract with the Commission. The contract must provide for:

- Approval of the articles of incorporation and bylaws of the DSO by the Commission.
- Submission of an annual budget for the approval of the Commission.
- Annual certification by the Commission that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the Commission and in the best interest of the state.[31]
- The reversion to the Commission, or the state if the Commission ceases to exist, of moneys and property held in trust by the DSO if the DSO is no longer approved to operate.
- The fiscal year of the DSO, to begin July 1 of each year and end June 30 of the following year.
- The disclosure of material provisions of the contract and the distinction between the board of directors and the DSO to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.[32]

The members of the DSO's board of directors must include members of the Commission.[33] The Commission may authorize the DSO to use its personal services, facilities, and property, except money.[34] Additionally, the Commission is required to adopt rules prescribing the procedures by which the DSO is governed and any conditions with which it must comply to use property, facilities, or personal services of the Commission.[35]

Funds held by the DSO may be held in a separate depository account and subject to the provisions of the contract with the commission.[36] Such funds may include membership fees, private donations, income derived from fundraising activities, and grants applied for and received by the DSO. The DSO must provide for an annual financial audit in accordance with s. 215.981, F.S.[37]

The statutory authority for the Commission's DSO is scheduled to repeal on October 1, 2018, unless reviewed and saved from repeal by the Legislature.[38]

Volunteer Florida Foundation, Inc.

The Commission established a not-for-profit corporation, the Volunteer Florida Foundation, Inc. (VFF), in May 2010, to serve as its DSO. The VFF provides the mechanism for the state to secure private funding and to properly review organizations requesting funding. The VFF is

[30] Section 14.29(9)(a), F.S.
[31] The certification must be reported in the official minutes of a Commission meeting. *See* s. 14.29(9)(b)3., F.S.
[32] Section 14.29(9)(b), F.S.
[33] Section 14.29(9)(c), F.S.
[34] Section 14.29(9)(d), F.S.
[35] Section 14.29(9)(e), F.S.
[36] Section 14.29(9)(f), F.S.
[37] Section 14.29(9)(g), F.S.
[38] Section 14.29(9)(h), F.S.

governed by a board of directors subject to approval by the Commission.[39] The board must consist of not less than nine members and not more than fifteen members, each serving a term of 3 years.[40] The VFF board is responsible for raising funds, approving distribution of funds, and providing oversight of the funding used to support the Commission's programs.[41]

Additionally, the VFF administers the Florida Disaster Fund, the State of Florida's official private fund to assist communities in times of disaster.[42] In 2017, the Florida Disaster Fund provided $1,250,000 in grants to 59 non-profit partners to support four separate disaster events, including response following Hurricane Irma.

Senate Professional Staff Review of the Volunteer Florida Foundation

Section 14.29(9), F.S., the statutory authority for the Commission's DSO, is scheduled to repeal on October 1, 2018, unless reviewed and saved from repeal by the Legislature. Professional staff of the Senate Committee on Governmental Oversight and Accountability reviewed the VFF to verify its compliance with applicable Florida Statutes.

Staff found that VFF is a DSO that supports the Commission in its mission to "deliver high-impact national service and volunteer programs across the state."[43] During the 2017 interim, staff met with representatives of VFF and the Commission to discuss the DSO's operations and structure and to receive documents to assist with the review. After reviewing the submitted documents and reviewing the other requirements to which VFF is subject, staff concluded that it appears VFF is in compliance with its enabling legislation, s. 14.29, F.S., as well as the DSO requirements in s. 20.058, F.S.

Senate professional staff reviewed relevant VFF records from Fiscal Years 2013-2014, 2014-2015, 2015-2016, and 2016-2017, and found that the VFF is an active DSO that supports the Commission.

Senate professional staff identified minor technical deficiencies in which the VFF was not in full compliance with the applicable Florida Statutes.[44] These deficiencies are largely administrative or procedural. The VFF will resolve each deficiency presented by Senate professional staff and intend to comply with the applicable Florida Statues moving forward.

III. Effect of Proposed Changes:

Section 1 amends s. 14.29, F.S., to save from repeal the Commission's DSO, which is currently scheduled for repeal on October 1, 2018.

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[39] *See* About Us, Transparency, Governance, VOLUNTEER FLORIDA, https://www.volunteerflorida.org/volunteer-florida-foundation/ (last visited on Jan. 24, 2018).
[40] Rule 27O-1.001(2)(c), F.A.C. *See also* VFF Bylaws (copy on file with the Senate Governmental and Accountability Committee).
[41] Email from Bonnie Hazleton, Chief Operating Officer, Volunteer Florida (Dec. 18, 2017) (copy on file with the Senate Governmental Oversight and Accountability Committee).
[42] Volunteer Florida Foundation Fact Sheet (copy on file with the Senate Governmental and Accountability Committee).
[43] *Id*.
[44] *See* Florida Senate Review of the Florida Commission on Community Service Direct-support Organization, Staff Findings and Recommendations (Jan. 26, 2018) (on file with the Senate Governmental Oversight and Accountability Committee).

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By saving the DSO from repeal, this bill sustains a source of financial and other assistance to Floridians affected by natural disasters and supports Governor's initiatives such as Florida's Black History Month and Hispanic Heritage Month celebrations.

C. Government Sector Impact:

The bill has no fiscal impact on state government. However, if the DSO is not saved from repeal, the Commission may need to find another source of funding for the Florida Disaster Fund and initiatives for the Governor's office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 14.29 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Baxley

12-01456A-18 20181500__

A bill to be entitled

An act relating to the direct-support organization of the Florida Commission on Community Service; amending s. 14.29, F.S.; removing the scheduled repeal of provisions governing the commission's direct-support organization; providing an effective date.

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

Section 1. Subsection (9) of section 14.29, Florida Statutes, is amended to read:

14.29 Florida Commission on Community Service.—

(9)(a) The commission may establish a direct-support organization which is:

1. A Florida corporation, not for profit, incorporated under the provisions of chapter 617 and approved by the Secretary of State.

2. Organized and operated exclusively to receive, hold, invest, and administer property and funds and to make expenditures to or for the benefit of the program.

3. An organization which the commission, after review, has certified to be operating in a manner consistent with the goals of the program and in the best interests of the state.

(b) The direct-support organization shall operate under written contract with the commission. The contract must provide for:

1. Approval of the articles of incorporation and bylaws of the direct-support organization by the commission.

2. Submission of an annual budget for the approval of the

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

12-01456A-18 20181500__

commission. The budget must comply with rules adopted by the commission.

3. Certification by the commission that the direct-support organization is complying with the terms of the contract and in a manner consistent with the goals and purposes of the commission and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the commission.

4. The reversion to the commission, or the state if the commission ceases to exist, of moneys and property held in trust by the direct-support organization if the direct-support organization is no longer approved to operate for the commission or the commission ceases to exist.

5. The fiscal year of the direct-support organization, to begin July 1 of each year and end June 30 of the following year.

6. The disclosure of material provisions of the contract and the distinction between the board of directors and the direct-support organization to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.

(c) The members of the direct-support organization's board of directors must include members of the commission.

(d) The commission may authorize a direct-support organization to use its personal services, facilities, and property, except money, subject to the provisions of this section. A direct-support organization that does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin may not use the property, facilities, or personal services of the

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

commission. For the purposes of this subsection, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing.

(e) The commission shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which the direct-support organization must comply to use property, facilities, or personal services of the commission.

(f) Moneys of the direct-support organization may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the commission. Such moneys may include membership fees, private donations, income derived from fundraising activities, and grants applied for and received by the direct-support organization.

(g) The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

~~(h) This subsection is repealed effective October 1, 2018, unless reviewed and saved from repeal by the Legislature.~~

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	HB 7045
INTRODUCER:	Rules and Policy Committee and Representative Nuñez
SUBJECT:	The Legislature/Date for Convening 2020 Regular Session
DATE:	February 28, 2018
REVISED:	

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Mackintosh	Phelps	RC	**Favorable**

I. Summary:

HB 7045 requires the 2020 regular session of the Legislature to convene on Tuesday, January 14, 2020.

II. Present Situation:

The State Constitution prescribes the date for convening the 60-day regular session of the Legislature. Specifically, the State Constitution provides that, in odd-numbered years, the regular session of the Legislature must begin on the first Tuesday after the first Monday in March. For even-numbered years, the State Constitution permits the Legislature to fix by law the date for convening the regular legislative session.[1] If no date is fixed by law, the regular session in even-numbered years must begin on the first Tuesday after the first Monday in March.

Presently, the Legislature has not permanently fixed a specific date in law for even-numbered years. As such, the regular legislative session for even-numbered years typically convenes on the first Tuesday after the first Monday in March.[2] However, in 2014, the Legislature enacted ch. 2014-106, Laws of Florida, to require the 2016 regular legislative session to begin on January 12, 2016. Also, in 2016, the Legislature enacted ch. 2016-218, Laws of Florida, to require the 2018 regular legislative session to begin on January 9, 2018. For subsequent even-numbered years, the regular legislative session will convene on the first Tuesday after the first Monday in March.

III. Effect of Proposed Changes:

HB 7045 requires the 2020 regular session of the Legislature to convene on Tuesday, January 14, 2020.

The bill takes effect upon becoming law.

[1] Subsection 3(b), Article III, Florida Constitution.

[2] Traditionally, the Legislature fixes an early start date for the regular session in apportionment (redistricting) years. For example, in 2012, the regular legislative session started on January 10, 2012. See chapter 2010-91, L.O.F.

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:

Moving the start date of the regular legislative session in 2020 would result in the Legislature enacting the state budget approximately six weeks earlier than current practice. This change would provide state agencies with additional time prior to the start of the fiscal year to implement or react to any budgetary changes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section 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.)

None.

B. Amendments:

None.

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

A bill to be entitled

An act relating to the Legislature; fixing the date for convening the 2020 Regular Session of the Legislature; providing an effective date.

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

Section 1. In accordance with subsection (b) of Section 3 of Article III of the State Constitution, and in lieu of the date fixed therein, the 2020 Regular Session of the Legislature shall convene on January 14, 2020.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1862
INTRODUCER:	Rules Committee and Senator Broxson
SUBJECT:	Physician Fee Sharing
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Davis	Cibula	JU	**Favorable**
3.	Looke	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1862 creates s. 456.0541, F.S., to establish the Physician Fee Sharing Task Force (task force) within the Department of Health (DOH). The bill specifies the make-up of the task force and requires the task force to develop and evaluate policy proposals to address barriers to innovation and modernization of provider payment models created by the federal Ethics in Patient Referrals Act of 1989, the Florida Patient Self-Referral Act of 1992, federal and state anti-kickback laws, and the state patient brokering law, including policy proposals for:

- Implementing and maintaining alternative payment models;
- Increasing or extending existing safe harbor provisions to include physician practice groups; and
- Reforming the liability standard for violations.

The task force must convene its first meeting by June 1, 2018, and must report its findings, conclusions, and recommendations to the Governor and the Legislature by December 1, 2018.

The bill's provisions take effect upon becoming law and s. 456.0541, F.S., expires on January 1,2019.

II. Present Situation:

The Patient Self-Referral Act of 1992

Section 456.053, F.S., entitled the "Patient Self-Referral Act of 1992," was enacted by the Legislature to safeguard the people of Florida from unnecessary and costly health care expenditures while providing guidance to health care providers on prohibited patient referrals.[1] The Act applies to any physician licensed under chapters 458, 459, 460, or 461, F.S., or any health care provider licensed under chapter 463 or 466, F.S.[2]

The Act has differing limitations and prohibitions on patient referrals depending on the type of health care service to be provided as follows:

- A health care provider may not refer a patient for the provision of designated health services[3] to an entity in which the health care provider is an investor[4] or has an investment interest.[5,6]
- A health care provider may not refer a patient for the provision of any other health care services or items (non-designated health services) to an entity in which the health care provider is an investor unless:[7]
  - For entities whose shares are publicly traded:
    - The provider's investment interest is in registered securities purchased over a national exchange or over-the-counter market; and
    - The entity's total assets at the end of the last fiscal quarter exceed $50 million;
  - For entities whose shares are not publicly traded:
    - No more than 50 percent of the value of the investment interests are held by investors in a position to make referrals to the entity;
    - The terms of an investment interest offered to an investor are the same regardless of whether the investor is in a position to make referrals;
    - The terms offered to an investor are not related to the previous or expected volume of referrals; and
    - There is no requirement that an investor refer patients to the entity as a condition for becoming or remaining an investor.

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[1] Section 456.053(2), F.S.

[2] Allopathic, osteopathic, chiropractic, and podiatric physicians, certified optometrists, and dentists are health care providers under the Act.

[3] Section 456.053(3)(c), F.S., defines "designated health services" as clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services.

[4] Section 456.053(3)(l), F.S., defines "investor" as a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. s. 413.17, in an entity.

[5] Section 456.053(3)(k), F.S., defines "investment interest" to include an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instrument. Certain investment interests are excepted from the definition including an investment interest in a sole provider of health care services in a rural area; an investment interest in the form of certain notes, bonds, debentures, or other debt instruments that matured prior to Oct. 1, 1996; an investment interest in real property resulting in a landlord-tenant relationship between the entity and the referring healthcare provider unless the rent is determined by the volume of referrals; and an investment interest in an entity which owns or leases and operates a hospital or nursing home.

[6] Section 456.053(5)(a), F.S. Offices providing radiation therapy services are exempt from these requirements if they were in business before April 1, 1991. (*See* s. 456.053(5)(i), F.S.).

[7] Section 456.053(5)(b), F.S.

- Entities accepting outside referrals for diagnostic imaging must meet additional conditions including conditions for the physician make-up of the solo or group practice as well as physician performance of diagnostic imaging services, conditions on billing practices, restrictions on contracting with outside providers, and conditions on reporting accepted outside referrals to the Agency for Health Care Administration (AHCA).[8]

A health care provider who refers a patient to an entity that the health care provider has an investment interest in must disclose such interest to the patient on a written form that details the patient's right to obtain the services elsewhere along with at least two alternative sources from which the patient could receive the services.[9]

A health care provider found to have violated the Act could be subject to one or more disciplinary actions or penalties including:

- A penalty of up to $100,000 for each arrangement if a health care provider or other entity enters into an arrangement that has the principal purpose of assuring referrals between the provider and the entity.[10]
- Discipline by his or her appropriate board and hospitals are subject to penalties imposed by the AHCA.[11]
- Being charged with a first degree misdemeanor and subject to additional penalties and disciplinary action by his or her respective board if a health care provider fails to comply with the notice provisions of the Act and s. 456.052, F.S.[12]

A claim for payment for a service provided pursuant to a referral prohibited by the Act may not be made and any such payments received must be refunded. Additionally, any person who knows or should know that such a claim is prohibited and who presents or causes to be presented such a claim, is subject to a fine of up to $15,000 per service to be imposed and collected by that person's regulatory board.[13]

The Federal Stark Law

The federal Ethics in Patient Referrals Act of 1989,[14] also known as the Stark law, is similar to the Act. It prohibits a physician from referring Medicare or Medicaid patients to an entity that provides designated health services if the physician or his or her immediate family member has a financial relationship with the entity, unless an exception applies.[15] Under the Stark law, designated health services include:

- Clinical laboratory services;
- Physical therapy, occupational therapy, and outpatient speech-language pathology services;
- Radiology and certain other imaging services;

[8] Section 456.053(4), F.S.
[9] Sections 456.053(5)(j) and 456.052, F.S.
[10] Section 456.053(5)(f), F.S.
[11] Section 456.053(5)(g), F.S.
[12] Section 456.052(3), F.S.
[13] Section 456.053(5)(c)-(e), F.S.
[14] 42 U.S.C. s. 1395nn.
[15] U.S. Dept. of Health & Human Services, Office of the Inspector General: *A Roadmap for New Physicians: Fraud and Abuse Laws*, available at http://oig.hhs.gov/compliance/physician-education/01laws.asp, (last visited Feb. 1, 2018).

- Radiation therapy services and supplies;
- Durable medical equipment and supplies;
- Parenteral and enteral nutrients, equipment, and supplies;
- Prosthetics, orthotics, and prosthetic devices and supplies;
- Home health services;
- Outpatient prescription drugs; and
- Inpatient and outpatient hospital services.[16]

The Stark law, in legal terms, is a strict liability statute. This means that liability does not depend on proof of a specific intent to violate the law. The Stark law prohibits someone from submitting, or causing someone to submit, claims that violate the law's restrictions on referrals. The penalties for physicians who violate this law include fines and exclusion from participating in the Federal health care programs.[17]

The exceptions to the Stark law's self-referral prohibitions include:

- Exceptions for certain services:
  - Most referrals of a patient for physician's services and in-office ancillary services provided by the same physician or another physician in the same group practice; and
  - Referrals for services furnished by an organization that has a contract with a health maintenance organization or a prepaid health plan.[18]
- Exceptions related to ownership or investment interests:
  - Ownership of investment securities that are publically traded and held in a corporation having equity exceeding $75 million on average during the previous 3 fiscal years and which were purchased on terms generally available to the public; and
  - Ownership of shares in an investment company if the company has total assets exceeding $75 million on average during the previous 3 fiscal years.[19]
  - Ownership of certain hospitals including hospitals in Puerto Rico, in rural areas, and certain hospitals in which the referring physician is authorized to perform services.[20]
- Exceptions related to other compensation arrangements:
  - The rental of office space or equipment with terms that are consistent with fair market value and without consideration of any past or future referrals made between the parties;
  - Bona fide employment relationships with remuneration that does not take into account the volume or value of referrals by the referring physician;
  - Personal services arrangements with terms that do not exceed fair market value and do not take into account the volume or value of any referrals or other business generated between the parties;
  - Physician incentive plans if no specific payment is made to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity;

[16] 42 U.S.C. s. 1395nn(h)(6).When compared to Florida law, it can be seen that the list of designated health services under the Stark law includes the services listed as designated health services under the Act but also includes additional services not included in Florida law.
[17] See supra note 17.
[18] 42 U.S.C. s. 1395nn(b).
[19] 42 U.S.C. s. 1395nn(c).
[20] 42 U.S.C. s. 1395nn(d).

- Remuneration provided by a hospital to a physician that is unrelated to designated health services;
- Physician recruitment bonuses paid by a hospital that do not take into account the volume or value of referrals;
- Certain isolated transactions;
- Certain group practice arrangements made with hospitals that began before December 19, 1989; and
- Payments made by a physician for laboratory services or other items or services if paid at fair market value.[21]

Additional Restrictions on Agreements between Referring Health Care Providers and Providers of Health Care Services

Federal and State Anti-Kickback Statutes

Both Florida and Federal law include a prohibition on providing any sort of kickback for the referral of patients from a health care provider to a licensed facility. Section 395.0185, F.S., prohibits any person from paying a commission, bonus, kickback, or rebate or engaging in any form of split-fee arrangement with a physician, surgeon, organization, or person for patients referred to a licensed facility. The AHCA is required to enforce the provisions of the law and, if the violator is not licensed by the AHCA, the law authorizes the AHCA to impose a fine of up to $1,000, and if applicable, to recommend disciplinary action to the appropriate licensing board.

Section 456.054, F.S., prohibits a health care provider or provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.[22]

Federal law also prohibits payments for the referral of an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made under a Federal health care program.[23] A violation of the federal anti-kickback statute is punishable as a felony and a fine of not more than $25,000, or up to 5 years imprisonment, or both. However, there are several exceptions to the federal statute including, but not limited to:

- Discounts properly disclosed and appropriately reflected in the costs claimed and charges made by the provider or entity;
- Payments between employers and employees for employment in the provision of covered items or services;
- Certain amounts paid to vendors;
- Waivers of co-insurance; and
- The waiver of any cost-sharing provisions by a pharmacy.

Anti-Trust Laws

Additionally, both Florida and Federal law prohibit price-fixing and unfair trade practices which may be applicable to certain relationships between referring health care providers and providers

[21] 42 U.S.C. s. 1395nn(e).
[22] Violations of this section are considered patient brokering and are punishable as provided in s. 817.505, F.S., which can include criminal penalties (felony of the third degree) and other civil, administrative, or criminal penalties.
[23] 42 U.S.C. s. 1320a-7b(b)(2)(A).

of health care services. The Florida Deceptive and Unfair Trade Practices Act[24] generally prohibits unfair methods of competition, as well as deceptive acts or practices, in the conduct of trade or commerce. Also, Federal anti-trust laws, including the Sherman Act, generally prohibit unreasonable restraints on fair trade created by contract, combination, or conspiracy.[25]

Sections 458.331(1)(i) and 459.015(1)(j), F.S.

In addition to the prohibitions detailed above, the practice acts for both allopathic and osteopathic physicians include a restriction against referring patients for compensation. These sections restrict a physician from paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies.[26]

These sections have been interpreted by the courts to prohibit an employer from sharing profits with a physician employee. In *Crow v. the Agency for Health Care Administration*, the Florida Fifth District Court of Appeal found that "[t]o the extent that the arrangement proposed by Petitioner would provide for either a salary or a year-end bonus based upon total revenues generated by Petitioner for [the employer], such an arrangement would be in violation of the prohibition set forth in Subsection 458.331(1)(i), Florida Statutes."[27] This interpretation is narrower than other state and federal laws (detailed above) that provide exceptions in certain situations, such as for health care practitioners in a group practice.

III. Effect of Proposed Changes:

CS/SB 1862 creates s. 456.0541, F.S., to establish the Physician Fee Sharing Task Force within the DOH. The DOH must use existing and available resources to support the activities of the task force and the task force members must serve without compensation and are not entitled to reimbursement for per diem or travel expenses. The bill specifies that the task force will consist of, at a minimum, the following members:

- The State Surgeon General or his or her designee, who shall serve as the chair of the task force.
- The Secretary of Health Care Administration (Secretary) or his or her designee.
- The Attorney General or his or her designee.
- Two members of the Legislature appointed by the Governor.
- Two members of the Senate appointed by the President of the Senate (President).
- Two members of the House of Representatives appointed by the Speaker of the House of Representatives (Speaker).
- Two representatives of hospitals or facilities licensed under chapter 395, who each regularly deal with health care fraud and abuse matters, particularly those relating to the federal False

[24] Sections 501.201 and 501.204, F.S.
[25] Federal Trade Commission, *The Antitrust Laws*, available at: https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws, (last visited Feb. 1, 2018).
[26] Section 817.505, F.S., has a similar prohibition related to patient brokering.
[27] See *Crow v. Agency for Health Care Administration*, 669 So. 2d 1160, 1162 (Fla. 5th DCA 1996).

Claims Act, the federal Ethics in Patient Referrals Act of 1989, and anti-kickback issues, appointed by the Secretary .
- One general counsel of a health insurer or his or her designee, who is familiar with health care fraud and abuse matters, particularly those relating to the federal False Claims Act, federal Ethics in Patient Referrals Act of 1989, and anti-kickback issues, appointed by the Secretary.
- Five health care practitioners, each of whom practices in a different area of medicine, appointed by the State Surgeon General.
- One representative of an organization that represents health care practitioners and who is familiar with health care fraud and abuse matters, particularly those relating to the federal False Claims Act, federal Ethics in Patient Referrals Act of 1989, and anti-kickback issues, appointed by the President.
- One representative of The Florida Bar, whose practice area primarily involves health care fraud and abuse matters, particularly those relating to the federal False Claims Act, federal Ethics in Patient Referrals Act of 1989, and anti-kickback issues, appointed by the Executive Director of The Florida Bar.
- Two representatives from companies whose primary business function is the development and deployment of a certified electronic health record, appointed by the Speaker.
- Two representatives from companies whose primary business function is the development and deployment of health information technology, such as population health or data analytics, which is not a certified electronic health record, appointed by the President.
- Two representatives from a company whose primary business function is the development and deployment of smart medical devices, such as remote patient monitoring, appointed by the Speaker.
- One representative from an investment company whose investment portfolio is comprised of at least 20 percent in health information technology investments, appointed by the President.

The bill requires the task force to develop and evaluate policy proposals to address barriers to innovation and modernization of provider payment models created by the federal Ethics in Patient Referrals Act of 1989, the Florida Patient Self-Referral Act of 1992, federal and state anti-kickback laws, and the state patient brokering law, including policy proposals for:
- Implementing and maintaining alternative payment models;
- Increasing or extending existing safe harbor provisions to include physician practice groups; and
- Reforming the liability standard for violations.

The task force must convene its first meeting by June 1, 2018, and may meet as many times as necessary to fulfill its responsibilities. Meetings may be conducted in person, by teleconference, or by other electronic means. The task force must report its findings, conclusions, and recommendations to the Governor and the Legislature by December 1, 2018.

The bill's provisions take effect upon becoming law and s. 456.0541, F.S., expires on January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOH may incur an indeterminate negative fiscal impact related to administering and supporting the task force.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 456.0541 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on March 1, 2018:
The CS eliminates the existing provisions of the bill and instead establishes the Physician Fee Sharing Task Force within the DOH. The CS requires the task force to develop and evaluate policy proposals to address barriers to innovation and modernization of provider

payment models created by certain federal and state laws restricting patient self-referrals and referral kick-backs. Specifically, the task force must develop proposals for:

- Implementing and maintaining alternative payment models;
- Increasing or extending existing safe harbor provision to include physician practice groups; and
- Reforming the liability standard for violations.

The task force must convene its first meeting by June 1, 2018, and submit the required report by December 1, 2018. The CS changes the bill's effective date to upon becoming law and specifies that s. 456.0541, F.S., expires on January 1, 2019.

B. Amendments:

None

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
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The Committee on Rules (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 456.0541, Florida Statutes is created to read:

456.0541 Physician Fee Sharing Task Force.—

(1) The Physician Fee Sharing Task Force is created within the department. The department shall use existing and available resources to administer and support the activities of the task force under this section.



(2) Members of the task force shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses. The task force shall consist, at a minimum, of the following members:

(a) The State Surgeon General or his or her designee, who shall serve as the chair of the task force.

(b) The Secretary of Health Care Administration or his or her designee.

(c) The Attorney General or his or her designee.

(d) Two members of the Legislature appointed by the Governor.

(e) Two members of the Senate appointed by the President of the Senate.

(f) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.

(g) Two representatives of hospitals or facilities licensed under chapter 395, who each regularly deal with health care fraud and abuse matters, particularly those relating to the federal False Claims Act, the federal Ethics in Patient Referrals Act of 1989, and anti-kickback issues, appointed by the Secretary of Health Care Administration.

(h) One general counsel of a health insurer or his or her designee, who is familiar with health care fraud and abuse matters, particularly those relating to the federal False Claims Act, federal Ethics in Patient Referrals Act of 1989, and anti-kickback issues, appointed by the Secretary of Health Care Administration.

(i) Five health care practitioners, each of whom practices in a different area of medicine, appointed by the State Surgeon



General.

(j) One representative of an organization that represents health care practitioners and who is familiar with health care fraud and abuse matters, particularly those relating to the federal False Claims Act, federal Ethics in Patient Referrals Act of 1989, and anti-kickback issues, appointed by the President of the Senate.

(k) One representative of The Florida Bar, whose practice area primarily involves health care fraud and abuse matters, particularly those relating to the federal False Claims Act, federal Ethics in Patient Referrals Act of 1989, and anti-kickback issues, appointed by the Executive Director of The Florida Bar.

(l) Two representatives from companies whose primary business function is the development and deployment of a certified electronic health record, appointed by the Speaker of the House of Representatives.

(m) Two representatives from companies whose primary business function is the development and deployment of health information technology, such as population health or data analytics, which is not a certified electronic health record, appointed by the President of the Senate.

(n) Two representatives from a company whose primary business function is the development and deployment of smart medical devices, such as remote patient monitoring, appointed by the Speaker of the House of Representatives.

(o) One representative from an investment company whose investment portfolio is comprised of at least 20 percent in health information technology investments, appointed by the



President of the Senate.

(3) The task force shall develop and evaluate policy proposals to address barriers to innovation and modernization of provider payment models created by the federal Ethics in Patient Referrals Act of 1989, the Florida Patient Self-Referral Act of 1992, federal and state anti-kickback laws, and the state patient brokering law, including policy proposals for:

(a) Implementing and maintaining alternative payment models.

(b) Increasing or extending existing safe harbor provisions to include physician practice groups.

(c) Reforming the liability standard for violations.

(4) The task force shall convene its first meeting by June 1, 2018, and shall meet as often as necessary to fulfill its responsibilities under this section. Meetings may be conducted in person, by teleconference, or by other electronic means.

(5) The task force shall submit a report by December 1, 2018, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes its findings, conclusions, and recommendations.

(6) This section expires January 1, 2019.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Physician Fee Sharing Task



Force; creating s. 456.0541, F.S.; establishing the Physician Fee Sharing Task Force within the Department of Health; providing for duties, membership, and meetings of the task force; requiring a report to the Governor and Legislature by a specified date; providing for expiration of the task force; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2018	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (204760) (with title amendment)

Delete line 91
and insert:
Section 2. Effective October 1, 2018, subsections (3), (6), and (7) of section 464.003, Florida Statutes, are amended, to read:
464.003 Definitions.—As used in this part, the term:
(3) "Advanced practice registered nurse" ~~"Advanced registered nurse practitioner"~~ means any person licensed in this



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state to practice professional nursing and who is licensed ~~certified~~ in an advanced ~~or specialized~~ nursing practice, including certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists ~~certified nurse midwives~~, and psychiatric nurses ~~nurse practitioners~~.

~~(6) "Clinical nurse specialist" means any person licensed in this state to practice professional nursing and certified in clinical nurse specialist practice.~~

~~(7) "Clinical nurse specialist practice" means the delivery and management of advanced practice nursing care to individuals or groups, including the ability to:~~

~~(a) Assess the health status of individuals and families using methods appropriate to the population and area of practice.~~

~~(b) Diagnose human responses to actual or potential health problems.~~

~~(c) Plan for health promotion, disease prevention, and therapeutic intervention in collaboration with the patient or client.~~

~~(d) Implement therapeutic interventions based on the nurse specialist's area of expertise and within the scope of advanced nursing practice, including, but not limited to, direct nursing care, counseling, teaching, and collaboration with other licensed health care providers.~~

~~(e) Coordinate health care as necessary and appropriate and evaluate with the patient or client the effectiveness of care.~~

Section 3. Effective October 1, 2018, section 464.0115, Florida Statutes, is repealed.



Section 4. Effective October 1, 2018, section 464.012, Florida Statutes, as amended by section 3 of chapter 2017-134, section 8 of chapter 2016-139, and section 7 of chapter 2016-231, Laws of Florida, is amended to read:

464.012 Licensure ~~Certification~~ of advanced practice registered nurses ~~advanced registered nurse practitioners~~; fees; controlled substance prescribing.—

(1) Any nurse desiring to be licensed ~~certified~~ as an advanced practice registered nurse must ~~advanced registered nurse practitioner shall~~ apply to the department and submit proof that he or she holds a current license to practice professional nursing or holds an active multistate license to practice professional nursing pursuant to s. 464.0095 and that he or she meets one or more of the following requirements as determined by the board:

(a) Certification by an appropriate specialty board. Such certification is ~~shall be~~ required for initial state licensure ~~certification~~ and any licensure renewal ~~recertification~~ as a certified nurse midwife, certified nurse practitioner, certified registered nurse anesthetist, clinical nurse specialist, or psychiatric nurse~~, or nurse midwife~~. The board may by rule provide for provisional state licensure ~~certification~~ of ~~graduate~~ certified registered nurse anesthetists, clinical nurse specialists, certified nurse practitioners, psychiatric nurses, and certified nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in


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specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program is ~~shall be~~ required for initial licensure ~~certification~~ as a certified nurse practitioner under paragraph (4)(a) ~~(4)(c)~~.

1. For applicants graduating on or after October 1, 2001, graduation from a master's degree program is ~~shall be~~ required for initial licensure ~~certification~~ as a certified registered nurse anesthetist who may perform the acts listed in ~~under~~ paragraph (4)(b) ~~(4)(a)~~.

2. For applicants graduating on or after October 1, 1998, graduation from a master's degree program is required for initial licensure as a certified nurse midwife who may perform the acts listed in paragraph (4)(c).

3. For applicants graduating on or after July 1, 2007, graduation from a master's degree program is required for initial licensure as a clinical nurse specialist who may perform the acts listed in paragraph (4)(d).

(2)(a) The board shall provide by rule the appropriate requirements for advanced practice registered nurses for ~~advanced registered nurse practitioners in~~ the advanced nursing practices ~~categories~~ of certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists ~~anesthetist~~, clinical ~~certified~~ nurse specialists ~~midwife~~, and psychiatric nurses ~~nurse practitioner~~.

(3) An advanced practice registered nurse ~~advanced registered nurse practitioner~~ shall perform those functions authorized in this section within the framework of an established protocol that ~~which~~ must be maintained on site at the location or locations at which an advanced practice



registered nurse ~~advanced registered nurse practitioner~~ practices. In the case of multiple supervising physicians in the same group, an advanced practice registered nurse ~~advanced registered nurse practitioner~~ must enter into a supervisory protocol with at least one physician within the physician group practice. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may:

(a) Prescribe, dispense, administer, or order any drug; however, an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may prescribe or dispense a controlled substance as defined in s. 893.03 only if the advanced practice registered nurse ~~advanced registered nurse practitioner~~ has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills.

(b) Initiate appropriate therapies for certain conditions.

(c) Perform additional functions as may be determined by rule in accordance with s. 464.003(2).

(d) Order diagnostic tests and physical and occupational therapy.

(e) Order any medication for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400, notwithstanding any provisions in chapter 465 or chapter 893.

(4) In addition to the general functions specified in subsection (3), an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may perform the following acts



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within his or her specialty:

(a) The certified nurse practitioner may perform any or all of the following acts within the framework of established protocol:

1. Manage selected medical problems.

2. Order physical and occupational therapy.

3. Initiate, monitor, or alter therapies for certain uncomplicated acute illnesses.

4. Monitor and manage patients with stable chronic diseases.

5. Establish behavioral problems and diagnosis and make treatment recommendations.

(b) ~~(a)~~ The certified registered nurse anesthetist may, to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed, perform any or all of the following:

1. Determine the health status of the patient as it relates to the risk factors and to the anesthetic management of the patient through the performance of the general functions.

2. Based on history, physical assessment, and supplemental laboratory results, determine, with the consent of the responsible physician, the appropriate type of anesthesia within the framework of the protocol.

3. Order under the protocol preanesthetic medication.

4. Perform under the protocol procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, therapeutic, or diagnostic clinical procedures. These procedures include ordering and administering regional, spinal, and general anesthesia; inhalation agents and

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techniques; intravenous agents and techniques; and techniques of hypnosis.

5. Order or perform monitoring procedures indicated as pertinent to the anesthetic health care management of the patient.

6. Support life functions during anesthesia health care, including induction and intubation procedures, the use of appropriate mechanical supportive devices, and the management of fluid, electrolyte, and blood component balances.

7. Recognize and take appropriate corrective action for abnormal patient responses to anesthesia, adjunctive medication, or other forms of therapy.

8. Recognize and treat a cardiac arrhythmia while the patient is under anesthetic care.

9. Participate in management of the patient while in the postanesthesia recovery area, including ordering the administration of fluids and drugs.

10. Place special peripheral and central venous and arterial lines for blood sampling and monitoring as appropriate.

(c) ~~(b)~~ The certified nurse midwife may, to the extent authorized by an established protocol which has been approved by the medical staff of the health care facility in which the midwifery services are performed, or approved by the nurse midwife's physician backup when the delivery is performed in a patient's home, perform any or all of the following:

1. Perform superficial minor surgical procedures.

2. Manage the patient during labor and delivery to include amniotomy, episiotomy, and repair.

3. Order, initiate, and perform appropriate anesthetic



procedures.

4. Perform postpartum examination.

5. Order appropriate medications.

6. Provide family-planning services and well-woman care.

7. Manage the medical care of the normal obstetrical patient and the initial care of a newborn patient.

(d) The clinical nurse specialist may perform any or all of the following acts within the framework of established protocol:

1. Assess the health status of individuals and families using methods appropriate to the population and area of practice.

2. Diagnose human responses to actual or potential health problems.

3. Plan for health promotion, disease prevention, and therapeutic intervention in collaboration with the patient or client.

4. Implement therapeutic interventions based on the nurse specialist’s area of expertise and within the scope of advanced nursing practice, including, but not limited to, direct nursing care, counseling, teaching, and collaboration with other licensed health care providers.

5. Coordinate health care as necessary and appropriate and evaluate with the patient or client the effectiveness of care.

~~(c) The nurse practitioner may perform any or all of the following acts within the framework of established protocol:~~

~~1. Manage selected medical problems.~~

~~2. Order physical and occupational therapy.~~

~~3. Initiate, monitor, or alter therapies for certain uncomplicated acute illnesses.~~


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~~4. Monitor and manage patients with stable chronic diseases.~~

~~5. Establish behavioral problems and diagnosis and make treatment recommendations.~~

(e)~~(5)~~ A psychiatric nurse, who meets the requirements in s. 394.455(35) ~~as defined in s. 394.455~~, within the framework of an established protocol with a psychiatrist, may prescribe psychotropic controlled substances for the treatment of mental disorders.

(5)~~(6)~~ The board shall approve for licensure ~~certify~~, and the department shall issue a license ~~certificate~~ to, any nurse meeting the qualifications in this section. The board shall establish an application fee not to exceed $100 and a biennial renewal fee not to exceed $50. The board is authorized to adopt such other rules as are necessary to implement the provisions of this section.

(6)~~(7)~~(a) The board shall establish a committee to recommend a formulary of controlled substances that an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may not prescribe or may prescribe only for specific uses or in limited quantities. The committee must consist of three advanced practice registered nurses ~~advanced registered nurse practitioners~~ licensed under this section, recommended by the board; three physicians licensed under chapter 458 or chapter 459 who have work experience with advanced practice registered nurses ~~advanced registered nurse practitioners~~, recommended by the Board of Medicine; and a pharmacist licensed under chapter 465 who is a doctor of pharmacy, recommended by the Board of Pharmacy. The committee may recommend an evidence-based


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formulary applicable to all advanced practice registered nurses ~~advanced registered nurse practitioners~~ which is limited by specialty certification, is limited to approved uses of controlled substances, or is subject to other similar restrictions the committee finds are necessary to protect the health, safety, and welfare of the public. The formulary must restrict the prescribing of psychiatric mental health controlled substances for children younger than 18 years of age to advanced practice registered nurses ~~advanced registered nurse practitioners~~ who also are psychiatric nurses as defined in s. 394.455. The formulary must also limit the prescribing of Schedule II controlled substances as listed in s. 893.03 to a 7-day supply, except that such restriction does not apply to controlled substances that are psychiatric medications prescribed by psychiatric nurses as defined in s. 394.455.

(b) The board shall adopt by rule the recommended formulary and any revision to the formulary which it finds is supported by evidence-based clinical findings presented by the Board of Medicine, the Board of Osteopathic Medicine, or the Board of Dentistry.

(c) The formulary required under this subsection does not apply to a controlled substance that is dispensed for administration pursuant to an order, including an order for medication authorized by subparagraph (4)(b)3., subparagraph (4)(b)4., or subparagraph (4)(b)9 ~~subparagraph (4)(a)3., subparagraph (4)(a)4., or subparagraph (4)(a)9~~.

(d) The board shall adopt the committee's initial recommendation no later than October 31, 2016.

(7)~~(8)~~ This section shall be known as "The Barbara Lumpkin



Prescribing Act."

(8) The department and board shall establish a transition timeline and process for practitioners certified as of September 30, 2018, as advanced registered nurse practitioners or clinical nurse specialists, to convert a certificate in good standing to a license that becomes effective on October 1, 2018, to practice as an advanced practice registered nurse. An advanced registered nurse practitioner or a clinical nurse specialist holding a certificate to practice in good standing on September 30, 2018, may continue to practice with all rights, authorizations, and responsibilities under this section for licensure as an advanced practice registered nurse and may use the applicable title under s. 464.015 after the effective date of this act while the department and board complete the transition from certification to licensure, as established under this act. This subsection may not be construed to limit or restrict the department's or board's disciplinary authority or enforcement responsibilities for safe nursing practice. This subsection expires on October 1, 2020.

Section 5. Effective October 1, 2018, subsection (2) of section 960.28, Florida Statutes, is amended to read:

960.28 Payment for victims' initial forensic physical examinations.—

(2) The Crime Victims' Services Office of the department shall pay for medical expenses connected with an initial forensic physical examination of a victim of sexual battery as defined in chapter 794 or a lewd or lascivious offense as defined in chapter 800. Such payment shall be made regardless of whether the victim is covered by health or disability insurance



and whether the victim participates in the criminal justice system or cooperates with law enforcement. The payment shall be made only out of moneys allocated to the Crime Victims' Services Office for the purposes of this section, and the payment may not exceed $500 with respect to any violation. The department shall develop and maintain separate protocols for the initial forensic physical examination of adults and children. Payment under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical provider using an examiner qualified under part I of chapter 464, excluding s. 464.003(14) ~~s. 464.003(16)~~; chapter 458; or chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required to pay, directly or indirectly, the cost of an initial forensic physical examination performed in accordance with this section.

Section 6. Effective October 1, 2018, paragraph (c) of subsection (5) and paragraph (a) of subsection (6) of section 39.303, Florida Statutes, are amended to read:

39.303 Child protection teams and sexual abuse treatment programs; services; eligible cases.—

(5) All abuse and neglect cases transmitted for investigation to a circuit by the hotline must be simultaneously transmitted to the child protection team for review. For the purpose of determining whether a face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (4) must be timely reviewed by:



(c) An advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464 who has a specialty in pediatrics or family medicine and is a member of a child protection team;

(6) A face-to-face medical evaluation by a child protection team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team medical director or a child protection team board-certified pediatrician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, physician assistant working under the supervision of a child protection team medical director or a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection team medical director or a child protection team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

Notwithstanding paragraphs (a), (b), and (c), a child protection team medical director or a child protection team pediatrician, as authorized in subsection (5), may determine that a face-to-face medical evaluation is necessary.

Section 7. Effective October 1, 2018, paragraph (b) of subsection (1) of section 39.304, Florida Statutes, is amended to read:

39.304 Photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected child.—

(1)

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(b) If the areas of trauma visible on a child indicate a need for a medical examination, or if the child verbally complains or otherwise exhibits distress as a result of injury through suspected child abuse, abandonment, or neglect, or is alleged to have been sexually abused, the person required to investigate may cause the child to be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents or legal custodian. Such examination may be performed by any licensed physician or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed pursuant to part I of chapter 464. Any licensed physician~~,~~ or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed pursuant to part I of chapter 464~~,~~ who has reasonable cause to suspect that an injury was the result of child abuse, abandonment, or neglect may authorize a radiological examination to be performed on the child without the consent of the child's parent or legal custodian.

Section 8. Effective October 1, 2018, paragraph (a) of subsection (1) of section 90.503, Florida Statutes, is amended to read:

90.503 Psychotherapist-patient privilege.—

(1) For purposes of this section:

(a) A "psychotherapist" is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

2. A person licensed or certified as a psychologist under



the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Families pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or

5. An advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012, whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions performed in accordance with part I of chapter 464.

Section 9. Effective October 1, 2018, paragraph (d) of subsection (2) of section 110.12315, Florida Statutes, is amended to read:

110.12315 Prescription drug program.—The state employees' prescription drug program is established. This program shall be administered by the Department of Management Services, according to the terms and conditions of the plan as established by the



relevant provisions of the annual General Appropriations Act and implementing legislation, subject to the following conditions:

(2) In providing for reimbursement of pharmacies for prescription drugs and supplies dispensed to members of the state group health insurance plan and their dependents under the state employees' prescription drug program:

(d) The department shall establish the reimbursement schedule for prescription drugs and supplies dispensed under the program. Reimbursement rates for a prescription drug or supply must be based on the cost of the generic equivalent drug or supply if a generic equivalent exists, unless the physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant prescribing the drug or supply clearly states on the prescription that the brand name drug or supply is medically necessary or that the drug or supply is included on the formulary of drugs and supplies that may not be interchanged as provided in chapter 465, in which case reimbursement must be based on the cost of the brand name drug or supply as specified in the reimbursement schedule adopted by the department.

Section 10. Effective October 1, 2018, paragraph (f) of subsection (3) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special Risk Class.—

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(f) Effective January 1, 2001, the member must be employed in one of the following classes and must spend at least 75 percent of his or her time performing duties which involve



contact with patients or inmates in a correctional or forensic facility or institution:

1. Dietitian (class codes 5203 and 5204);
2. Public health nutrition consultant (class code 5224);
3. Psychological specialist (class codes 5230 and 5231);
4. Psychologist (class code 5234);
5. Senior psychologist (class codes 5237 and 5238);
6. Regional mental health consultant (class code 5240);
7. Psychological Services Director—DCF (class code 5242);
8. Pharmacist (class codes 5245 and 5246);
9. Senior pharmacist (class codes 5248 and 5249);
10. Dentist (class code 5266);
11. Senior dentist (class code 5269);
12. Registered nurse (class codes 5290 and 5291);
13. Senior registered nurse (class codes 5292 and 5293);
14. Registered nurse specialist (class codes 5294 and 5295);
15. Clinical associate (class codes 5298 and 5299);
16. Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ (class codes 5297 and 5300);
17. Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ specialist (class codes 5304 and 5305);
18. Registered nurse supervisor (class codes 5306 and 5307);
19. Senior registered nurse supervisor (class codes 5308 and 5309);
20. Registered nursing consultant (class codes 5312 and 5313);
21. Quality management program supervisor (class code



5314);

22. Executive nursing director (class codes 5320 and 5321);

23. Speech and hearing therapist (class code 5406); or

24. Pharmacy manager (class code 5251);

Section 11. Effective October 1, 2018, paragraph (a) of subsection (3) of section 252.515, Florida Statutes, is amended to read:

252.515 Postdisaster Relief Assistance Act; immunity from civil liability.—

(3) As used in this section, the term:

(a) "Emergency first responder" means:

1. A physician licensed under chapter 458.

2. An osteopathic physician licensed under chapter 459.

3. A chiropractic physician licensed under chapter 460.

4. A podiatric physician licensed under chapter 461.

5. A dentist licensed under chapter 466.

6. An advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012.

7. A physician assistant licensed under s. 458.347 or s. 459.022.

8. A worker employed by a public or private hospital in the state.

9. A paramedic as defined in s. 401.23(17).

10. An emergency medical technician as defined in s. 401.23(11).

11. A firefighter as defined in s. 633.102.

12. A law enforcement officer as defined in s. 943.10.

13. A member of the Florida National Guard.

14. Any other personnel designated as emergency personnel



by the Governor pursuant to a declared emergency.

Section 12. Effective October 1, 2018, paragraph (c) of subsection (1) of section 310.071, Florida Statutes, is amended to read:

310.071 Deputy pilot certification.—

(1) In addition to meeting other requirements specified in this chapter, each applicant for certification as a deputy pilot must:

(c) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a physician assistant and that controlled substance was prescribed by that physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant. To maintain eligibility as a certificated deputy pilot, each certificated deputy pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder satisfactorily meets the standards. The standards for certificateholders shall include a



drug test.

Section 13. Effective October 1, 2018, subsection (3) of section 310.073, Florida Statutes, is amended to read:

310.073 State pilot licensing.—In addition to meeting other requirements specified in this chapter, each applicant for license as a state pilot must:

(3) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a physician assistant and that controlled substance was prescribed by that physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant. To maintain eligibility as a licensed state pilot, each licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the licensee satisfactorily meets the standards. The standards for licensees shall include a drug test.

Section 14. Effective October 1, 2018, paragraph (b) of subsection (3) of section 310.081, Florida Statutes, is amended



to read:

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(3) Pilots shall hold their licenses or certificates pursuant to the requirements of this chapter so long as they:

(b) Are in good physical and mental health as evidenced by documentary proof of having satisfactorily passed a physical examination administered by a licensed physician or physician assistant within each calendar year. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot or a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a physician assistant and that controlled substance was prescribed by that physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant. To maintain eligibility as a certificated deputy pilot or licensed state pilot, each certificated deputy pilot or licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder or licensee satisfactorily meets the standards. The standards for certificateholders and for licensees shall include a drug test.



Upon resignation or in the case of disability permanently affecting a pilot's ability to serve, the state license or certificate issued under this chapter shall be revoked by the department.

Section 15. Effective October 1, 2018, paragraph (b) of subsection (1) of section 320.0848, Florida Statutes, is amended to read:

320.0848 Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities.—

(1)

(b)1. The person must be currently certified as being legally blind or as having any of the following disabilities that render him or her unable to walk 200 feet without stopping to rest:

a. Inability to walk without the use of or assistance from a brace, cane, crutch, prosthetic device, or other assistive device, or without the assistance of another person. If the assistive device significantly restores the person's ability to walk to the extent that the person can walk without severe limitation, the person is not eligible for the exemption parking permit.

b. The need to permanently use a wheelchair.

c. Restriction by lung disease to the extent that the person's forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the person's arterial oxygen is less than 60 mm/hg on room air at rest.



d. Use of portable oxygen.

e. Restriction by cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association.

f. Severe limitation in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

2. The certification of disability which is required under subparagraph 1. must be provided by a physician licensed under chapter 458, chapter 459, or chapter 460, by a podiatric physician licensed under chapter 461, by an optometrist licensed under chapter 463, by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464 under the protocol of a licensed physician as stated in this subparagraph, by a physician assistant licensed under chapter 458 or chapter 459, or by a similarly licensed physician from another state if the application is accompanied by documentation of the physician's licensure in the other state and a form signed by the out-of-state physician verifying his or her knowledge of this state's eligibility guidelines.

Section 16. Effective October 1, 2018, paragraph (c) of subsection (1) of section 381.00315, Florida Statutes, is amended to read:

381.00315 Public health advisories; public health emergencies; isolation and quarantines.—The State Health Officer is responsible for declaring public health emergencies, issuing public health advisories, and ordering isolation or quarantines.

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

(c) "Public health emergency" means any occurrence, or



threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters. Before declaring a public health emergency, the State Health Officer shall, to the extent possible, consult with the Governor and shall notify the Chief of Domestic Security. The declaration of a public health emergency shall continue until the State Health Officer finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and he or she terminates the declaration. However, a declaration of a public health emergency may not continue for longer than 60 days unless the Governor concurs in the renewal of the declaration. The State Health Officer, upon declaration of a public health emergency, may take actions that are necessary to protect the public health. Such actions include, but are not limited to:

1. Directing manufacturers of prescription drugs or over-the-counter drugs who are permitted under chapter 499 and wholesalers of prescription drugs located in this state who are permitted under chapter 499 to give priority to the shipping of specified drugs to pharmacies and health care providers within geographic areas that have been identified by the State Health Officer. The State Health Officer must identify the drugs to be shipped. Manufacturers and wholesalers located in the state must respond to the State Health Officer’s priority shipping directive before shipping the specified drugs.

2. Notwithstanding chapters 465 and 499 and rules adopted thereunder, directing pharmacists employed by the department to



compound bulk prescription drugs and provide these bulk prescription drugs to physicians and nurses of county health departments or any qualified person authorized by the State Health Officer for administration to persons as part of a prophylactic or treatment regimen.

3. Notwithstanding s. 456.036, temporarily reactivating the inactive license of the following health care practitioners, when such practitioners are needed to respond to the public health emergency: physicians licensed under chapter 458 or chapter 459; physician assistants licensed under chapter 458 or chapter 459; licensed practical nurses, registered nurses, and advanced practice registered nurses ~~advanced registered nurse practitioners~~ licensed under part I of chapter 464; respiratory therapists licensed under part V of chapter 468; and emergency medical technicians and paramedics certified under part III of chapter 401. Only those health care practitioners specified in this paragraph who possess an unencumbered inactive license and who request that such license be reactivated are eligible for reactivation. An inactive license that is reactivated under this paragraph shall return to inactive status when the public health emergency ends or before the end of the public health emergency if the State Health Officer determines that the health care practitioner is no longer needed to provide services during the public health emergency. Such licenses may only be reactivated for a period not to exceed 90 days without meeting the requirements of s. 456.036 or chapter 401, as applicable.

4. Ordering an individual to be examined, tested, vaccinated, treated, isolated, or quarantined for communicable diseases that have significant morbidity or mortality and



present a severe danger to public health. Individuals who are unable or unwilling to be examined, tested, vaccinated, or treated for reasons of health, religion, or conscience may be subjected to isolation or quarantine.

a. Examination, testing, vaccination, or treatment may be performed by any qualified person authorized by the State Health Officer.

b. If the individual poses a danger to the public health, the State Health Officer may subject the individual to isolation or quarantine. If there is no practical method to isolate or quarantine the individual, the State Health Officer may use any means necessary to vaccinate or treat the individual.

Any order of the State Health Officer given to effectuate this paragraph shall be immediately enforceable by a law enforcement officer under s. 381.0012.

Section 17. Effective October 1, 2018, subsection (3) of section 381.00593, Florida Statutes, is amended to read:

381.00593 Public school volunteer health care practitioner program.—

(3) For purposes of this section, the term "health care practitioner" means a physician licensed under chapter 458; an osteopathic physician licensed under chapter 459; a chiropractic physician licensed under chapter 460; a podiatric physician licensed under chapter 461; an optometrist licensed under chapter 463; an advanced practice registered nurse ~~advanced registered nurse practitioner~~, registered nurse, or licensed practical nurse licensed under part I of chapter 464; a pharmacist licensed under chapter 465; a dentist or dental



hygienist licensed under chapter 466; a midwife licensed under chapter 467; a speech-language pathologist or audiologist licensed under part I of chapter 468; a dietitian/nutritionist licensed under part X of chapter 468; or a physical therapist licensed under chapter 486.

Section 18. Effective October 1, 2018, paragraph (c) of subsection (1) of section 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(1) SCREENING REQUIREMENTS.—To help ensure access to the maternal and child health care system, the Department of Health shall promote the screening of all newborns born in Florida for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, as screening programs accepted by current medical practice become available and practical in the judgment of the department. The department shall also promote the identification and screening of all newborns in this state and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services, including, but not limited to, parent support and training programs, home visitation, and case management. Identification, perinatal screening, and intervention efforts shall begin prior to and immediately following the birth of the child by the attending health care provider. Such efforts shall be conducted in hospitals,



perinatal centers, county health departments, school health programs that provide prenatal care, and birthing centers, and reported to the Office of Vital Statistics.

(c) *Release of screening results.*—Notwithstanding any law to the contrary, the State Public Health Laboratory may release, directly or through the Children's Medical Services program, the results of a newborn's hearing and metabolic tests or screenings to the newborn's health care practitioner, the newborn's parent or legal guardian, the newborn's personal representative, or a person designated by the newborn's parent or legal guardian. As used in this paragraph, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458; an osteopathic physician or physician assistant licensed under chapter 459; an advanced practice registered nurse ~~advanced registered nurse practitioner~~, registered nurse, or licensed practical nurse licensed under part I of chapter 464; a midwife licensed under chapter 467; a speech-language pathologist or audiologist licensed under part I of chapter 468; or a dietician or nutritionist licensed under part X of chapter 468.

Section 19. Effective October 1, 2018, paragraph (c) of subsection (1) of section 383.141, Florida Statutes, is amended to read:

383.141 Prenatally diagnosed conditions; patient to be provided information; definitions; information clearinghouse; advisory council.—

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

(c) "Health care provider" means a practitioner licensed or registered under chapter 458 or chapter 459 or an advanced



practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under chapter 464.

Section 20. Effective October 1, 2018, paragraph (a) of subsection (7) of section 384.27, Florida Statutes, is amended to read:

384.27 Physical examination and treatment.—

(7)(a) A health care practitioner licensed under chapter 458, ~~or~~ chapter 459, or ~~certified under~~ s. 464.012 may provide expedited partner therapy if the following requirements are met:

1. The patient has a laboratory-confirmed or suspected clinical diagnosis of a sexually transmissible disease.

2. The patient indicates that he or she has a partner with whom he or she engaged in sexual activity before the diagnosis of the sexually transmissible disease.

3. The patient indicates that his or her partner is unable or unlikely to seek clinical services in a timely manner.

Section 21. Effective October 1, 2018, paragraph (a) of subsection (3) of section 390.0111, Florida Statutes, is amended to read:

390.0111 Termination of pregnancies.—

(3) CONSENTS REQUIRED.—A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian.

(a) Except in the case of a medical emergency, consent to a termination of pregnancy is voluntary and informed only if:

1. The physician who is to perform the procedure, or the referring physician, has, at a minimum, orally, while physically



present in the same room, and at least 24 hours before the procedure, informed the woman of:

a. The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and willful decision of whether to terminate a pregnancy.

b. The probable gestational age of the fetus, verified by an ultrasound, at the time the termination of pregnancy is to be performed.

(I) The ultrasound must be performed by the physician who is to perform the abortion or by a person having documented evidence that he or she has completed a course in the operation of ultrasound equipment as prescribed by rule and who is working in conjunction with the physician.

(II) The person performing the ultrasound must offer the woman the opportunity to view the live ultrasound images and hear an explanation of them. If the woman accepts the opportunity to view the images and hear the explanation, a physician or a registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant working in conjunction with the physician must contemporaneously review and explain the images to the woman before the woman gives informed consent to having an abortion procedure performed.

(III) The woman has a right to decline to view and hear the explanation of the live ultrasound images after she is informed of her right and offered an opportunity to view the images and hear the explanation. If the woman declines, the woman shall complete a form acknowledging that she was offered an



opportunity to view and hear the explanation of the images but that she declined that opportunity. The form must also indicate that the woman's decision was not based on any undue influence from any person to discourage her from viewing the images or hearing the explanation and that she declined of her own free will.

(IV) Unless requested by the woman, the person performing the ultrasound may not offer the opportunity to view the images and hear the explanation and the explanation may not be given if, at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a restraining order, police report, medical record, or other court order or documentation is presented which provides evidence that the woman is obtaining the abortion because the woman is a victim of rape, incest, domestic violence, or human trafficking or that the woman has been diagnosed as having a condition that, on the basis of a physician's good faith clinical judgment, would create a serious risk of substantial and irreversible impairment of a major bodily function if the woman delayed terminating her pregnancy.

c. The medical risks to the woman and fetus of carrying the pregnancy to term.

The physician may provide the information required in this subparagraph within 24 hours before the procedure if requested by the woman at the time she schedules or arrives for her appointment to obtain an abortion and if she presents to the physician a copy of a restraining order, police report, medical record, or other court order or documentation evidencing that



she is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking.

2. Printed materials prepared and provided by the department have been provided to the pregnant woman, if she chooses to view these materials, including:

a. A description of the fetus, including a description of the various stages of development.

b. A list of entities that offer alternatives to terminating the pregnancy.

c. Detailed information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care.

3. The woman acknowledges in writing, before the termination of pregnancy, that the information required to be provided under this subsection has been provided.

Nothing in this paragraph is intended to prohibit a physician from providing any additional information which the physician deems material to the woman’s informed decision to terminate her pregnancy.

Section 22. Effective October 1, 2018, paragraphs (c), (e), and (f) of subsection (3) of section 390.012, Florida Statutes, are amended to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including the following:



(c) Rules relating to abortion clinic personnel. At a minimum, these rules shall require that:

1. The abortion clinic designate a medical director who is licensed to practice medicine in this state, and all physicians who perform abortions in the clinic have admitting privileges at a hospital within reasonable proximity to the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

2. If a physician is not present after an abortion is performed, a registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant be present and remain at the clinic to provide postoperative monitoring and care until the patient is discharged.

3. Surgical assistants receive training in counseling, patient advocacy, and the specific responsibilities associated with the services the surgical assistants provide.

4. Volunteers receive training in the specific responsibilities associated with the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

(e) Rules relating to the abortion procedure. At a minimum, these rules shall require:

1. That a physician, registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant is available to all



patients throughout the abortion procedure.

2. Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

3. Appropriate use of general and local anesthesia, analgesia, and sedation if ordered by the physician.

4. Appropriate precautions, such as the establishment of intravenous access at least for patients undergoing post-first trimester abortions.

5. Appropriate monitoring of the vital signs and other defined signs and markers of the patient’s status throughout the abortion procedure and during the recovery period until the patient’s condition is deemed to be stable in the recovery room.

(f) Rules that prescribe minimum recovery room standards. At a minimum, these rules must require that:

1. Postprocedure recovery rooms be supervised and staffed to meet the patients’ needs.

2. Immediate postprocedure care consist of observation in a supervised recovery room for as long as the patient’s condition warrants.

3. A registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remain on the premises of the abortion clinic until all patients are discharged.

4. A physician sign the discharge order and be readily



accessible and available until the last patient is discharged to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary.

5. A physician discuss Rho(D) immune globulin with each patient for whom it is indicated and ensure that it is offered to the patient in the immediate postoperative period or will be available to her within 72 hours after completion of the abortion procedure. If the patient refuses the Rho(D) immune globulin, she and a witness must sign a refusal form approved by the agency which must be included in the medical record.

6. Written instructions with regard to postabortion coitus, signs of possible problems, and general aftercare which are specific to the patient be given to each patient. The instructions must include information regarding access to medical care for complications, including a telephone number for use in the event of a medical emergency.

7. A minimum length of time be specified, by type of abortion procedure and duration of gestation, during which a patient must remain in the recovery room.

8. The physician ensure that, with the patient’s consent, a registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant from the abortion clinic makes a good faith effort to contact the patient by telephone within 24 hours after surgery to assess the patient’s recovery.

9. Equipment and services be readily accessible to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.



Section 23. Effective October 1, 2018, subsections (35) and (44) of section 394.455, Florida Statutes, are amended to read:

394.455 Definitions.—As used in this part, the term:

(35) "Psychiatric nurse" means an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012 who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician.

(44) "Service provider" means a receiving facility, a facility licensed under chapter 397, a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, a psychiatric nurse, or a qualified professional as defined in s. 39.01.

Section 24. Effective October 1, 2018, paragraphs (a) and (b) of subsection (2) and subsection (4) of section 395.0191, Florida Statutes, are amended to read:

395.0191 Staff membership and clinical privileges.—

(2)(a) Each licensed facility shall establish rules and procedures for consideration of an application for clinical privileges submitted by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed ~~and certified~~ under part I of chapter 464, in accordance with the provisions of this section. No licensed facility shall deny such



application solely because the applicant is licensed under part I of chapter 464 or because the applicant is not a participant in the Florida Birth-Related Neurological Injury Compensation Plan.

(b) An advanced practice registered nurse ~~advanced registered nurse practitioner~~ who is certified as a registered nurse anesthetist licensed under part I of chapter 464 shall administer anesthesia under the onsite medical direction of a professional licensed under chapter 458, chapter 459, or chapter 466, and in accordance with an established protocol approved by the medical staff. The medical direction shall specifically address the needs of the individual patient.

(4) Nothing herein shall restrict in any way the authority of the medical staff of a licensed facility to review for approval or disapproval all applications for appointment and reappointment to all categories of staff and to make recommendations on each applicant to the governing board, including the delineation of privileges to be granted in each case. In making such recommendations and in the delineation of privileges, each applicant shall be considered individually pursuant to criteria for a doctor licensed under chapter 458, chapter 459, chapter 461, or chapter 466, or for an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed ~~and certified~~ under part I of chapter 464, or for a psychologist licensed under chapter 490, as applicable. The applicant’s eligibility for staff membership or clinical privileges shall be determined by the applicant’s background, experience, health, training, and demonstrated competency; the applicant’s adherence to applicable professional ethics; the



applicant's reputation; and the applicant's ability to work with others and by such other elements as determined by the governing board, consistent with this part.

Section 25. Effective October 1, 2018, subsection (34) of section 397.311, Florida Statutes, is amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(34) "Qualified professional" means a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

Section 26. Effective October 1, 2018, section 397.4012, Florida Statutes, is amended to read:

397.4012 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(1) A hospital or hospital-based component licensed under chapter 395.

(2) A nursing home facility as defined in s. 400.021.



(3) A substance abuse education program established pursuant to s. 1003.42.

(4) A facility or institution operated by the Federal Government.

(5) A physician or physician assistant licensed under chapter 458 or chapter 459.

(6) A psychologist licensed under chapter 490.

(7) A social worker, marriage and family therapist, or mental health counselor licensed under chapter 491.

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(26) is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

(9) Facilities licensed under chapter 393 which, in addition to providing services to persons with developmental disabilities, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero.

(10) DUI education and screening services provided pursuant to ss. 316.192, 316.193, 322.095, 322.271, and 322.291. Persons or entities providing treatment services must be licensed under this chapter unless exempted from licensing as provided in this section.

(11) A facility licensed under s. 394.875 as a crisis



stabilization unit.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.4014. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 27. Effective October 1, 2018, subsections (4), (7), and (8) of section 397.427, Florida Statutes, are amended to read:

397.427 Medication-assisted treatment service providers; rehabilitation program; needs assessment and provision of services; persons authorized to issue takeout medication; unlawful operation; penalty.—



(4) Notwithstanding s. 465.019(2), a physician assistant, a registered nurse, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a licensed practical nurse working for a licensed service provider may deliver takeout medication for opiate treatment to persons enrolled in a maintenance treatment program for medication-assisted treatment for opiate addiction if:

(a) The medication-assisted treatment program for opiate addiction has an appropriate valid permit issued pursuant to rules adopted by the Board of Pharmacy;

(b) The medication for treatment of opiate addiction has been delivered pursuant to a valid prescription written by the program's physician licensed pursuant to chapter 458 or chapter 459;

(c) The medication for treatment of opiate addiction which is ordered appears on a formulary and is prepackaged and prelabeled with dosage instructions and distributed from a source authorized under chapter 499;

(d) Each licensed provider adopts written protocols which provide for supervision of the physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse by a physician licensed pursuant to chapter 458 or chapter 459 and for the procedures by which patients' medications may be delivered by the physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse. Such protocols shall be signed by the supervising physician and either the administering registered nurse, the advanced practice registered nurse ~~advanced~~



1172 ~~registered nurse practitioner~~, or the licensed practical nurse.
1173 (e) Each licensed service provider maintains and has
1174 available for inspection by representatives of the Board of
1175 Pharmacy all medical records and patient care protocols,
1176 including records of medications delivered to patients, in
1177 accordance with the board.
1178 (7) A physician assistant, a registered nurse, an advanced
1179 practice registered nurse ~~advanced registered nurse~~
1180 ~~practitioner~~, or a licensed practical nurse working for a
1181 licensed service provider may deliver medication as prescribed
1182 by rule if:
1183 (a) The service provider is authorized to provide
1184 medication-assisted treatment;
1185 (b) The medication has been administered pursuant to a
1186 valid prescription written by the program's physician who is
1187 licensed under chapter 458 or chapter 459; and
1188 (c) The medication ordered appears on a formulary or meets
1189 federal requirements for medication-assisted treatment.
1190 (8) Each licensed service provider that provides
1191 medication-assisted treatment must adopt written protocols as
1192 specified by the department and in accordance with federally
1193 required rules, regulations, or procedures. The protocol shall
1194 provide for the supervision of the physician assistant,
1195 registered nurse, advanced practice registered nurse ~~advanced~~
1196 ~~registered nurse practitioner~~, or licensed practical nurse
1197 working under the supervision of a physician who is licensed
1198 under chapter 458 or chapter 459. The protocol must specify how
1199 the medication will be used in conjunction with counseling or
1200 psychosocial treatment and that the services provided will be



included on the treatment plan. The protocol must specify the procedures by which medication-assisted treatment may be administered by the physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse. These protocols shall be signed by the supervising physician and the administering physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse.

Section 28. Effective October 1, 2018, section 397.679, Florida Statutes, is amended to read:

397.679 Emergency admission; circumstances justifying.—A person who meets the criteria for involuntary admission in s. 397.675 may be admitted to a hospital or to a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only, upon receipt by the facility of a certificate by a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services, if the certificate is specific to substance abuse impairment, and the completion of an application for emergency admission.

Section 29. Effective October 1, 2018, subsection (1) of section 397.6793, Florida Statutes, is amended to read:



397.6793 Professional's certificate for emergency admission.—

(1) A physician, a clinical psychologist, a physician assistant working under the scope of practice of the supervising physician, a psychiatric nurse, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, a mental health counselor, a marriage and family therapist, a master's-level-certified addictions professional for substance abuse services, or a clinical social worker may execute a professional's certificate for emergency admission. The professional's certificate must include the name of the person to be admitted, the relationship between the person and the professional executing the certificate, the relationship between the applicant and the professional, any relationship between the professional and the licensed service provider, a statement that the person has been examined and assessed within the preceding 5 days after the application date, and factual allegations with respect to the need for emergency admission, including:

(a) The reason for the belief that the person is substance abuse impaired;

(b) The reason for the belief that because of such impairment the person has lost the power of self-control with respect to substance abuse; and

(c)1. The reason for the belief that, without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends



or the provision of other services, or there is substantial likelihood that the person has inflicted or, unless admitted, is likely to inflict, physical harm on himself, herself, or another; or

2. The reason for the belief that the person's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the person is incapable of appreciating his or her need for care and of making a rational decision regarding his or her need for care.

Section 30. Effective October 1, 2018, subsection (8) of section 400.021, Florida Statutes, is amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(8) "Geriatric outpatient clinic" means a site for providing outpatient health care to persons 60 years of age or older, which is staffed by a registered nurse, a physician assistant, or a licensed practical nurse under the direct supervision of a registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, physician assistant, or physician.

Section 31. Effective October 1, 2018, subsection (3) of section 400.462, Florida Statutes, is amended to read:

400.462 Definitions.—As used in this part, the term:

(3) "Advanced practice registered nurse" ~~"Advanced registered nurse practitioner"~~ means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

Section 32. Effective October 1, 2018, section 400.487, Florida Statutes, is amended to read:



400.487 Home health service agreements; physician's, physician assistant's, and advanced practice registered nurse's ~~advanced registered nurse practitioner's~~ treatment orders; patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate.—

(1) Services provided by a home health agency must be covered by an agreement between the home health agency and the patient or the patient's legal representative specifying the home health services to be provided, the rates or charges for services paid with private funds, and the sources of payment, which may include Medicare, Medicaid, private insurance, personal funds, or a combination thereof. A home health agency providing skilled care must make an assessment of the patient's needs within 48 hours after the start of services.

(2) When required by the provisions of chapter 464; part I, part III, or part V of chapter 468; or chapter 486, the attending physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~, acting within his or her respective scope of practice, shall establish treatment orders for a patient who is to receive skilled care. The treatment orders must be signed by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ before a claim for payment for the skilled services is submitted by the home health agency. If the claim is submitted to a managed care organization, the treatment orders must be signed within the time allowed under the provider agreement. The treatment orders shall be reviewed, as frequently as the patient's illness requires, by the physician, physician assistant, or advanced practice registered nurse ~~advanced~~



~~registered nurse practitioner~~ in consultation with the home health agency.

(3) A home health agency shall arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services in accordance with the patient's direction, approval, and agreement to pay the charge for the visits.

(4) Each patient has the right to be informed of and to participate in the planning of his or her care. Each patient must be provided, upon request, a copy of the plan of care established and maintained for that patient by the home health agency.

(5) When nursing services are ordered, the home health agency to which a patient has been admitted for care must provide the initial admission visit, all service evaluation visits, and the discharge visit by a direct employee. Services provided by others under contractual arrangements to a home health agency must be monitored and managed by the admitting home health agency. The admitting home health agency is fully responsible for ensuring that all care provided through its employees or contract staff is delivered in accordance with this part and applicable rules.

(6) The skilled care services provided by a home health agency, directly or under contract, must be supervised and coordinated in accordance with the plan of care.

(7) Home health agency personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The agency shall adopt rules providing for the implementation of such orders.



Home health personnel and agencies shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the agency.

Section 33. Effective October 1, 2018, paragraph (a) of subsection (13) of section 400.506, Florida Statutes, is amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(13) All persons referred for contract in private residences by a nurse registry must comply with the following requirements for a plan of treatment:

(a) When, in accordance with the privileges and restrictions imposed upon a nurse under part I of chapter 464, the delivery of care to a patient is under the direction or supervision of a physician or when a physician is responsible for the medical care of the patient, a medical plan of treatment must be established for each patient receiving care or treatment provided by a licensed nurse in the home. The original medical plan of treatment must be timely signed by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~, acting within his or her respective scope of practice, and reviewed in consultation with the licensed nurse at least every 2 months. Any additional order or change in orders must be obtained from the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and reduced to writing and timely signed by the physician, physician assistant, or



advanced practice registered nurse ~~advanced registered nurse practitioner~~. The delivery of care under a medical plan of treatment must be substantiated by the appropriate nursing notes or documentation made by the nurse in compliance with nursing practices established under part I of chapter 464.

Section 34. Effective October 1, 2018, subsections (5) and (7) of section 400.9973, Florida Statutes, are amended to read:

400.9973 Client admission, transfer, and discharge.—

(5) A client admitted to a transitional living facility must be admitted upon prescription by a licensed physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and must remain under the care of a licensed physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ for the duration of the client's stay in the facility.

(7) A person may not be admitted to a transitional living facility if the person:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide documentation that the person is free of apparent signs and symptoms of communicable disease;

(b) Is a danger to himself or herself or others as determined by a physician, physician assistant, advanced practice registered nurse, ~~or advanced registered nurse practitioner~~ or a mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.


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Section 35. Effective October 1, 2018, subsection (1) and paragraphs (a) and (b) of subsection (2) of section 400.9974, Florida Statutes, are amended to read:

400.9974 Client comprehensive treatment plans; client services.—

(1) A transitional living facility shall develop a comprehensive treatment plan for each client as soon as practicable but no later than 30 days after the initial comprehensive treatment plan is developed. The comprehensive treatment plan must be developed by an interdisciplinary team consisting of the case manager, the program director, the advanced practice registered nurse ~~advanced registered nurse practitioner~~, and appropriate therapists. The client or, if appropriate, the client's representative must be included in developing the comprehensive treatment plan. The comprehensive treatment plan must be reviewed and updated if the client fails to meet projected improvements outlined in the plan or if a significant change in the client's condition occurs. The comprehensive treatment plan must be reviewed and updated at least once monthly.

(2) The comprehensive treatment plan must include:

(a) Orders obtained from the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and the client's diagnosis, medical history, physical examination, and rehabilitative or restorative needs.

(b) A preliminary nursing evaluation, including orders for immediate care provided by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse~~



1433 ~~practitioner~~, which shall be completed when the client is
1434 admitted.
1435 Section 36. Effective October 1, 2018, section 400.9976,
1436 Florida Statutes, is amended to read:
1437 400.9976 Administration of medication.—
1438 (1) An individual medication administration record must be
1439 maintained for each client. A dose of medication, including a
1440 self-administered dose, shall be properly recorded in the
1441 client's record. A client who self-administers medication shall
1442 be given a pill organizer. Medication must be placed in the pill
1443 organizer by a nurse. A nurse shall document the date and time
1444 that medication is placed into each client's pill organizer. All
1445 medications must be administered in compliance with orders of a
1446 physician, physician assistant, or advanced practice registered
1447 nurse ~~advanced registered nurse practitioner~~.
1448 (2) If an interdisciplinary team determines that self-
1449 administration of medication is an appropriate objective, and if
1450 the physician, physician assistant, or advanced practice
1451 registered nurse ~~advanced registered nurse practitioner~~ does not
1452 specify otherwise, the client must be instructed by the
1453 physician, physician assistant, or advanced practice registered
1454 nurse ~~advanced registered nurse practitioner~~ to self-administer
1455 his or her medication without the assistance of a staff person.
1456 All forms of self-administration of medication, including
1457 administration orally, by injection, and by suppository, shall
1458 be included in the training. The client's physician, physician
1459 assistant, or advanced practice registered nurse ~~advanced~~
1460 ~~registered nurse practitioner~~ must be informed of the
1461 interdisciplinary team's decision that self-administration of


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medication is an objective for the client. A client may not self-administer medication until he or she demonstrates the competency to take the correct medication in the correct dosage at the correct time, to respond to missed doses, and to contact the appropriate person with questions.

(3) Medication administration discrepancies and adverse drug reactions must be recorded and reported immediately to a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~.

Section 37. Effective October 1, 2018, subsections (2) through (5) of section 400.9979, Florida Statutes, are amended to read:

400.9979 Restraint and seclusion; client safety.—

(2) The use of physical restraints must be ordered and documented by a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and must be consistent with the policies and procedures adopted by the facility. The client or, if applicable, the client's representative shall be informed of the facility's physical restraint policies and procedures when the client is admitted.

(3) The use of chemical restraints shall be limited to prescribed dosages of medications as ordered by a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and must be consistent with the client's diagnosis and the policies and procedures adopted by the facility. The client and, if applicable, the client's representative shall be informed of the facility's chemical restraint policies and procedures when the client is admitted.



(4) Based on the assessment by a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~, if a client exhibits symptoms that present an immediate risk of injury or death to himself or herself or others, a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ may issue an emergency treatment order to immediately administer rapid-response psychotropic medications or other chemical restraints. Each emergency treatment order must be documented and maintained in the client's record.

(a) An emergency treatment order is not effective for more than 24 hours.

(b) Whenever a client is medicated under this subsection, the client's representative or a responsible party and the client's physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ shall be notified as soon as practicable.

(5) A client who is prescribed and receives a medication that can serve as a chemical restraint for a purpose other than an emergency treatment order must be evaluated by his or her physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ at least monthly to assess:

(a) The continued need for the medication.

(b) The level of the medication in the client's blood.

(c) The need for adjustments to the prescription.

Section 38. Effective October 1, 2018, subsections (1) and (2) of section 401.445, Florida Statutes, are amended to read:

401.445 Emergency examination and treatment of



incapacitated persons.—

(1) No recovery shall be allowed in any court in this state against any emergency medical technician, paramedic, or physician as defined in this chapter, any advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012, or any physician assistant licensed under s. 458.347 or s. 459.022, or any person acting under the direct medical supervision of a physician, in an action brought for examining or treating a patient without his or her informed consent if:

(a) The patient at the time of examination or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent as provided in s. 766.103;

(b) The patient at the time of examination or treatment is experiencing an emergency medical condition; and

(c) The patient would reasonably, under all the surrounding circumstances, undergo such examination, treatment, or procedure if he or she were advised by the emergency medical technician, paramedic, physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant in accordance with s. 766.103(3).

Examination and treatment provided under this subsection shall be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient.

(2) In examining and treating a person who is apparently



intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used.

Section 39. Effective October 1, 2018, subsection (1) of section 409.905, Florida Statutes, is amended to read:

409.905 Mandatory Medicaid services.—The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.



(1) ADVANCED PRACTICE REGISTERED NURSE ~~ADVANCED REGISTERED NURSE PRACTITIONER~~ SERVICES.—The agency shall pay for services provided to a recipient by a licensed advanced practice registered nurse ~~advanced registered nurse practitioner~~ who has a valid collaboration agreement with a licensed physician on file with the Department of Health or who provides anesthesia services in accordance with established protocol required by state law and approved by the medical staff of the facility in which the anesthetic service is performed. Reimbursement for such services must be provided in an amount that equals not less than 80 percent of the reimbursement to a physician who provides the same services, unless otherwise provided for in the General Appropriations Act.

Section 40. Effective October 1, 2018, paragraph (a) of subsection (3) and subsection (7) of section 409.908, Florida Statutes, are amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider’s rate for that semester



shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(3) Subject to any limitations or directions provided for in the General Appropriations Act, the following Medicaid services and goods may be reimbursed on a fee-for-service basis. For each allowable service or goods furnished in accordance with Medicaid rules, policy manuals, handbooks, and state and federal law, the payment shall be the amount billed by the provider, the provider's usual and customary charge, or the maximum allowable fee established by the agency, whichever amount is less, with the exception of those services or goods for which the agency makes payment using a methodology based on capitation rates, average costs, or negotiated fees.

(a) Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ services.

(7) A provider of family planning services shall be



reimbursed the lesser of the amount billed by the provider or an all-inclusive amount per type of visit for physicians and advanced practice registered nurses ~~advanced registered nurse practitioners~~, as established by the agency in a fee schedule.

Section 41. Effective October 1, 2018, paragraph (a) of subsection (1) of section 409.973, Florida Statutes, is amended to read:

409.973 Benefits.—

(1) MINIMUM BENEFITS.—Managed care plans shall cover, at a minimum, the following services:

(a) Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ services.

Section 42. Effective March 1, 2019, subsection (1) of section 409.973, Florida Statutes, as amended by section 1 of chapter 2016-109, Laws of Florida, is amended to read:

409.973 Benefits.—

(1) MINIMUM BENEFITS.—Managed care plans shall cover, at a minimum, the following services:

(a) Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ services.

(b) Ambulatory surgical treatment center services.

(c) Birthing center services.

(d) Chiropractic services.

(e) Early periodic screening diagnosis and treatment services for recipients under age 21.

(f) Emergency services.

(g) Family planning services and supplies. Pursuant to 42 C.F.R. s. 438.102, plans may elect to not provide these services due to an objection on moral or religious grounds, and must



notify the agency of that election when submitting a reply to an invitation to negotiate.

(h) Healthy start services, except as provided in s. 409.975(4).

(i) Hearing services.

(j) Home health agency services.

(k) Hospice services.

(l) Hospital inpatient services.

(m) Hospital outpatient services.

(n) Laboratory and imaging services.

(o) Medical supplies, equipment, prostheses, and orthoses.

(p) Mental health services.

(q) Nursing care.

(r) Optical services and supplies.

(s) Optometrist services.

(t) Physical, occupational, respiratory, and speech therapy services.

(u) Physician services, including physician assistant services.

(v) Podiatric services.

(w) Prescription drugs.

(x) Renal dialysis services.

(y) Respiratory equipment and supplies.

(z) Rural health clinic services.

(aa) Substance abuse treatment services.

(bb) Transportation to access covered services.

Section 43. Effective October 1, 2018, paragraph (a) of subsection (2) and paragraph (a) of subsection (7) of section 429.918, Florida Statutes, are amended to read:



429.918 Licensure designation as a specialized Alzheimer's services adult day care center.—

(2) As used in this section, the term:

(a) "ADRD participant" means a participant who has a documented diagnosis of Alzheimer's disease or a dementia-related disorder (ADRD) from a licensed physician, licensed physician assistant, or a licensed advanced practice registered nurse ~~advanced registered nurse practitioner~~.

(7)(a) An ADRD participant admitted to an adult day care center having a license designated under this section, or the caregiver when applicable, must:

1. Require ongoing supervision to maintain the highest level of medical or custodial functioning and have a demonstrated need for a responsible party to oversee his or her care.

2. Not actively demonstrate aggressive behavior that places himself, herself, or others at risk of harm.

3. Provide the following medical documentation signed by a licensed physician, licensed physician assistant, or a licensed advanced practice registered nurse ~~advanced registered nurse practitioner~~:

a. Any physical, health, or emotional conditions that require medical care.

b. A listing of the ADRD participant's current prescribed and over-the-counter medications and dosages, diet restrictions, mobility restrictions, and other physical limitations.

4. Provide documentation signed by a health care provider licensed in this state which indicates that the ADRD participant is free of the communicable form of tuberculosis and free of


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signs and symptoms of other communicable diseases.

Section 44. Effective October 1, 2018, section 456.0391, Florida Statutes, is amended to read:

456.0391 Advanced practice registered nurses ~~Advanced registered nurse practitioners~~; information required for licensure ~~certification~~.—

(1)(a) Each person who applies for initial licensure ~~certification~~ under s. 464.012 must, at the time of application, and each person licensed ~~certified~~ under s. 464.012 who applies for licensure ~~certification~~ renewal must, in conjunction with the renewal of such licensure ~~certification~~ and under procedures adopted by the Department of Health, and in addition to any other information that may be required from the applicant, furnish the following information to the Department of Health:

1. The name of each school or training program that the applicant has attended, with the months and years of attendance and the month and year of graduation, and a description of all graduate professional education completed by the applicant, excluding any coursework taken to satisfy continuing education requirements.

2. The name of each location at which the applicant practices.

3. The address at which the applicant will primarily conduct his or her practice.

4. Any certification or designation that the applicant has received from a specialty or certification board that is recognized or approved by the regulatory board or department to which the applicant is applying.

5. The year that the applicant received initial



certification or licensure and began practicing the profession in any jurisdiction and the year that the applicant received initial certification or licensure in this state.

6. Any appointment which the applicant currently holds to the faculty of a school related to the profession and an indication as to whether the applicant has had the responsibility for graduate education within the most recent 10 years.

7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant’s profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, within 15 days after the disposition of the appeal, submit to the department a copy of the final written order of disposition.

8. A description of any final disciplinary action taken within the previous 10 years against the applicant by a licensing or regulatory body in any jurisdiction, by a specialty board that is recognized by the board or department, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home.



Disciplinary action includes resignation from or nonrenewal of staff membership or the restriction of privileges at a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disciplinary action is under appeal if the disciplinary action is reported in the applicant's profile.

(b) In addition to the information required under paragraph (a), each applicant for initial licensure ~~certification~~ or licensure ~~certification~~ renewal must provide the information required of licensees pursuant to s. 456.049.

(2) The Department of Health shall send a notice to each person licensed ~~certified~~ under s. 464.012 at the licensee's ~~certificateholder's~~ last known address of record regarding the requirements for information to be submitted by advanced practice registered nurses ~~advanced registered nurse practitioners~~ pursuant to this section in conjunction with the renewal of such license ~~certificate~~.

(3) Each person licensed ~~certified~~ under s. 464.012 who has submitted information pursuant to subsection (1) must update that information in writing by notifying the Department of Health within 45 days after the occurrence of an event or the attainment of a status that is required to be reported by subsection (1). Failure to comply with the requirements of this subsection to update and submit information constitutes a ground


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for disciplinary action under chapter 464 and s. 456.072(1)(k). For failure to comply with the requirements of this subsection to update and submit information, the department or board, as appropriate, may:

(a) Refuse to issue a license ~~certificate~~ to any person applying for initial licensure ~~certification~~ who fails to submit and update the required information.

(b) Issue a citation to any certificateholder or licensee who fails to submit and update the required information and may fine the certificateholder or licensee up to $50 for each day that the certificateholder or licensee is not in compliance with this subsection. The citation must clearly state that the certificateholder or licensee may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the certificateholder or licensee disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the certificateholder or licensee does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the certificateholder's or licensee's last known address.

(4)(a) An applicant for initial licensure ~~certification~~ under s. 464.012 must submit a set of fingerprints to the Department of Health on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check of the applicant.



(b) An applicant for renewed licensure ~~certification~~ who has not previously submitted a set of fingerprints to the Department of Health for purposes of certification must submit a set of fingerprints to the department as a condition of the initial renewal of his or her certificate after the effective date of this section. The applicant must submit the fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check. For subsequent renewals, the applicant for renewed licensure ~~certification~~ must only submit information necessary to conduct a statewide criminal history check, along with payment in an amount equal to the costs incurred by the Department of Health for a statewide criminal history check.

(c)1. The Department of Health shall submit the fingerprints provided by an applicant for initial licensure ~~certification~~ to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant.

2. The department shall submit the fingerprints provided by an applicant for the initial renewal of licensure ~~certification~~ to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant’s certificate after the effective date of this section.



3. For any subsequent renewal of the applicant's certificate, the department shall submit the required information for a statewide criminal history check of the applicant to the Florida Department of Law Enforcement.

(d) Any applicant for initial licensure ~~certification~~ or renewal of licensure ~~certification~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who submits to the Department of Health a set of fingerprints and information required for the criminal history check required under this section shall not be required to provide a subsequent set of fingerprints or other duplicate information required for a criminal history check to the Agency for Health Care Administration, the Department of Juvenile Justice, or the Department of Children and Families for employment or licensure with such agency or department, if the applicant has undergone a criminal history check as a condition of initial licensure ~~certification~~ or renewal of licensure ~~certification~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ with the Department of Health, notwithstanding any other provision of law to the contrary. In lieu of such duplicate submission, the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Children and Families shall obtain criminal history information for employment or licensure of persons licensed ~~certified~~ under s. 464.012 by such agency or department from the Department of Health's health care practitioner credentialing system.

(5) Each person who is required to submit information pursuant to this section may submit additional information to the Department of Health. Such information may include, but is



not limited to:

(a) Information regarding publications in peer-reviewed professional literature within the previous 10 years.

(b) Information regarding professional or community service activities or awards.

(c) Languages, other than English, used by the applicant to communicate with patients or clients and identification of any translating service that may be available at the place where the applicant primarily conducts his or her practice.

(d) An indication of whether the person participates in the Medicaid program.

Section 45. Effective October 1, 2018, subsection (2) of section 456.0392, Florida Statutes, is amended to read:

456.0392 Prescription labeling.—

(2) A prescription for a drug that is not listed as a controlled substance in chapter 893 which is written by an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012 is presumed, subject to rebuttal, to be valid and within the parameters of the prescriptive authority delegated by a practitioner licensed under chapter 458, chapter 459, or chapter 466.

Section 46. Effective October 1, 2018, paragraph (a) of subsection (1) and subsection (6) of section 456.041, Florida Statutes, are amended to read:

456.041 Practitioner profile; creation.—

(1)(a) The Department of Health shall compile the information submitted pursuant to s. 456.039 into a practitioner profile of the applicant submitting the information, except that the Department of Health shall develop a format to compile



uniformly any information submitted under s. 456.039(4)(b). Beginning July 1, 2001, the Department of Health may compile the information submitted pursuant to s. 456.0391 into a practitioner profile of the applicant submitting the information. The protocol submitted pursuant to s. 464.012(3) must be included in the practitioner profile of the advanced practice registered nurse ~~advanced registered nurse practitioner~~.

(6) The Department of Health shall provide in each practitioner profile for every physician or advanced practice registered nurse ~~advanced registered nurse practitioner~~ terminated for cause from participating in the Medicaid program, pursuant to s. 409.913, or sanctioned by the Medicaid program a statement that the practitioner has been terminated from participating in the Florida Medicaid program or sanctioned by the Medicaid program.

Section 47. Effective October 1, 2018, subsection (1) of section 456.048, Florida Statutes, is amended to read:

456.048 Financial responsibility requirements for certain health care practitioners.—

(1) As a prerequisite for licensure or license renewal, the Board of Acupuncture, the Board of Chiropractic Medicine, the Board of Podiatric Medicine, and the Board of Dentistry shall, by rule, require that all health care practitioners licensed under the respective board, and the Board of Medicine and the Board of Osteopathic Medicine shall, by rule, require that all anesthesiologist assistants licensed pursuant to s. 458.3475 or s. 459.023, and the Board of Nursing shall, by rule, require that advanced practice registered nurses licensed ~~advanced~~



~~registered nurse practitioners certified~~ under s. 464.012, and the department shall, by rule, require that midwives maintain medical malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by the board or department to be sufficient to cover claims arising out of the rendering of or failure to render professional care and services in this state.

Section 48. Effective October 1, 2018, subsection (7) of section 456.072, Florida Statutes, is amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(7) Notwithstanding subsection (2), upon a finding that a physician has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a manner that violates the standard of practice set forth in s. 458.331(1)(q) or (t), s. 459.015(1)(t) or (x), s. 461.013(1)(o) or (s), or s. 466.028(1)(p) or (x), or that an advanced practice registered nurse ~~advanced registered nurse practitioner~~ has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a manner that violates the standard of practice set forth in s. 464.018(1)(n) or (p)6., the physician or advanced practice registered nurse ~~advanced registered nurse practitioner~~ shall be suspended for a period of not less than 6 months and pay a fine of not less than $10,000 per count. Repeated violations shall result in increased penalties.

Section 49. Effective October 1, 2018, paragraph (g) of subsection (1) and subsection (2) of section 456.44, Florida Statutes, are amended to read:

456.44 Controlled substance prescribing.—


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

(g) "Registrant" means a physician, a physician assistant, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who meets the requirements of subsection (2).

(2) REGISTRATION.—A physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under part I of chapter 464 who prescribes any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, for the treatment of chronic nonmalignant pain, must:

(a) Designate himself or herself as a controlled substance prescribing practitioner on his or her practitioner profile.

(b) Comply with the requirements of this section and applicable board rules.

Section 50. Effective October 1, 2018, paragraph (c) of subsection (2) of section 458.3265, Florida Statutes, is amended to read:

458.3265 Pain-management clinics.—

(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities apply to any physician who provides professional services in a pain-management clinic that is required to be registered in subsection (1).

(c) A physician, a physician assistant, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ must perform a physical examination of a patient on the same day that the physician prescribes a controlled substance to a patient at a pain-management clinic. If the physician prescribes



more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the physician must document in the patient's record the reason for prescribing that quantity.

Section 51. Effective October 1, 2018, paragraph (dd) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(dd) Failing to supervise adequately the activities of those physician assistants, paramedics, emergency medical technicians, advanced practice registered nurses ~~advanced registered nurse practitioners~~, or anesthesiologist assistants acting under the supervision of the physician.

Section 52. Effective October 1, 2018, paragraph (a) of subsection (1) and subsection (3) of section 458.348, Florida Statutes, are amended to read:

458.348 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(1) NOTICE.—

(a) When a physician enters into a formal supervisory relationship or standing orders with an emergency medical technician or paramedic licensed pursuant to s. 401.27, which relationship or orders contemplate the performance of medical acts, or when a physician enters into an established protocol with an advanced practice registered nurse ~~advanced registered nurse practitioner~~, which protocol contemplates the performance



of medical acts set forth in s. 464.012(3) and (4), the physician shall submit notice to the board. The notice shall contain a statement in substantially the following form:

I, ...(name and professional license number of physician)..., of ...(address of physician)... have hereby entered into a formal supervisory relationship, standing orders, or an established protocol with ...(number of persons)... emergency medical technician(s), ...(number of persons)... paramedic(s), or ...(number of persons)... advanced practice registered nurse(s) ~~advanced registered nurse practitioner(s)~~.

(3) SUPERVISORY RELATIONSHIPS IN MEDICAL OFFICE SETTINGS.—A physician who supervises an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant at a medical office other than the physician's primary practice location, where the advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant is not under the onsite supervision of a supervising physician, must comply with the standards set forth in this subsection. For the purpose of this subsection, a physician's "primary practice location" means the address reflected on the physician's profile published pursuant to s. 456.041.

(a) A physician who is engaged in providing primary health care services may not supervise more than four offices in addition to the physician's primary practice location. For the purpose of this subsection, "primary health care" means health care services that are commonly provided to patients without referral from another practitioner, including obstetrical and



gynecological services, and excludes practices providing primarily dermatologic and skin care services, which include aesthetic skin care services.

(b) A physician who is engaged in providing specialty health care services may not supervise more than two offices in addition to the physician's primary practice location. For the purpose of this subsection, "specialty health care" means health care services that are commonly provided to patients with a referral from another practitioner and excludes practices providing primarily dermatologic and skin care services, which include aesthetic skin care services.

(c) A physician who supervises an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant at a medical office other than the physician's primary practice location, where the advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant is not under the onsite supervision of a supervising physician and the services offered at the office are primarily dermatologic or skin care services, which include aesthetic skin care services other than plastic surgery, must comply with the standards listed in subparagraphs 1.-4. Notwithstanding s. 458.347(4)(e)6., a physician supervising a physician assistant pursuant to this paragraph may not be required to review and cosign charts or medical records prepared by such physician assistant.

1. The physician shall submit to the board the addresses of all offices where he or she is supervising an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or a physician's assistant which are not the physician's primary



practice location.

2. The physician must be board certified or board eligible in dermatology or plastic surgery as recognized by the board pursuant to s. 458.3312.

3. All such offices that are not the physician's primary place of practice must be within 25 miles of the physician's primary place of practice or in a county that is contiguous to the county of the physician's primary place of practice. However, the distance between any of the offices may not exceed 75 miles.

4. The physician may supervise only one office other than the physician's primary place of practice except that until July 1, 2011, the physician may supervise up to two medical offices other than the physician's primary place of practice if the addresses of the offices are submitted to the board before July 1, 2006. Effective July 1, 2011, the physician may supervise only one office other than the physician's primary place of practice, regardless of when the addresses of the offices were submitted to the board.

(d) A physician who supervises an office in addition to the physician's primary practice location must conspicuously post in each of the physician's offices a current schedule of the regular hours when the physician is present in that office and the hours when the office is open while the physician is not present.

(e) This subsection does not apply to health care services provided in facilities licensed under chapter 395 or in conjunction with a college of medicine, a college of nursing, an accredited graduate medical program, or a nursing education



program; not-for-profit, family-planning clinics that are not licensed pursuant to chapter 390; rural and federally qualified health centers; health care services provided in a nursing home licensed under part II of chapter 400, an assisted living facility licensed under part I of chapter 429, a continuing care facility licensed under chapter 651, or a retirement community consisting of independent living units and a licensed nursing home or assisted living facility; anesthesia services provided in accordance with law; health care services provided in a designated rural health clinic; health care services provided to persons enrolled in a program designed to maintain elderly persons and persons with disabilities in a home or community-based setting; university primary care student health centers; school health clinics; or health care services provided in federal, state, or local government facilities. Subsection (2) and this subsection do not apply to offices at which the exclusive service being performed is laser hair removal by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant.

Section 53. Effective October 1, 2018, paragraph (c) of subsection (2) of section 459.0137, Florida Statutes, is amended to read:

459.0137 Pain-management clinics.—

(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities apply to any osteopathic physician who provides professional services in a pain-management clinic that is required to be registered in subsection (1).

(c) An osteopathic physician, a physician assistant, or an advanced practice registered nurse ~~advanced registered nurse~~



~~practitioner~~ must perform a physical examination of a patient on the same day that the physician prescribes a controlled substance to a patient at a pain-management clinic. If the osteopathic physician prescribes more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the osteopathic physician must document in the patient's record the reason for prescribing that quantity.

Section 54. Effective October 1, 2018, paragraph (hh) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(hh) Failing to supervise adequately the activities of those physician assistants, paramedics, emergency medical technicians, advanced practice registered nurses ~~advanced registered nurse practitioners~~, anesthesiologist assistants, or other persons acting under the supervision of the osteopathic physician.

Section 55. Effective October 1, 2018, paragraph (a) of subsection (1) and subsection (3) of section 459.025, Florida Statutes, are amended to read:

459.025 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(1) NOTICE.—

(a) When an osteopathic physician enters into a formal supervisory relationship or standing orders with an emergency medical technician or paramedic licensed pursuant to s. 401.27,


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which relationship or orders contemplate the performance of medical acts, or when an osteopathic physician enters into an established protocol with an advanced practice registered nurse ~~advanced registered nurse practitioner~~, which protocol contemplates the performance of medical acts or acts set forth in s. 464.012(3) and (4), the osteopathic physician shall submit notice to the board. The notice must contain a statement in substantially the following form:

I, ...(name and professional license number of osteopathic physician)..., of ...(address of osteopathic physician)... have hereby entered into a formal supervisory relationship, standing orders, or an established protocol with ...(number of persons)... emergency medical technician(s), ...(number of persons)... paramedic(s), or ...(number of persons)... advanced practice registered nurse(s) ~~advanced registered nurse practitioner(s)~~.

(3) SUPERVISORY RELATIONSHIPS IN MEDICAL OFFICE SETTINGS.—An osteopathic physician who supervises an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant at a medical office other than the osteopathic physician's primary practice location, where the advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant is not under the onsite supervision of a supervising osteopathic physician, must comply with the standards set forth in this subsection. For the purpose of this subsection, an osteopathic physician's "primary practice location" means the address reflected on the physician's profile published pursuant to s. 456.041.



(a) An osteopathic physician who is engaged in providing primary health care services may not supervise more than four offices in addition to the osteopathic physician's primary practice location. For the purpose of this subsection, "primary health care" means health care services that are commonly provided to patients without referral from another practitioner, including obstetrical and gynecological services, and excludes practices providing primarily dermatologic and skin care services, which include aesthetic skin care services.

(b) An osteopathic physician who is engaged in providing specialty health care services may not supervise more than two offices in addition to the osteopathic physician's primary practice location. For the purpose of this subsection, "specialty health care" means health care services that are commonly provided to patients with a referral from another practitioner and excludes practices providing primarily dermatologic and skin care services, which include aesthetic skin care services.

(c) An osteopathic physician who supervises an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant at a medical office other than the osteopathic physician's primary practice location, where the advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant is not under the onsite supervision of a supervising osteopathic physician and the services offered at the office are primarily dermatologic or skin care services, which include aesthetic skin care services other than plastic surgery, must comply with the standards listed in subparagraphs 1.-4. Notwithstanding s.



459.022(4)(e)6., an osteopathic physician supervising a physician assistant pursuant to this paragraph may not be required to review and cosign charts or medical records prepared by such physician assistant.

1. The osteopathic physician shall submit to the Board of Osteopathic Medicine the addresses of all offices where he or she is supervising or has a protocol with an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or a physician ~~physician's~~ assistant which are not the osteopathic physician's primary practice location.

2. The osteopathic physician must be board certified or board eligible in dermatology or plastic surgery as recognized by the Board of Osteopathic Medicine pursuant to s. 459.0152.

3. All such offices that are not the osteopathic physician's primary place of practice must be within 25 miles of the osteopathic physician's primary place of practice or in a county that is contiguous to the county of the osteopathic physician's primary place of practice. However, the distance between any of the offices may not exceed 75 miles.

4. The osteopathic physician may supervise only one office other than the osteopathic physician's primary place of practice except that until July 1, 2011, the osteopathic physician may supervise up to two medical offices other than the osteopathic physician's primary place of practice if the addresses of the offices are submitted to the Board of Osteopathic Medicine before July 1, 2006. Effective July 1, 2011, the osteopathic physician may supervise only one office other than the osteopathic physician's primary place of practice, regardless of when the addresses of the offices were submitted to the Board of



Osteopathic Medicine.

(d) An osteopathic physician who supervises an office in addition to the osteopathic physician's primary practice location must conspicuously post in each of the osteopathic physician's offices a current schedule of the regular hours when the osteopathic physician is present in that office and the hours when the office is open while the osteopathic physician is not present.

(e) This subsection does not apply to health care services provided in facilities licensed under chapter 395 or in conjunction with a college of medicine or college of nursing or an accredited graduate medical or nursing education program; offices where the only service being performed is hair removal by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant; not-for-profit, family-planning clinics that are not licensed pursuant to chapter 390; rural and federally qualified health centers; health care services provided in a nursing home licensed under part II of chapter 400, an assisted living facility licensed under part I of chapter 429, a continuing care facility licensed under chapter 651, or a retirement community consisting of independent living units and either a licensed nursing home or assisted living facility; anesthesia services provided in accordance with law; health care services provided in a designated rural health clinic; health care services provided to persons enrolled in a program designed to maintain elderly persons and persons with disabilities in a home or community-based setting; university primary care student health centers; school health clinics; or health care services provided in



federal, state, or local government facilities.

Section 56. Effective October 1, 2018, subsection (2) of section 464.003, Florida Statutes, is amended to read:

464.003 Definitions.—As used in this part, the term:

(2) "Advanced or specialized nursing practice" means, in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the board which, by virtue of postbasic specialized education, training, and experience, are appropriately performed by an advanced practice registered nurse ~~advanced registered nurse practitioner~~. Within the context of advanced or specialized nursing practice, the advanced practice registered nurse ~~advanced registered nurse practitioner~~ may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The advanced practice registered nurse ~~advanced registered nurse practitioner~~ may also perform acts of medical diagnosis and treatment, prescription, and operation as authorized within the framework of an established supervisory protocol. The department may, by rule, require that a copy of the protocol be filed with the department along with the notice required by s. 458.348.

Section 57. Effective October 1, 2018, subsection (2) of section 464.004, Florida Statutes, is amended to read:

464.004 Board of Nursing; membership; appointment; terms.—

(2) Seven members of the board must be registered nurses who are residents of this state and who have been engaged in the practice of professional nursing for at least 4 years, including at least one advanced practice registered nurse ~~advanced registered nurse practitioner~~, one nurse educator member of an



approved program, and one nurse executive. These seven board members should be representative of the diverse areas of practice within the nursing profession. In addition, three members of the board must be licensed practical nurses who are residents of this state and who have been actively engaged in the practice of practical nursing for at least 4 years prior to their appointment. The remaining three members must be residents of the state who have never been licensed as nurses and who are in no way connected with the practice of nursing. No person may be appointed as a lay member who is in any way connected with, or has any financial interest in, any health care facility, agency, or insurer. At least one member of the board must be 60 years of age or older.

Section 58. Effective October 1, 2018, paragraph (b) of subsection (3) of section 464.013, Florida Statutes, is amended to read:

464.013 Renewal of license or certificate.—

(3) The board shall by rule prescribe up to 30 hours of continuing education biennially as a condition for renewal of a license or certificate.

(b) Notwithstanding the exemption in paragraph (a), as part of the maximum 30 hours of continuing education hours required under this subsection, advanced practice registered nurses licensed ~~advanced registered nurse practitioners certified~~ under s. 464.012 must complete at least 3 hours of continuing education on the safe and effective prescription of controlled substances. Such continuing education courses must be offered by a statewide professional association of physicians in this state accredited to provide educational activities designated for the


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American Medical Association Physician's Recognition Award Category 1 credit, the American Nurses Credentialing Center, the American Association of Nurse Anesthetists, or the American Association of Nurse Practitioners and may be offered in a distance learning format.

Section 59. Effective October 1, 2018, subsections (5) and (8), of section 464.015, Florida Statutes, are amended to read:

464.015 Titles and abbreviations; restrictions; penalty.—

(5) Only persons who hold valid licenses ~~certificates~~ to practice as clinical nurse specialists in this state may use the title "Clinical Nurse Specialist" and the abbreviation "C.N.S."

(8) Only persons who hold valid licenses ~~certificates~~ to practice as advanced practice registered nurses ~~advanced registered nurse practitioners~~ in this state may use the title "Advanced Practice Registered Nurse" ~~"Advanced Registered Nurse Practitioner"~~ and the abbreviation "A.P.R.N." ~~"A.R.N.P."~~

Section 60. Effective October 1, 2018, subsection (9) of section 464.015, Florida Statutes, as amended by section 9 of chapter 2016-139, Laws of Florida, is amended to read:

464.015 Titles and abbreviations; restrictions; penalty.—

(9) A person may not practice or advertise as, or assume the title of, registered nurse, licensed practical nurse, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ or use the abbreviation "R.N.," "L.P.N.," "C.N.S.," "C.R.N.A.," "C.N.M.," "C.N.P.," or "A.P.R.N.," ~~"A.R.N.P."~~ or take any other action that would lead the public to believe that person was authorized by law to



practice as such or is performing nursing services pursuant to the exception set forth in s. 464.022(8), unless that person is licensed, certified, or authorized pursuant to s. 464.0095 to practice as such.

Section 61. Effective October 1, 2018, paragraph (a) of subsection (2) of section 464.016, Florida Statutes, is amended to read:

464.016 Violations and penalties.—

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Using the name or title "Nurse," "Registered Nurse," "Licensed Practical Nurse," "Clinical Nurse Specialist," "Certified Registered Nurse Anesthetist," "Certified Nurse Practitioner," "Certified Nurse Midwife," "Advanced Practice Registered Nurse," ~~"Advanced Registered Nurse Practitioner,"~~ or any other name or title which implies that a person was licensed or certified as same, unless such person is duly licensed or certified.

Section 62. Effective October 1, 2018, paragraphs (p) and (q) of subsection (1) of section 464.018, Florida Statutes, are amended to read:

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(p) For an advanced practice registered nurse ~~advanced registered nurse practitioner~~:

1. Presigning blank prescription forms.

2. Prescribing for office use any medicinal drug appearing



on Schedule II in chapter 893.

3. Prescribing, ordering, dispensing, administering, supplying, selling, or giving a drug that is an amphetamine, a sympathomimetic amine drug, or a compound designated in s. 893.03(2) as a Schedule II controlled substance, to or for any person except for:

a. The treatment of narcolepsy; hyperkinesis; behavioral syndrome in children characterized by the developmentally inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability, and impulsivity; or drug-induced brain dysfunction.

b. The differential diagnostic psychiatric evaluation of depression or the treatment of depression shown to be refractory to other therapeutic modalities.

c. The clinical investigation of the effects of such drugs or compounds when an investigative protocol is submitted to, reviewed by, and approved by the department before such investigation is begun.

4. Prescribing, ordering, dispensing, administering, supplying, selling, or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance. As used in this subparagraph, the term "muscle building" does not include the treatment of injured muscle. A prescription written for the drug products identified in this subparagraph may be dispensed by a pharmacist with the presumption that the prescription is for legitimate medical use.

5. Promoting or advertising on any prescription form a community pharmacy unless the form also states: "This



prescription may be filled at any pharmacy of your choice."

6. Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including a controlled substance, other than in the course of his or her professional practice. For the purposes of this subparagraph, it is legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the advanced practice registered nurse's ~~advanced registered nurse practitioner's~~ professional practice, without regard to his or her intent.

7. Prescribing, dispensing, or administering a medicinal drug appearing on any schedule set forth in chapter 893 to himself or herself, except a drug prescribed, dispensed, or administered to the advanced practice registered nurse ~~advanced registered nurse practitioner~~ by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

8. Prescribing, ordering, dispensing, administering, supplying, selling, or giving amygdalin (laetrile) to any person.

9. Dispensing a substance designated in s. 893.03(2) or (3) as a substance controlled in Schedule II or Schedule III, respectively, in violation of s. 465.0276.

10. Promoting or advertising through any communication medium the use, sale, or dispensing of a substance designated in s. 893.03 as a controlled substance.

(q) For a psychiatric nurse:

1. Presigning blank prescription forms.



2477 2. Prescribing for office use any medicinal drug appearing
2478 in Schedule II of s. 893.03.
2479 3. Prescribing, ordering, dispensing, administering,
2480 supplying, selling, or giving a drug that is an amphetamine, a
2481 sympathomimetic amine drug, or a compound designated in s.
2482 893.03(2) as a Schedule II controlled substance, to or for any
2483 person except for:
2484 a. The treatment of narcolepsy; hyperkinesis; behavioral
2485 syndrome in children characterized by the developmentally
2486 inappropriate symptoms of moderate to severe distractibility,
2487 short attention span, hyperactivity, emotional lability, and
2488 impulsivity; or drug-induced brain dysfunction.
2489 b. The differential diagnostic psychiatric evaluation of
2490 depression or the treatment of depression shown to be refractory
2491 to other therapeutic modalities.
2492 c. The clinical investigation of the effects of such drugs
2493 or compounds when an investigative protocol is submitted to,
2494 reviewed by, and approved by the department before such
2495 investigation is begun.
2496 4. Prescribing, ordering, dispensing, administering,
2497 supplying, selling, or giving growth hormones, testosterone or
2498 its analogs, human chorionic gonadotropin (HCG), or other
2499 hormones for the purpose of muscle building or to enhance
2500 athletic performance. As used in this subparagraph, the term
2501 “muscle building” does not include the treatment of injured
2502 muscle. A prescription written for the drug products identified
2503 in this subparagraph may be dispensed by a pharmacist with the
2504 presumption that the prescription is for legitimate medical use.
2505 5. Promoting or advertising on any prescription form a



community pharmacy unless the form also states: "This prescription may be filled at any pharmacy of your choice."

6. Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including a controlled substance, other than in the course of his or her professional practice. For the purposes of this subparagraph, it is legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the advanced practice registered nurse's ~~advanced registered nurse practitioner's~~ professional practice, without regard to his or her intent.

7. Prescribing, dispensing, or administering a medicinal drug appearing on any schedule set forth in chapter 893 to himself or herself, except a drug prescribed, dispensed, or administered to the psychiatric nurse by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

8. Prescribing, ordering, dispensing, administering, supplying, selling, or giving amygdalin (laetrile) to any person.

9. Dispensing a substance designated in s. 893.03(2) or (3) as a substance controlled in Schedule II or Schedule III, respectively, in violation of s. 465.0276.

10. Promoting or advertising through any communication medium the use, sale, or dispensing of a substance designated in s. 893.03 as a controlled substance.

Section 63. Effective October 1, 2018, paragraph (a) of

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subsection (4) of section 464.0205, Florida Statutes, is amended to read:

464.0205 Retired volunteer nurse certificate.—

(4) A retired volunteer nurse receiving certification from the board shall:

(a) Work under the direct supervision of the director of a county health department, a physician working under a limited license issued pursuant to s. 458.317 or s. 459.0075, a physician licensed under chapter 458 or chapter 459, an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012, or a registered nurse licensed under s. 464.008 or s. 464.009.

Section 64. Effective October 1, 2018, subsection (2) of section 467.003, Florida Statutes, is amended to read:

467.003 Definitions.—As used in this chapter, unless the context otherwise requires:

(2) "Certified nurse midwife" means a person who is licensed as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ under part I of chapter 464 and who is certified to practice midwifery by the American College of Nurse Midwives.

Section 65. Effective October 1, 2018, subsection (1) of section 480.0475, Florida Statutes, is amended to read:

480.0475 Massage establishments; prohibited practices.—

(1) A person may not operate a massage establishment between the hours of midnight and 5 a.m. This subsection does not apply to a massage establishment:

(a) Located on the premises of a health care facility as defined in s. 408.07; a health care clinic as defined in s.



400.9905(4); a hotel, motel, or bed and breakfast inn, as those terms are defined in s. 509.242; a timeshare property as defined in s. 721.05; a public airport as defined in s. 330.27; or a pari-mutuel facility as defined in s. 550.002;

(b) In which every massage performed between the hours of midnight and 5 a.m. is performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464, or a dentist licensed under chapter 466; or

(c) Operating during a special event if the county or municipality in which the establishment operates has approved such operation during the special event.

Section 66. Effective October 1, 2018, subsection (7) of section 483.041, Florida Statutes, is amended to read:

483.041 Definitions.—As used in this part, the term:

(7) "Licensed practitioner" means a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461; a certified optometrist licensed under chapter 463; a dentist licensed under chapter 466; a person licensed under chapter 462; a consultant pharmacist or doctor of pharmacy licensed under chapter 465; or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464; or a duly licensed practitioner from another state licensed under similar statutes who orders examinations on materials or specimens for nonresidents of the State of Florida, but who



reside in the same state as the requesting licensed practitioner.

Section 67. Effective October 1, 2018, subsection (5) of section 483.801, Florida Statutes, is amended to read:

483.801 Exemptions.—This part applies to all clinical laboratories and clinical laboratory personnel within this state, except:

(5) Advanced practice registered nurses ~~advanced registered nurse practitioners~~ licensed under part I of chapter 464 who perform provider-performed microscopy procedures (PPMP) in an exclusive-use laboratory setting.

Section 68. Effective October 1, 2018, paragraph (a) of subsection (11) of section 486.021, Florida Statutes, is amended to read:

486.021 Definitions.—In this chapter, unless the context otherwise requires, the term:

(11) "Practice of physical therapy" means the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto by the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of the foregoing or related thereto; the performance of tests of



neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

(a) A physical therapist may implement a plan of treatment developed by the physical therapist for a patient or provided for a patient by a practitioner of record or by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under s. 464.012. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient's condition is found to be outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 30 days for a condition not previously assessed by a practitioner of record, the physical therapist shall have a practitioner of record review and sign the plan. The requirement that a physical therapist have a practitioner of record review and sign a plan of treatment does not apply when a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the physical therapist is treating the condition. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

Section 69. Effective October 1, 2018, paragraph (d) of subsection (1) of section 490.012, Florida Statutes, is amended to read:

490.012 Violations; penalties; injunction.—



(1)

(d) A person may not ~~No person shall~~ hold herself or himself out by any title or description incorporating the word, or a permutation of the word, "psychotherapy" unless such person holds a valid, active license under chapter 458, chapter 459, chapter 490, or chapter 491, or such person is licensed ~~certified~~ as an advanced practice registered nurse under ~~advanced registered nurse practitioner, pursuant to~~ s. 464.012, who has been determined by the Board of Nursing as a specialist in psychiatric mental health.

Section 70. Effective October 1, 2018, subsection (1) of section 491.0057, Florida Statutes, is amended to read:

491.0057 Dual licensure as a marriage and family therapist.—The department shall license as a marriage and family therapist any person who demonstrates to the board that he or she:

(1) Holds a valid, active license as a psychologist under chapter 490 or as a clinical social worker or mental health counselor under this chapter, or is licensed ~~certified~~ under s. 464.012 as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who has been determined by the Board of Nursing as a specialist in psychiatric mental health.

Section 71. Effective October 1, 2018, paragraph (d) of subsection (1) and subsection (2) of section 491.012, Florida Statutes, are amended to read:

491.012 Violations; penalty; injunction.—

(1) It is unlawful and a violation of this chapter for any person to:

(d) Use the terms psychotherapist, sex therapist, or



juvenile sexual offender therapist unless such person is licensed pursuant to this chapter or chapter 490, or is licensed ~~certified~~ under s. 464.012 as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training, and licensure.

(2) It is unlawful and a violation of this chapter for any person to describe her or his services using the following terms or any derivative thereof, unless such person holds a valid, active license under this chapter or chapter 490, or is licensed ~~certified~~ under s. 464.012 as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training, and licensure:

(a) "Psychotherapy."

(b) "Sex therapy."

(c) "Sex counseling."

(d) "Clinical social work."

(e) "Psychiatric social work."

(f) "Marriage and family therapy."

(g) "Marriage and family counseling."

(h) "Marriage counseling."

(i) "Family counseling."

(j) "Mental health counseling."

Section 72. Effective October 1, 2018, subsection (2) of



section 493.6108, Florida Statutes, is amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(2) In addition to subsection (1), the department shall make an investigation of the general physical fitness of the Class "G" applicant to bear a weapon or firearm. Determination of physical fitness shall be certified by a physician or physician assistant currently licensed pursuant to chapter 458, chapter 459, or any similar law of another state or authorized to act as a licensed physician by a federal agency or department or by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ currently licensed pursuant to chapter 464. Such certification shall be submitted on a form provided by the department.

Section 73. Effective October 1, 2018, paragraph (b) of subsection (1) of section 627.357, Florida Statutes, is amended to read:

627.357 Medical malpractice self-insurance.—

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

(b) "Health care provider" means any:

1. Hospital licensed under chapter 395.

2. Physician licensed, or physician assistant licensed, under chapter 458.

3. Osteopathic physician or physician assistant licensed under chapter 459.

4. Podiatric physician licensed under chapter 461.

5. Health maintenance organization certificated under part I of chapter 641.

6. Ambulatory surgical center licensed under chapter 395.

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7. Chiropractic physician licensed under chapter 460.

8. Psychologist licensed under chapter 490.

9. Optometrist licensed under chapter 463.

10. Dentist licensed under chapter 466.

11. Pharmacist licensed under chapter 465.

12. Registered nurse, licensed practical nurse, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed or registered under part I of chapter 464.

13. Other medical facility.

14. Professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., 4., 7., 8., 9., 10., 11., and 12. for professional activity.

Section 74. Effective October 1, 2018, subsection (6) of section 627.6471, Florida Statutes, is amended to read:

627.6471 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(6) If psychotherapeutic services are covered by a policy issued by the insurer, the insurer shall provide eligibility criteria for each group of health care providers licensed under chapter 458, chapter 459, chapter 490, or chapter 491, which include psychotherapy within the scope of their practice as provided by law, or for any person who is licensed ~~certified~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ in psychiatric mental health under s. 464.012. When psychotherapeutic services are covered, eligibility criteria shall be established by the insurer to be included in the insurer's criteria for selection of network providers. The insurer may not discriminate against a health care provider by



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excluding such practitioner from its provider network solely on the basis of the practitioner's license.

Section 75. Effective October 1, 2018, subsections (15) and (17) of section 627.6472, Florida Statutes, are amended to read:

627.6472 Exclusive provider organizations.—

(15) If psychotherapeutic services are covered by a policy issued by the insurer, the insurer shall provide eligibility criteria for all groups of health care providers licensed under chapter 458, chapter 459, chapter 490, or chapter 491, which include psychotherapy within the scope of their practice as provided by law, or for any person who is licensed ~~certified~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ in psychiatric mental health under s. 464.012. When psychotherapeutic services are covered, eligibility criteria shall be established by the insurer to be included in the insurer's criteria for selection of network providers. The insurer may not discriminate against a health care provider by excluding such practitioner from its provider network solely on the basis of the practitioner's license.

(17) An exclusive provider organization shall not discriminate with respect to participation as to any advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed ~~and certified~~ pursuant to s. 464.012, who is acting within the scope of such license ~~and certification~~, solely on the basis of such license ~~or certification~~. This subsection shall not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the



responsibilities of the plan.

Section 76. Effective October 1, 2018, paragraph (a) of subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 must provide personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) *Medical benefits.*—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, or a chiropractic physician licensed under chapter 460 or



that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based upon a referral by a provider described in this subparagraph.



e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464 has determined that the injured person had an emergency



medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to $2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and such insurer may not require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing

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channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 77. Effective October 1, 2018, subsection (5) of section 633.412, Florida Statutes, is amended to read:

633.412 Firefighters; qualifications for certification.—A person applying for certification as a firefighter must:

(5) Be in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 458; an osteopathic physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 459; or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed to practice in the state pursuant to chapter 464. Such examination may include, but need not be limited to, the National Fire Protection Association Standard 1582. A medical examination evidencing good physical condition shall be submitted to the division, on a form as provided by rule, before an individual is eligible for admission into a course under s. 633.408.

Section 78. Effective October 1, 2018, section 641.3923, Florida Statutes, is amended to read:

641.3923 Discrimination against providers prohibited.—A health maintenance organization may ~~shall~~ not discriminate with



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respect to participation as to any advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed ~~and certified~~ pursuant to s. 464.012, who is acting within the scope of such license ~~and certification~~, solely on the basis of such license ~~or certification~~. This section may ~~shall~~ not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan.

Section 79. Effective October 1, 2018, subsection (3) of section 766.103, Florida Statutes, is amended to read:

766.103 Florida Medical Consent Law.—

(3) No recovery shall be allowed in any court in this state against any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, podiatric physician licensed under chapter 461, dentist licensed under chapter 466, advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012, or physician assistant licensed under s. 458.347 or s. 459.022 in an action brought for treating, examining, or operating on a patient without his or her informed consent when:

(a)1. The action of the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant in obtaining the consent of the patient or another person authorized to give consent for the patient was in accordance with an accepted standard of medical



practice among members of the medical profession with similar training and experience in the same or similar medical community as that of the person treating, examining, or operating on the patient for whom the consent is obtained; and

2. A reasonable individual, from the information provided by the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant, under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, or dentists in the same or similar community who perform similar treatments or procedures; or

(b) The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant in accordance with the provisions of paragraph (a).

Section 80. Effective October 1, 2018, paragraph (d) of subsection (3) of section 766.1115, Florida Statutes, is amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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



(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association and its employees or a corporate medical group and its employees.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic



services or nonsurgical medical treatment free of charge to all low-income recipients.

15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

Section 81. Effective October 1, 2018, subsection (1) of section 766.1116, Florida Statutes, is amended to read:

766.1116 Health care practitioner; waiver of license renewal fees and continuing education requirements.—

(1) As used in this section, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458; an osteopathic physician or physician assistant licensed under chapter 459; a chiropractic physician licensed under chapter 460; a podiatric physician licensed under chapter 461; an advanced practice registered nurse ~~advanced registered nurse practitioner~~, registered nurse, or licensed practical nurse licensed under part I of chapter 464; a dentist or dental hygienist licensed under chapter 466; or a midwife



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licensed under chapter 467, who participates as a health care provider under s. 766.1115.

Section 82. Effective October 1, 2018, paragraph (c) of subsection (1) of section 766.118, Florida Statutes, is amended to read:

766.118 Determination of noneconomic damages.—

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

(c) "Practitioner" means any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, ~~or~~ chapter 486 or ~~certified under~~ s. 464.012. "Practitioner" also means any association, corporation, firm, partnership, or other business entity under which such practitioner practices or any employee of such practitioner or entity acting in the scope of his or her employment. For the purpose of determining the limitations on noneconomic damages set forth in this section, the term "practitioner" includes any person or entity for whom a practitioner is vicariously liable and any person or entity whose liability is based solely on such person or entity being vicariously liable for the actions of a practitioner.

Section 83. Effective October 1, 2018, subsection (5) of section 794.08, Florida Statutes, is amended to read:

794.08 Female genital mutilation.—

(5) This section does not apply to procedures performed by or under the direction of a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a registered nurse licensed under part I of chapter 464, a practical nurse licensed under part I of chapter 464, an advanced practice registered nurse ~~advanced registered nurse~~


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~~practitioner~~ licensed under part I of chapter 464, a midwife licensed under chapter 467, or a physician assistant licensed under chapter 458 or chapter 459 when necessary to preserve the physical health of a female person. This section also does not apply to any autopsy or limited dissection conducted pursuant to chapter 406.

Section 84. Effective October 1, 2018, subsection (23) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(23) "Practitioner" means a physician licensed under chapter 458, a dentist licensed under chapter 466, a veterinarian licensed under chapter 474, an osteopathic physician licensed under chapter 459, an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under chapter 464, a naturopath licensed under chapter 462, a certified optometrist licensed under chapter 463, a psychiatric nurse as defined in s. 394.455, a podiatric physician licensed under chapter 461, or a physician assistant licensed under chapter 458 or chapter 459, provided such practitioner holds a valid federal controlled substance registry number.

Section 85. Effective October 1, 2018, paragraph (b) of subsection (1) of section 893.05, Florida Statutes, is amended to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1)



(b) Pursuant to s. 458.347(4)(g), s. 459.022(4)(f), or s. 464.012(3), as applicable, a practitioner who supervises a licensed physician assistant or advanced practice registered nurse ~~advanced registered nurse practitioner~~ may authorize the licensed physician assistant or advanced practice registered nurse ~~advanced registered nurse practitioner~~ to order controlled substances for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400.

Section 86. Effective October 1, 2018, subsection (6) of section 943.13, Florida Statutes, is amended to read:

943.13 Officers' minimum qualifications for employment or appointment.—On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

(6) Have passed a physical examination by a licensed physician, physician assistant, or licensed advanced practice registered nurse ~~certified advanced registered nurse practitioner~~, based on specifications established by the commission. In order to be eligible for the presumption set forth in s. 112.18 while employed with an employing agency, a law enforcement officer, correctional officer, or correctional probation officer must have successfully passed the physical examination required by this subsection upon entering into



service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension. A law enforcement officer, correctional officer, or correctional probation officer may not use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.

Section 87. Effective October 1, 2018, paragraph (n) of subsection (1) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

(n) Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a physician assistant. The probationer or community controllee may not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

Section 88. Effective October 1, 2018, paragraph (i) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public



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

(3) HEALTH ISSUES.—

(i) *Epinephrine use and supply.*—

1. A student who has experienced or is at risk for life-threatening allergic reactions may carry an epinephrine auto-injector and self-administer epinephrine by auto-injector while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities if the school has been provided with parental and physician authorization. The State Board of Education, in cooperation with the Department of Health, shall adopt rules for such use of epinephrine auto-injectors that shall include provisions to protect the safety of all students from the misuse or abuse of auto-injectors. A school district, county health department, public-private partner, and their employees and volunteers shall be indemnified by the parent of a student authorized to carry an epinephrine auto-injector for any and all liability with respect to the student's use of an epinephrine auto-injector pursuant to this paragraph.

2. A public school may purchase a supply of epinephrine auto-injectors from a wholesale distributor as defined in s. 499.003 or may enter into an arrangement with a wholesale distributor or manufacturer as defined in s. 499.003 for the epinephrine auto-injectors at fair-market, free, or reduced prices for use in the event a student has an anaphylactic



reaction. The epinephrine auto-injectors must be maintained in a secure location on the public school's premises. The participating school district shall adopt a protocol developed by a licensed physician for the administration by school personnel who are trained to recognize an anaphylactic reaction and to administer an epinephrine auto-injection. The supply of epinephrine auto-injectors may be provided to and used by a student authorized to self-administer epinephrine by auto-injector under subparagraph 1. or trained school personnel.

3. The school district and its employees, agents, and the physician who provides the standing protocol for school epinephrine auto-injectors are not liable for any injury arising from the use of an epinephrine auto-injector administered by trained school personnel who follow the adopted protocol and whose professional opinion is that the student is having an anaphylactic reaction:

a. Unless the trained school personnel's action is willful and wanton;

b. Notwithstanding that the parents or guardians of the student to whom the epinephrine is administered have not been provided notice or have not signed a statement acknowledging that the school district is not liable; and

c. Regardless of whether authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~.

Section 89. Effective October 1, 2018, paragraph (b) of subsection (17) of section 1002.42, Florida Statutes, is amended to read:



1002.42 Private schools.—

(17) EPINEPHRINE SUPPLY.—

(b) The private school and its employees, agents, and the physician who provides the standing protocol for school epinephrine auto-injectors are not liable for any injury arising from the use of an epinephrine auto-injector administered by trained school personnel who follow the adopted protocol and whose professional opinion is that the student is having an anaphylactic reaction:

1. Unless the trained school personnel's action is willful and wanton;

2. Notwithstanding that the parents or guardians of the student to whom the epinephrine is administered have not been provided notice or have not signed a statement acknowledging that the school district is not liable; and

3. Regardless of whether authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~.

Section 90. Effective October 1, 2018, subsections (4) and (5) of section 1006.062, Florida Statutes, are amended to read:

1006.062 Administration of medication and provision of medical services by district school board personnel.—

(4) Nonmedical assistive personnel shall be allowed to perform health-related services upon successful completion of child-specific training by a registered nurse or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464, a physician licensed pursuant to chapter 458 or chapter 459, or a physician assistant licensed



pursuant to chapter 458 or chapter 459. All procedures shall be monitored periodically by a nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, physician assistant, or physician, including, but not limited to:

(a) Intermittent clean catheterization.

(b) Gastrostomy tube feeding.

(c) Monitoring blood glucose.

(d) Administering emergency injectable medication.

(5) For all other invasive medical services not listed in this subsection, a registered nurse or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464, a physician licensed pursuant to chapter 458 or chapter 459, or a physician assistant licensed pursuant to chapter 458 or chapter 459 shall determine if nonmedical district school board personnel shall be allowed to perform such service.

Section 91. Effective October 1, 2018, subsection (1) and paragraph (a) of subsection (2) of section 1009.65, Florida Statutes, are amended to read:

1009.65 Medical Education Reimbursement and Loan Repayment Program.—

(1) To encourage qualified medical professionals to practice in underserved locations where there are shortages of such personnel, there is established the Medical Education Reimbursement and Loan Repayment Program. The function of the program is to make payments that offset loans and educational expenses incurred by students for studies leading to a medical or nursing degree, medical or nursing licensure, or advanced practice registered nurse licensure ~~advanced registered nurse~~



~~practitioner certification~~ or physician assistant licensure. The following licensed or certified health care professionals are eligible to participate in this program: medical doctors with primary care specialties, doctors of osteopathic medicine with primary care specialties, physician's assistants, licensed practical nurses and registered nurses, and advanced practice registered nurses ~~advanced registered nurse practitioners~~ with primary care specialties such as certified nurse midwives. Primary care medical specialties for physicians include obstetrics, gynecology, general and family practice, internal medicine, pediatrics, and other specialties which may be identified by the Department of Health.

(2) From the funds available, the Department of Health shall make payments to selected medical professionals as follows:

(a) Up to $4,000 per year for licensed practical nurses and registered nurses, up to $10,000 per year for advanced practice registered nurses ~~advanced registered nurse practitioners~~ and physician's assistants, and up to $20,000 per year for physicians. Penalties for noncompliance shall be the same as those in the National Health Services Corps Loan Repayment Program. Educational expenses include costs for tuition, matriculation, registration, books, laboratory and other fees, other educational costs, and reasonable living expenses as determined by the Department of Health.

Section 92. Effective October 1, 2018, subsection (2) of section 1009.66, Florida Statutes, is amended to read:

1009.66 Nursing Student Loan Forgiveness Program.—

(2) To be eligible, a candidate must have graduated from an



accredited or approved nursing program and have received a Florida license as a licensed practical nurse or a registered nurse or a Florida license ~~certificate~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~.

Section 93. Effective October 1, 2018, subsection (3) of section 1009.67, Florida Statutes, is amended to read:

1009.67 Nursing scholarship program.—

(3) A scholarship may be awarded for no more than 2 years, in an amount not to exceed $8,000 per year. However, registered nurses pursuing a graduate degree for a faculty position or to practice as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may receive up to $12,000 per year. These amounts shall be adjusted by the amount of increase or decrease in the Consumer Price Index for All Urban Consumers published by the United States Department of Commerce.

Section 94. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete lines 98 - 105

and insert:

An act relating to licensed health care professionals; creating s. 456.0541, F.S.; establishing the Physician Fee Sharing Task Force within the Department of Health; providing for duties, membership, and meetings of the task force; requiring a report to the Governor and Legislature by a specified date; providing for expiration of the task force; amending s. 464.003,



F.S.; defining the term "advanced practice registered nurse"; deleting the terms "advanced registered nurse practitioner," "clinical nurse specialist," and "clinical nurse specialist practice," to conform to changes made by the act; repealing s. 464.0115, F.S., relating to the certification of clinical nurse specialists; amending s. 464.012, F.S.; requiring any nurse desiring to be licensed as an advanced practice registered nurse to apply to the Department of Health, submit proof that he or she holds a current license to practice professional nursing, and meet one or more specified requirements as determined by the Board of Nursing; authorizing the board to adopt rules to provide for provisional state licensure of certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists, and psychiatric nurses for a specified period of time; requiring the department and the board to establish a transition process for converting certain certified practitioners to licensed practitioners; authorizing certain certified practitioners to continue practicing advanced nursing during a specified period of time; providing construction; providing an expiration date for provisions relating to the transition from certification to licensure; conforming provisions to changes made by the act; amending s. 960.28, F.S.; conforming a cross-reference; amending ss. 39.303, 39.304, 90.503, 110.12315, 121.0515, 252.515, 310.071,



176038

310.073, 310.081, 320.0848, 381.00315, 381.00593, 383.14, 383.141, 384.27, 390.0111, 390.012, 394.455, 395.0191, 397.311, 397.4012, 397.427, 397.679, 397.6793, 400.021, 400.462, 400.487, 400.506, 400.9973, 400.9974, 400.9976, 400.9979, 401.445, 409.905, 409.908, 409.973, 429.918, 456.0391, 456.0392, 456.041, 456.048, 456.072, 456.44, 458.3265, 458.331, 458.348, 459.0137, 459.015, 459.025, 464.003, 464.004, 464.013, 464.015, 464.016, 464.018, 464.0205, 467.003, 480.0475, 483.041, 483.801, 486.021, 490.012, 491.0057, 491.012, 493.6108, 627.357, 627.6471, 627.6472, 627.736, 633.412, 641.3923, 766.103, 766.1115, 766.1116, 766.118, 794.08, 893.02, 893.05, 943.13, 948.03, 1002.20, 1002.42, 1006.062, 1009.65, 1009.66, and 1009.67, F.S.; conforming provisions to changes made by the act; providing effective dates.

By Senator Broxson

1-00805A-18 20181862__

A bill to be entitled

An act relating to physician fee sharing; amending ss. 458.331 and 459.015, F.S.; revising an exemption relating to grounds for disciplinary action by the Boards of Medicine and Osteopathic Medicine and the Department of Health to authorize specified forms of payment to a physician or osteopathic physician, respectively; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(i) Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. ~~The provisions of~~ This paragraph may ~~shall~~ not be construed to preclude a physician from entering into an alternative payment arrangement that otherwise complies with federal and state law or to preclude ~~prevent~~ a physician from receiving one or more of the following forms of payment or compensation, as long as the forms

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

1-00805A-18 20181862__

of payment or compensation comply with federal and state law:

1. A fee for professional consultation services; or

2. If the physician is an employee or independent contractor of the entity compensating the physician, a share of:

a. Profits, collections, or revenues based on the professional services provided by the physician, or on his or her direct supervision of the provision of such professional services, which are provided on behalf of the entity compensating the physician; or

b. Overall profit or revenue of the entity compensating the physician, provided that such share is not determined in a manner that directly takes into account the volume or value of services ordered by, but not performed by, or performed under the direct supervision of, the physician.

Section 2. Paragraph (j) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(j) Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, person, partnership, firm, corporation, or other business entity, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. ~~The provisions of~~ This paragraph may ~~shall~~ not be construed to preclude an osteopathic physician from entering

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

into an alternative payment arrangement that otherwise complies with federal and state law or to preclude ~~prevent~~ an osteopathic physician from receiving one or more of the following forms of payment or compensation, as long as the forms of payment or compensation comply with federal and state law:

1. A fee for professional consultation services; or

2. If the osteopathic physician is an employee or independent contractor of the entity compensating the osteopathic physician, a share of:

a. Profits, collections, or revenues based on the professional services provided by the osteopathic physician, or on his or her direct supervision of the provision of such professional services, which are provided on behalf of the entity compensating the osteopathic physician; or

b. Overall profit or revenue of the entity compensating the osteopathic physician, provided that such share is not determined in a manner that directly takes into account the volume or value of services ordered by, but not performed by, or performed under the direct supervision of, the osteopathic physician.

Section 3. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1862
Bill Number (if applicable)

204760
Amendment Barcode (if applicable)

Topic Fee Sharing

Name David Christian

Job Title Director - Govt Relations

Address 500 Hope Way
Street

Altamonte Springs
City *State* *Zip*

Phone 407/357-2493

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Hospital

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1862
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fee Sharing

Name David Christian

Job Title Director - Government Relations

Address 900 Hope Way
Street

Phone 407/357-2453

Altamonte Springs FL 32714
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Hospital

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

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

DATE	COMM	ACTION
2/8/18	SM	**Favorable**
2/13/18	JU	**Fav/CS**
2/19/18	GO	**Favorable**
2/22/18	RC	**Favorable**

February 8, 2018

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

Re: **CS/SB 28** – Judiciary Committee and Senators Bill Montford and Linda Stewart
HB 6527 – Representative Ramon Alexander
Relief of Christopher Cannon

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $500,000, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN CHRISTOPHER V. CANNON, THE CLAIMANT, AND THE CITY OF TALLAHASSEE. THE FINAL JUDGMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A CITY OF TALLAHASSEE VEHICLE WHICH INJURED CHRISTOPHER CANNON.

FINDINGS OF FACT:

This claim arises out of an accident involving a Dial-a-Ride (DART) vehicle and a motorcyclist, Christopher V. Cannon, which occurred on December 16, 2015, in Tallahassee, Florida. The Star Metro department of the City of Tallahassee provides public transport services on DART vehicles to residents with qualifying disabilities. The City of Tallahassee employed Ms. Rosie Kelly as a DART driver.

On December 16, 2015, Ms. Kelly was driving a DART vehicle during work hours. According to witness statements, as documented in the Leon County Sheriff's Office accident report, Ms. Kelly made a left turn onto southbound Capital Circle Northwest, from Old Bainbridge Road while Mr. Cannon

was driving his motorcycle northbound on Capital Circle Northwest. Ms. Kelly hit Mr. Cannon in a head-on crash, causing him to be ejected from his motorcycle. Mr. Cannon was not communicative at the scene. Mr. Cannon was transported by ambulance to Tallahassee Memorial Hospital. At the time of the accident, Mr. Cannon was wearing a motorcycle helmet and other protective gear in the form of a jacket and boots.

At the time of impact, Mr. Cannon suffered multiple trauma. Specifically, the accident caused Mr. Cannon to have various fractures and a pulmonary contusion. On December 17, 2015, Dr. Hank Hutchinson of Tallahassee Memorial Healthcare operated on Mr. Cannon by inserting a permanent rod in his right lower leg and a plate in his right upper arm. On January 6, 2016, Mr. Cannon underwent a second surgery for infection, while under anesthesia, at which time, Dr. Hutchinson excised and closed the infected wound.

Based on the accident, Officer Robert Gaines III issued a traffic citation to Ms. Kelly for violating the right of way with serious bodily injury.

Not including this incident, Ms. Kelly has had 7 prior accidents in her capacity as a driver for the City of Tallahassee. The City documented in Disciplinary Accident Reports each of these previous incidents as preventable accidents. Discipline ranged from a written reprimand to suspension.

On March 30, 2016, the court held a nonjury trial on the infraction as is required in incidents in which an accident results in serious bodily injury (s. 318.19(2), F.S.) On April 4, 2016, the court found Ms. Kelly guilty of both failing to yield to oncoming traffic when making a left turn, in violation of s. 316.122, F.S., and of causing serious bodily injury to Mr. Cannon. The court suspended Ms. Kelly's commercial driver's license for a period of 90 days.

FUTURE SERVICES REPORT: Dr. Hutchinson drafted a future care plan dated November 9, 2017. In it, he indicates that Mr. Cannon's arm and leg, fractured in the incident, have completely healed. Mr. Cannon has a full range of motion in his shoulder, elbow, forearm, hand, and wrist and walks with a smooth and steady gait. He is at a significantly less than 50 percent chance of needing

hip, knee, or ankle replacement surgery in the future, and is at very low risk of long-term arthritis due to the injuries.

LITIGATION HISTORY:

On July 11, 2016, Christopher V. Cannon filed a Complaint for Damages against the City of Tallahassee in Leon County Circuit Court. The complaint alleged an action for damages against the City of Tallahassee based upon negligent hiring, discipline, and supervision of employee Rosie Kelly whose negligent driving proximately caused permanent personal injuries to Mr. Cannon. The plaintiff filed a first amended complaint on January 11, 2017, adding a Count II cause of action against the City of Tallahassee, based upon vicarious liability.

On February 9, 2017, the City filed an answer to the first amended complaint. In it, the City admitted negligence based on vicarious liability, as asserted in Count II of the plaintiff's complaint. The City also moved to dismiss Count I of the complaint.

On March 3, 2017, the parties filed a joint motion for partial summary judgment. In their motion, the parties moved to dismiss Count I of the complaint in exchange for the City of Tallahassee admitting liability under Count II based on the vicarious liability doctrine of respondeat superior. The court granted the motion and reserved judgment on the issue of damages. On June 22, 2017, the court entered a final judgment for damages in the amount of the agreed to settlement of $200,000.

On May 24, 2017, the parties entered into a Mediation Settlement Agreement. Therein, the City of Tallahassee agreed to a total settlement of $700,000, of which the City would pay the first $200,000 within 14 days after approval by the City Commission and agreed to pay the remaining $500,000 through a claim bill. The City Commission approved the settlement amount at a City Commission meeting held on June 14, 2017.

Subsequently, the parties submitted to the court a Consented Motion for Court Approval of Settlement and Final Judgment. In it, the parties agreed that upon the entry of a court order approving the settlement, the City would pay $200,000 to the plaintiff and the Plaintiff would execute a general release and secure a dismissal with prejudice. The court entered an Order

Granting the Consented Motion for Court Approval of Settlement and Final Judgment on June 22, 2017. The plaintiff then filed with the court a Motion for a Voluntary Dismissal with Prejudice on October 16, 2017.

CLAIMANT'S POSITION: To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Ms. Kelly had a duty to safely operate the Dial-a-Ride bus. Ms. Kelly breached that duty by operating the bus in a negligent manner. Specifically, Ms. Kelly drove negligently by turning left when it was not clear to do so and colliding with Mr. Cannon. Had Ms. Kelly properly looked before attempting to turn, she would have seen Mr. Cannon and avoided hitting him, as it was foreseeable that she could have hit someone. Ms. Kelly was 100 percent at fault for causing the collision.

As a direct and proximate result of the negligence of Ms. Kelly, Mr. Cannon suffered permanent bodily injury. He has experienced pain and suffering, multiple surgeries, disfigurement, hospitalization and other medical costs, and loss of earnings.

As a result of the accident, Mr. Cannon suffered multiple fractures. He underwent several surgeries to have a rod and screws inserted through his right tibia (shinbone), and plates and screws to his right humorous (upper arm). The rod, plates, and screws are permanent. Mr. Cannon also had to be readmitted to the hospital and operated on for a wound infection on his left thigh. The surgery left Mr. Cannon with considerable scarring and permanent disfigurement at the surgery sites.

Mr. Cannon testified at his deposition that he doesn't have full strength or feeling in the areas in which he was injured. He additionally stated that now his right leg hurts if he stands on it for long periods of time.

RESPONDENT'S POSITION: At the claim bill hearing, the City of Tallahassee admitted liability and indicated that the City fully supports the claim.

CONCLUSIONS OF LAW:

Section 768.28 (2009), F.S., governs this matter. That statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, Mr. Cannon will not receive the full benefit of his settlement agreement with the City of Tallahassee unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So. 2d 585,586 (Fla.1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992). Ms. Kelly failed to use reasonable care by not looking to the left before turning the Dial-a-Ride bus onto Capital Circle at a red light. Had Ms. Kelly looked properly, she would have seen Mr. Cannon to the left of her, and avoided striking him with her vehicle.

Due to Ms. Kelly's breach of her duty of care, she caused the accident and Mr. Cannon's damages.

Florida's dangerous instrumentality doctrine imposes strict vicarious liability on an owner of a dangerous instrumentality who entrusts the instrument to a person who operates it negligently. *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Trucks in operation are considered to be dangerous instrumentalities. *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1985).

Municipalities are subject to the dangerous instrumentality doctrine. "When a municipality owns a motor truck, a dangerous instrumentality when in operation, that is being

operated with the knowledge and consent of the municipality through its officers or employees and used on the other streets for lawful street, sewer, or other corporate purposes, the municipality may be liable for injuries … caused by negligence of the truck driver in operating the truck … ." *Barth v. City of Miami*, 1 So. 2d 574, 577 (Fla. 1941).

The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

The City of Tallahassee employed Ms. Kelly at the time of the accident. On that day, Ms. Kelly drove the Dial-a-Ride vehicle owned by the City of Tallahassee during the course of her normal workday. Therefore, the City of Tallahassee is liable for the negligence of Ms. Kelly and the damages caused to Mr. Cannon.

The claimant has demonstrated significant economic damages. Medical costs alone total $211,177. Of this, Mr. Cannon incurred medical bills in the amount of $180,235 from the Tallahassee Memorial Hospital (TMH) through a subrogation lien. TMH subsequently agreed to reduce the amount of the lien to $100,000 and to payment as follows: $25,000 after distribution of the first settlement with the City of Tallahassee, and $75,000 should the claim bill be approved. Due to missing work for a month and a half, Mr. Cannon lost income of $4,500 that he would have earned during that time. Additionally, he purchased the new motorcycle that was totaled in the accident just one day earlier for $5,757.

Noneconomic damages have not been calculated for Mr. Cannon. However, since the accident, Mr. Cannon finds running difficult and he limps at times. When the temperature is cold, he feels the titanium in both his arm and leg. He also experiences chronic numbness at several of the surgery sites.

Should this case have proceeded to trial, Mr. Cannon appears to have presented as a sympathetic plaintiff based upon: having been just 20 years of age at the time of the incident, undergoing multiple surgeries, and living permanently with a rod, plates, and screws placed internally. Additionally, he was

not at-fault for his injuries and was even wearing a motorcycle helmet and other protective gear at the time of the accident.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

LEGISLATIVE HISTORY: This is the first year in which the claim bill has been filed.

COLLATERAL SOURCES: The claimant represents that he has not received payment from any collateral sources.

ATTORNEY'S FEES: The bill provides that the total amount paid for attorney fees relating to this claim is limited to 25 percent of the $500,000 claim.

Mr. Cannon's attorney further agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. However, 5 percent of the award will be payable to the lobbyist for his lobbying services and this amount will be paid from the attorney's fee.

Therefore, the total amount of fees payable for attorney and lobbying fees is $125,000.

FISCAL IMPACT: The City of Tallahassee is self-insured. If approved by the Legislature, the $500,000 will be paid from the City's self-insurance fund. The City represents that it has reserved this amount for the claim.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 28 (2018) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute provides for the claimant's attorney to be paid $100,000, which is 20 percent of the $500,000 claim bill. The lobbyist for the claim bill is to be paid $25,000, which is 5 percent of the claim bill.

By the Committee on Judiciary; and Senator Montford

590-03192-18 201828c1

A bill to be entitled

An act for the relief of Christopher Cannon; providing an appropriation to compensate him for injuries and damages sustained as a result of the alleged negligence of the City of Tallahassee; providing that the appropriation satisfies all present and future claims arising out of the alleged negligent acts; providing a limitation on the payment of attorney and lobbying fees and costs; providing an effective date.

WHEREAS, on December 16, 2015, Christopher Cannon was driving his motorcycle home from work, and

WHEREAS, a City of Tallahassee Dial-A-Ride driver, believing that an intersection where she was preparing to make a turn was clear of traffic, made a left-hand turn in front of Christopher Cannon, who crashed into the left front of the Dial-A-Ride vehicle, causing him to be ejected from his motorcycle across two lanes of traffic, and

WHEREAS, Christopher Cannon was transported to Tallahassee Memorial Hospital where he was treated for a pulmonary contusion, a right sixth rib fracture, a right scapular fracture, a right kidney laceration, an adrenal gland contusion, a right tibia fracture, a right fibula fracture, a right mid-shaft femoral fracture, and a spleen laceration, and

WHEREAS, surgeons placed a rod secured by four screws through Christopher Cannon’s tibia and inserted a plate and four screws to realign his right humerus fracture, and

WHEREAS, Christopher Cannon was discharged approximately 2 weeks after the accident, but was readmitted 1 week after his

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

590-03192-18 201828c1

initial discharge due to a wound infection that required additional surgery for debridement, and

WHEREAS, on March 30, 2016, a mandatory hearing was conducted by the Leon County Court pursuant to ss. 318.14 and 318.19, Florida Statutes, for the purpose of making a determination as to whether the Dial-A-Ride driver committed a violation of s. 316.122, Florida Statutes, related to yield of right-of-way, vehicle turning left, and

WHEREAS, on April 4, 2016, the Leon County Court entered an order finding that the Dial-A-Ride driver violated s. 316.122, Florida Statutes, and that the victim suffered serious bodily harm as a direct result of the resulting accident, and

WHEREAS, on July 11, 2016, counsel for Christopher Cannon filed a claim against the City of Tallahassee seeking compensation for the injuries and damages arising out of the accident in the Circuit Court of the Second Judicial Circuit in and for Leon County, Case No. 2016 CA 1560, alleging the negligence per se of the Dial-A-Ride driver and the negligent hiring, training, disciplining, supervision, and retention of the Dial-A-Ride driver by the City of Tallahassee, and

WHEREAS, counsel for Christopher Cannon alleged that the Dial-A-Ride driver committed negligence per se by failing to yield to oncoming traffic when making a left turn in violation of s. 316.122, Florida Statutes, during the accident, and

WHEREAS, counsel for Christopher Cannon alleged that the City of Tallahassee had a duty to exercise reasonable care in the hiring, training, disciplining, supervision, and retention of the Dial-A-Ride driver, and

WHEREAS, counsel for Christopher Cannon alleged that the

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City of Tallahassee breached its duty of reasonable care by failing to exercise its duty of reasonable care to effectively and reasonably train, discipline, supervise, and retain or discharge the Dial-A-Ride driver, who incurred multiple traffic citations during the period from 1994 through 2012, and

WHEREAS, counsel for Christopher Cannon alleged that as a direct and proximate result of the negligence of the City of Tallahassee in failing to exercise a reasonable duty of care, and but for that negligence, Christopher Cannon suffered bodily injury that resulted in pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; costs associated with his hospitalization, medical and nursing care, and treatment; loss of earnings; and loss of the ability to earn money, and

WHEREAS, Christopher Cannon's past medical expenses and lost wages are in excess of $225,000 and it is anticipated that he will incur additional medical expenses in the future as a result of his injuries, and

WHEREAS, following mediation, a final order was entered in the case approving a settlement in the sum of $700,000 between Christopher Cannon and the City of Tallahassee to satisfy all present and future claims arising out of the factual situation described in this act, and

WHEREAS, pursuant to the final order, the City of Tallahassee has paid $200,000 to Christopher Cannon under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and $500,000 remains unpaid, NOW, THEREFORE,

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

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

Section 2. The City of Tallahassee is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $500,000 payable to Christopher Cannon as compensation for injuries and damages sustained.

Section 3. The amount paid by the City of Tallahassee pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Christopher Cannon. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $100,000, the total amount paid for lobbying fees may not exceed $25,000, and no amount may be paid for costs or other similar expenses.

Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR BILL MONTFORD
3rd District

February 21, 2018

Senator Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
Tallahassee, Florida 32399-1100

Dear Senator Benacquisto,

I respectfully request that the following bills be placed on the next Rules Committee Agenda.

SB 28 – A bill relating to the Relief of Christopher Cannon
SB 1460 – A bill relating to State Agency Law Enforcement Radio System

Your consideration is greatly appreciated.

Sincerely,

William "Bill" Montford
Senate District 3

WM/md

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100
☐ 105 North Jefferson Street, Perry, Florida 32347 (850) 223-0902

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 260
INTRODUCER:	Education Committee and Senator Book and others
SUBJECT:	Students with Disabilities in Public Schools
DATE:	February 28, 2018 REVISED: 2/28/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Androff	Graf	ED	**Fav/CS**
2.	Lloyd	Stovall	HP	**Favorable**
3.	Androff	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 260 revises the use of restraint techniques on certain students with disabilities, prohibits placing such students in seclusion, and specifies responsibilities for school districts, schools, and the Commissioner of Education (commissioner). Specifically, the bill:

- Defines student to mean a student with a disability.
- Defines exclusionary and nonexclusionary time; establishes conditions under which a student may be placed in exclusionary or nonexclusionary time; and specifies related documentation, reporting and monitoring of such incidents.
- Prohibits the use of specified physical restraint techniques by school personnel on students.
- Requires each school district to:
  - Develop policies and procedures regarding physical safety and security of all students and school personnel.
  - Report procedures for training related to restraint and the bill specifies the components of such training.
  - Publicly post its policies on all emergency procedures, including the district's policies on the use of restraint and seclusion.
- Requires a school to conduct a review of incidents of restraint, and related interventions and school personnel training.
- Requires redacted copies of documentation related to the use of restraint and exclusionary and nonexclusionary time to be updated monthly and made available to the public through the Department of Education's website by October 1, 2018.

- Requires the commissioner to develop recommendations to incorporate instruction regarding emotional or behavioral disabilities into continuing education and inservice training requirements for instructional personnel.

This bill takes effect July 1, 2018.

II. Present Situation:

Federal law provides individuals with disabilities several protections against discrimination, including specific provisions for students with disabilities. The Individuals with Disabilities Education Act (IDEA) was originally signed into law by President Gerald Ford as the Education for All Handicapped Children Act (Pub. Law 94-142) in 1975. The intent of the law in 1975 and its re-authorization as the IDEA in 2004, as amended through the Every Student Succeeds Act in December 2015, remains the same: to ensure the right to a free and appropriate public education (FAPE) to eligible children with disabilities and special education and related services to those children.[1] The FAPE is accomplished through an individualized education plan or an IEP for each child.

Florida law provides conditions for the use of restraint and seclusion on students with disabilities; and requires documentation, reporting, and monitoring of the use of such techniques.

The Use of Restraint and Seclusion

Florida law does not currently define restraint or seclusion, but guidance by the Florida Department of Education (department) directs that all documenting, reporting, and monitoring requirements for restraint be based on the definitions issued by the Office for Civil Rights (OCR) in the United States Department of Education.[2]

Restraint

The federal DOE OCR guidance defines restraint in two parts:

- Physical restraint immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely and does not include a physical escort.[3] A physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.[4]
- Mechanical restraint is the use of any device or equipment to restrict a student's freedom of movement and does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related service professional and are used for the specific and approved purposes for which such devices were designed.[5]

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[1] U.S. Department of Education, *About IDEA*, https://sites.ed.gov/idea/about-idea (last viewed Feb. 9, 2018).
[2] Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 2011), *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf (last viewed Feb. 10, 2018), at 2.
[3] *Id.* at 6.
[4] *Id.*
[5] *Id.*

School personnel are prohibited from using a mechanical restraint or a physical or manual restraint that restricts a student's breathing.[6] School personnel may not close, lock, or physically block a student in a room that is unlit and does not meet the rules of the State Fire Marshall for seclusion time-out rooms.[7]

School districts began reporting incidents of restraint and seclusion at the beginning of the school year 2010-2011.[8] Since the inception of the reporting system through July 31, 2017, there have been 63,652 incidents of restraint reported.[9]

School Year	Number of Students[10]	Restraint Incidents
2010-11	3,580	10,683
2011-12	4,369	9,789
2012-13	4,096	9,551
2013-14	3,479	8,964
2014-15	3,229	8,199
2015-16	3,437	7,696
2016-17	3,239	8,770
Total	**22,190**	**63,652**

Seclusion

The OCR defines seclusion as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.[11] Seclusion does not include a time out room, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.[12]

School districts began reporting incidents of seclusion at the beginning of the school year 2010-2011.[13] Since the inception of the reporting system through July 31, 2017, there have been 19,354 incidents of seclusion reported.[14]

School Year	Number of Students[15]	Seclusion Incidents
2010-11	1,321	4,637
2011-12	1,448	4,245

[6] Section 1003.573(4), F.S.
[7] *Id.* at (5); Rule 69A-58.0084, F.A.C.
[8] Florida Department of Education, *Senate Bill 260 Analysis* (Sept. 28, 2017), at 4.
[9] *Id.*
[10] Email from Florida Department of Education (Dec. 18, 2017).
[11] U.S. Department of Education, Office of Civil Rights, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* (Dec. 28, 2016), *available at* https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf, at 7.
[12] *Id*.
[13] Florida Department of Education, *SB 260 Analysis* (Sept. 28, 2017), at 4.
[14] Email from Florida Department of Education (Dec. 18, 2017).
[15] Email from Florida Department of Education (Dec. 18, 2017).

2012-13	1,237	3,024
2013-14	885	2,272
2014-15	732	2,262
2015-16	638	1,563
2016-17	503	1,351
Total	**6,621**	**19,354**

School District Responsibilities

Each school district must develop policies and procedures that are consistent with Florida law regarding the use of restraint and seclusion on students with disabilities and that govern specified topics, such as:[16]

- Data collection and monitoring, including when, where, and why students are restrained or secluded; the frequency of occurrences of such restraint or seclusion; and the prone or mechanical restraint that is most used.
- Training programs relating to manual or physical restraint and seclusion.
- The district's plan for reducing the use of restraint and seclusion particularly in settings where it occurs frequently or with students who are restrained repeatedly, and for reducing the use of prone restraint and mechanical restraint.

School Responsibilities

Florida law requires a school to prepare an incident report within 24 hours after a student is released from restraint or seclusion.[17] The incident report must contain information specified in law, such as:[18]

- The name, age, grade, ethnicity, and disability of the student restrained or secluded.
- The date and time of the event and the duration of the restraint or seclusion.
- A description of the type of restraint used in terms established by the department
- A detailed description of the incident.

A school must notify the parent or guardian of a student each time that manual or physical restraint or seclusion is used.[19] Such notification must be in writing and provided before the end of the school day on which the restraint or seclusion occurs.[20] Reasonable efforts must also be taken to notify the parent or guardian by telephone or computer e-mail, or both, and these efforts must be documented.[21] The school must obtain and keep in its records the parent's or guardian's signed acknowledgement that he or she was notified of his or her child's restraint or seclusion.[22] A school must also provide the parent or guardian with the completed incident report in writing by mail within three school days after a student was manually or physically restrained or

[16] Section 1003.573(3)(a), F.S.
[17] Section 1003.573(1)(a), F.S. If the student's release occurs on a day before the school closes for the weekend, a holiday or another reason, the incident report must be completed by the end of the school day on the day the school reopens. *Id.*
[18] Section 1003.573(1)(b), F.S.
[19] Section 1003.573(1)(c), F.S.
[20] *Id.*
[21] *Id.*
[22] *Id.*

secluded and the school must obtain, and keep in its records, the parents' or guardian's signed acknowledgment that he or she received a copy of the incident report.[23]
Florida law requires monitoring of the use of manual or physical restraint or seclusion on students to occur at the classroom, building, district, and state levels.[24] Documentation of the incident report and the notification to the parent or guardian must be provided to the school principal, the district director of Exceptional Student Education, and the bureau chief of the Bureau of Exceptional Education and Student Services electronically each month that school is in session.[25]

Florida Department of Education Responsibilities

The department is required to maintain aggregate data of incidents of manual or physical restraint and seclusion and disaggregate data for analysis by county, school, student exceptionality, and other variables, including the type and method of restraint or seclusion used.[26] This information must be updated monthly.[27] The department is also required to establish standards for documenting, reporting, and monitoring the use of manual or physical restraint or mechanical restraint, and occurrences of seclusion for the school districts.[28]

The commissioner is required to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education or in-service training requirements for personnel.[29] These recommendations address:[30]

- Early identification and intervention methods;
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques;
- The use of available state and local resources;
- The use of positive behavioral supports to deescalate problem behaviors; and
- Appropriate use of manual physical restraint and seclusion techniques.

Alternative Techniques

There are several behavioral interventions that have been adopted as alternative methods to address problem behavior for all students, including students with disabilities, which do not involve restraint or seclusion.

The positive behavioral interventions and supports (PBIS) approach is a multi-tiered behavioral framework that is intended to help improve academic outcomes by improving the overall school climate, preventing problem behavior, increasing learning time, promoting positive learning skills, and delivering effective behavioral interventions and supports.[31] A set of school-wide

[23] *Id.* at (d).
[24] Section 1003.573(2)(a), F.S.
[25] Section 1003.573(1)(b), F.S.
[26] Section 1003.573(1)(c), F.S.
[27] *Id.*
[28] *Id.* at (d).
[29] Section 6, ch. 2010-224, Laws of Fla.; s. 1012.582(1), F.S.
[30] Section 1012.582(1)(a)-(e), F.S.
[31] *Id* at 5.

positive expectations is set and behaviors are defined and taught with routines that are consistent. The school establishes procedures for encouraging expected behavior and discouraging problem behavior while monitoring and evaluating data. Procedures must also be put in place for the selecting, training, and coaching of new personnel in the system and for encouraging school-family partnerships.[32]

Following the 1997 Amendments to the IDEA, two concepts received greater emphasis in the evaluation of students with disabilities because of their reference in the amendments.[33] The department issued a Technical Assistance Paper in December 1999 to help school personnel understand how to conduct these two interventions.[34]

The first, a functional behavioral assessment plan (FBA) is a process unique to an individual student to identify the function of a student's behavior and how that behavior relates to the student's environment. Procedures typically include a review of the records, interviews with the family and student, observations of the students, and formal and informal measurement procedures.[35] The information collected during the FBA process is used to create behavior supports and plans.

A behavior intervention plan (BIP) or a positive behavior intervention plan (PBIP) are the resulting detailed plan gathered during the FBA such as function, frequency, severity, or consequence.[36] The BIP or PBIP will also include specific information regarding the target behavior, behavior goals, in addition to the steps that are being proposed to reduce the occurrences of the inappropriate behavior and to increase the occurrence of the desired or appropriate behaviors. The plan should include progress and monitoring notes and any reviews of the plan.

III. Effect of Proposed Changes:

CS/SB 260 revises the use of restraint techniques on certain students with disabilities, prohibits placing such students in seclusion, and specifies responsibilities for school districts, schools, and the Commissioner of Education (commissioner). Specifically, the bill:

- Defines student to mean a student with a disability.[37]
- Defines exclusionary and nonexclusionary time; establishes conditions under which a student may be placed in exclusionary or nonexclusionary time; and specifies related documentation, reporting and monitoring of such incidents.
- Prohibits the use of specified physical restraint techniques by school personnel on students.
- Requires each school district to:

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[32] *Id* at 14.
[33] 20 U.S.C. s. 1400(c)(2)(5).
[34] Florida Department of Education, *Technical Assistance Paper: Functional Behavioral Assessment and Behavioral Intervention Plans* (December 1999), http://www.fldoe.org/core/fileparse.php/7590/urlt/0107234-tap99-3.pdf (last viewed Feb 10, 2018).
[35] *Id*.
[36] Missouri Department of Elementary and Secondary Education, *Functional Behavioral Assessment & Behavioral Intervention Plans,* https://dese.mo.gov/special-education/effective-practices/functional-behavioral-assessment-behavioral-intervention-plans (last viewed Feb. 10, 2018).
[37] Section 1003.01(3)(a), F.S. provides a definition for students with disabilities.

  - Develop policies and procedures regarding physical safety and security of all students and school personnel.
  - Report procedures for training related to restraint and the bill specifies the components of such training.
  - Publicly post its policies on all emergency procedures, including the district's policies on the use of restraint and seclusion.
- Requires a school to conduct a review of incidents of restraint, and related interventions and school personnel training.
- Requires redacted copies of documentation related to the use of restraint and exclusionary and nonexclusionary time to be updated monthly and made available to the public through the Department of Education's website by October 1, 2018.
- Requires the commissioner to develop recommendations to incorporate instruction regarding emotional or behavioral disabilities into continuing education and inservice training requirements for instructional personnel.

The Use of Restraint and Seclusion

Restraint

The bill defines the following terms related to restraint:

- Restraint means the use of a mechanical or physical restraint, which may be used only when all other behavioral strategies and intervention techniques have been exhausted.
- Mechanical restraint means the use of a device that restricts a student's freedom of movement. The term includes, but is not limited to the use of straps, belts, tie-downs, and chairs with straps. However, the term mechanical restraint does not include the use of any of the following:
  - Medical protective equipment.
  - Behavioral protective equipment, including helmets, gloves, wraps, calming blankets and other devices that are used temporarily to prevent severe tissue damage caused by behavioral excess.
  - Physical equipment or orthopedic appliances, surgical dressings or bandages, or supportive body bands or other restraints necessary for ongoing medical treatment in the educational setting.
  - Devices used to support functional body position or proper balance, or to prevent a person from falling out of a bed or wheelchair, except when such device is used for a purpose other than supporting a body position or proper balance, such as coercion, discipline, convenience, or retaliation, to prevent imminent risk of serious injury or death of the student or others, or for any behavior management reason.[38]
  - Equipment used for safety during transportation
- Physical restraint is the use of manual restraint techniques that involve significant physical force applied by a teacher or other staff member to restrict the movement of all or part of a student's body.

The bill prohibits the use of a mechanical restraint.

[38] CS/SB 260 defines an imminent risk of serious injury or death as the impending risk of a significant injury, such as a laceration, bone fracture, substantial hematoma, or injury to an internal organ, or death.

The bill limits the use of physical restraint to only when there is an imminent risk of serious injury or death to the student or others and only for the period of time necessary to eliminate such risk.[39] Moreover, the bill specifies that physical restraint:

- Must be used only to protect the safety of students, school personnel, or others.
- May not be used for student discipline, to correct student noncompliance, or for the convenience of school district staff.
- Must only be used for the period needed to provide such protection.

The bill specifies that the degree of force applied during physical restraint must be the only degree of force necessary to protect the student or others from serious injury or death.

The bill also clarifies that school personnel who have received training that is not associated with their employment with the school district, such as a former law enforcement officer who is now a teacher, must receive training in the specific district-approved techniques and may not apply techniques or procedures acquired elsewhere. Specifically, school personnel may not use any of the following physical restraint techniques on a student:

- Pain inducement to obtain compliance.
- Bone locks.
- Hyperextension of joints.
- Peer restraint.
- Pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression.
- Straddling or sitting on any part of the body or any maneuver that places pressure, weight, or leverage on the neck or throat, on an artery, or on the back of the head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway.
- Any type of choking, including hand chokes, and any type of neck or head hold.
- A technique that involves spraying or pushing anything on or into the mouth, nose, eyes, or any part of the face or body with anything, including soft objects such as pillows or washcloths.
- Any maneuver that involves punching, hitting, poking pinching, or shoving.
- Prone or supine restraint.

The codification of impermissible physical restraint techniques may provide additional protection for students who are subject to restraint.

Seclusion

The bill prohibits the use of seclusion of students by school personnel. The bill defines seclusion to mean the removal of a student from an educational environment, involuntarily confining the student in a room or area, and preventing the student from leaving the area by locking or artificially blocking the door. The bill specifies that seclusion does not include exclusionary time. This prohibition may propel school personnel to consider effective and appropriate intervention strategies to address student behavior in the school setting.

[39] CS/SB 260 defines an imminent risk of serious injury or death as the impending risk of a significant injury, such as a laceration, bone fracture, substantial hematoma, or injury to an internal organ, or death.

Exclusionary and Nonexclusionary Time

The bill specifies that a student may be placed in exclusionary or nonexclusionary time. The bill defines:

- Exclusionary time to mean the period during which a student is removed from an event, activity, or instructional environment to encourage reflection on behavior and allow space and time for understanding of choices and consequences.
- Nonexclusionary time to mean a period during which a student remains in the event or instructional environment, but is redirected from the activities so that he or she has an opportunity to reflect on the behavior and is given space and time for understanding of choices and consequences.

The bill provides that school personnel may place a student in exclusionary or nonexclusionary time only if all of the following conditions are met:

- The exclusionary time or nonexclusionary time is part of a positive behavioral intervention plan developed for the student from a functional behavioral assessment and referenced in the student's individualized behavior intervention plan.
- There is documentation that the exclusionary nonexclusionary time was preceded by the use of other positive behavioral supports that were not effective.
- The exclusionary or nonexclusionary time takes place in a classroom or in another environment where class educational activities are taking place.
- The student is not physically prevented from leaving the exclusionary or nonexclusionary time area.
- An adult observes the student on a constant basis for the duration of the exclusionary or nonexclusionary time.
- The exclusionary or nonexclusionary time area and process are free of any action that is likely to embarrass or humiliate the student.

The bill also specifies that exclusionary or nonexclusionary time may not be used for a period that exceeds one minute for each year of a student's age or until the student is calm enough to return to his or her seat. Further, exclusionary or nonexclusionary time may not be used as a punishment or negative consequence of a student's behavior.

The bill provides that all documentation, reporting, and monitoring provisions in current law related to the use of restraint also apply to the use of exclusionary and nonexclusionary time.

The establishment of exclusionary and nonexclusionary time may provide school personnel with additional intervention methods and tools to reduce disruption during instructional time or other activities and to assist students to reflect on their behavior.

School District Responsibilities

The bill requires school districts to develop policies and procedures that provide for the physical safety and security of all students and school personnel and which treat all students with respect and dignity in an environment that promotes a positive school culture and climate. This is

consistent with Florida Department of Education (DOE) guidance.[40] The bill specifies that the policies and procedures adopted by the school districts must also include:

- A description of escalating behavioral strategies that may be used.
- Allowable use of restraint on students.
- Training procedures.
- The district's timeframe for completing the newly established training procedures in the use of restraint on students.
- Analysis of data to determine trends.
- Ongoing reduction of the use of restraint.

Additionally, the bill requires each school district to publicly post its policies on all emergency procedures, including its policies on the use of seclusion and restraint at the beginning of each school year. Accordingly, such policies and procedures may assist with reducing the use of restraint techniques by public schools.

Training for the Use of Restraint

The bill requires each school district to develop and publish training protocol. Each school district must report its procedures for training in the use of restraint to the DOE by publishing the procedures in the district's special policies and procedures manual. The bill specifies that the school district training in the use of restraint must include all of the following:

- Procedures for deescalating a problem behavior before the problem behavior increases to a level or intensity necessitating physical intervention.
- Information regarding the risks associated with restraint and procedures for assessing individual situations and restraint and procedures for assessing individual situations and students in order to determine whether the use of restraint is appropriate and sufficiently safe.
- The actual use of specific techniques that range from the least to most restrictive, with ample opportunity for trainees to demonstrate proficiency in the use of such techniques.
- Techniques for implementing restraint with multiple staff members working as a team.
- Techniques for assisting a student in reentering the instructional environment and reengaging in learning.
- Instruction in the district's documentation and reporting requirements.
- Procedures to identify and deal with possible medical emergencies arising during the use of restraint.
- Cardiopulmonary recitation.

The establishment of training protocol on the use of restraint may provide school personnel with additional resources and knowledge related to the techniques and the use of restraint.

[40] DOE guidance recognizes that there are instances in which students pose a threat to the safety of themselves or others and that it is the purpose of restraint and seclusion to prevent such injury to self and or others. Seclusion and restraint procedures are not to be used to punish a student, as a deterrent, or to teach a student a lesson. DOE guidance states that it is important to recognize that the use of restraint and seclusion may have an emotional impact on students and such interventions should only be used in emergency situations when an imminent risk of serious injury or death to the student or others exists and in a manner that conveys respect for the dignity of the student. Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 2011), *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf, at 1.

School Responsibilities

The bill modifies information included in incident reports prepared by public schools to also include specified information on exclusionary or nonexclusionary time.

Additionally, the bill requires a school to conduct a review if a student is restrained more than twice during a semester. Such review must include:

- The restraint incidents and an analysis of how future incidents may be avoided;
- The student's functional behavioral assessment and positive behavioral intervention plan by the school personnel and parent within two weeks before the end of the semester; and
- The training provided to school personnel concerning the use of restraint.

Such review process may assist the schools and school districts to reduce the use of restraint on students and ensure that appropriate training is provided to personnel regarding restraint techniques and use.

Florida Department of Education Responsibilities

The bill requires redacted copies of any documentation or reporting related to the use of restraint or exclusionary or nonexclusionary time to be updated monthly and made available to the public through the department's website by October 1, 2018.

The bill also requires the DOE to make the aggregate-level data maintained on the incidents of restraint or exclusionary or nonexclusionary time, disaggregated by county, school, student exceptionality, and other variables, available to the public through the department's website by October 1, 2018. This may provide the public with access to policies, procedures, and data related to the use of seclusion and restraint on students.

The bill requires the DOE to establish and provide to school districts standards for documenting, reporting, and monitoring the use of and occurrences of exclusionary or nonexclusionary time.

The bill requires the Commissioner of Education to develop recommendations that incorporate instruction regarding emotional or behavioral disabilities into continuing education or inservice training requirements for instructional personnel. Such recommendations must address the appropriate use of physical restraint and seclusion techniques and effective classroom behavior management strategies, including, but not limited to, differential reinforcement, precision commands, minimizing attention or access to other reinforcers, and exclusionary and nonexclusionary time methods.

Accordingly, the bill may help instructional personnel to be informed and trained in strategies to teach students with emotional or behavioral disabilities.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Florida Department of Education, school districts may incur costs associated with certification and refresher training in district-approved techniques for manual physical restraint.[41] Such costs are currently indeterminable.[42]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.573 and 1012.582.

[41] Florida Department of Education, *Senate Bill 260 Analysis* (Sept. 28, 2017), at 7.
[42] *Id.*

IX. Additional Information:

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

CS by Education on February 6, 2018.
The committee substitute retains the substance of the bill with the following modifications:

- Defines student to mean a student with a disability.
- Explicitly prohibits the use of a prone or supine restraint.
- Prohibits the use of a mechanical restraint, defines mechanical restraint, identifies types of mechanical restraints, and clarifies that calming blankets do not constitute a mechanical restraint.
- Provides that documentation, reporting, and monitoring requirements in law also apply to the use of exclusionary or nonexclusionary time.
- Requires a school to make redacted copies of documentation related to the use of restraint or exclusionary or nonexclusionary time available to the public through the Department of Education's website by October 1, 2018.

B. Amendments:

None.

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

By the Committee on Education; and Senators Book, Flores, and Hukill

581-02903-18 2018260c1

A bill to be entitled

An act relating to students with disabilities in public schools; amending s. 1003.573, F.S., relating to the seclusion and restraint of students with disabilities; defining terms; providing requirements for the use of restraint; prohibiting specified physical restraint techniques; providing requirements for the use of exclusionary and nonexclusionary time; providing requirements for school districts to report and publish training procedures; providing for student-centered followup; providing requirements for documenting, reporting, and monitoring the use of restraint and exclusionary or nonexclusionary time; revising school district policies and procedures relating to restraint; amending s. 1012.582, F.S.; requiring continuing education and inservice training for teaching students with emotional or behavioral disabilities; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 1003.573, Florida Statutes, is amended to read:

1003.573 Seclusion and ~~Use of~~ restraint of ~~and seclusion on~~ students with disabilities in public schools.—

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

(a) "Department" means the Department of Education.

(b) "Exclusionary time" means the period during which a student is removed from an event, activity, or instructional environment to encourage reflection on behavior and allow space and time for understanding of choices and consequences.

(c) "Imminent risk of serious injury or death" means the impending risk of a significant injury, such as a laceration, bone fracture, substantial hematoma, or injury to an internal organ, or death.

(d) "Medical protective equipment" means health-related protective devices prescribed by a physician or dentist for use as student protection in response to an existing medical condition.

(e) "Nonexclusionary time" means a period during which a student remains in the event or instructional environment but is redirected from the activities so that he or she has an opportunity to reflect on the behavior and is given space and time for understanding of choices and consequences.

(f) "Restraint" means the use of a mechanical or physical restraint which may be used only when all other behavioral strategies and intervention techniques have been exhausted.

1. "Mechanical restraint" means the use of a device that restricts a student's freedom of movement. The term includes, but is not limited to, the use of straps, belts, tie-downs, and chairs with straps; however, the term does not include the use of any of the following:

a. Medical protective equipment.

b. Behavioral protective equipment, including helmets, gloves, wraps, calming blankets, and other devices that are used temporarily to prevent severe tissue damage caused by behavioral excesses.

c. Physical equipment or orthopedic appliances, surgical dressings or bandages, or supportive body bands or other restraints necessary for ongoing medical treatment in the educational setting.

d. Devices used to support functional body position or proper balance, or to prevent a person from falling out of a bed or a wheelchair, except when such a device is used for a purpose other than supporting a body position or proper balance, such as coercion, discipline, convenience, or retaliation, to prevent imminent risk of serious injury or death of the student or others, or for any other behavior management reason.

e. Equipment used for safety during transportation, such as seatbelts or wheelchair tie-downs.

2. "Physical restraint" means the use of manual restraint techniques that involve significant physical force applied by a teacher or other staff member to restrict the movement of all or part of a student's body.

(g) "Seclusion" means the removal of a student from an educational environment, involuntarily confining the student in a room or area, and preventing the student from leaving the area by locking or artificially blocking the door. The term does not include exclusionary time.

(h) "Student" means a student with a disability.

(2) PHYSICAL RESTRAINT.—

(a) Physical restraint may be used only when there is an imminent risk of serious injury or death to the student or others and only for the period of time necessary to eliminate such risk.

(b) Notwithstanding the authority provided in s. 1003.32,

physical restraint shall be used only to protect the safety of students, school personnel, or others and may not be used for student discipline, to correct student noncompliance, or for the convenience of school district staff. Physical restraint shall be used only for the period needed to provide such protection.

(c) The degree of force applied during physical restraint must be only that degree of force necessary to protect the student or others from serious injury or death.

(d) School personnel who have received training that is not associated with their employment with the school district, such as a former law enforcement officer who is now a teacher, shall receive training in the specific district-approved techniques and may not apply techniques or procedures acquired elsewhere.

(e) School personnel may not use any of the following physical restraint techniques on a student:

1. Pain inducement to obtain compliance.

2. Bone locks.

3. Hyperextension of joints.

4. Peer restraint.

5. Pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression.

6. Straddling or sitting on any part of the body or any maneuver that places pressure, weight, or leverage on the neck or throat, on an artery, or on the back of the head or neck or that otherwise obstructs or restricts the circulation of blood or obstructs an airway.

7. Any type of choking, including hand chokes, and any type of neck or head hold.

8. A technique that involves spraying or pushing anything

on or into the mouth, nose, eyes, or any part of the face or that involves covering the face or body with anything, including soft objects such as pillows or washcloths.

9. Any maneuver that involves punching, hitting, poking, pinching, or shoving.

10. Prone or supine restraint.

(3) EXCLUSIONARY AND NONEXCLUSIONARY TIME.—

(a) School personnel may place a student in exclusionary or nonexclusionary time if all of the following conditions are met:

1. The exclusionary or nonexclusionary time is part of a positive behavioral intervention plan developed for the student.

2. There is documentation that the exclusionary or nonexclusionary time was preceded by the use of other positive behavioral supports that were not effective.

3. The exclusionary or nonexclusionary time takes place in a classroom or in another environment where class educational activities are taking place.

4. The student is not physically prevented from leaving the exclusionary or nonexclusionary time area.

5. The student is observed on a constant basis by an adult for the duration of the exclusionary or nonexclusionary time.

6. The exclusionary or nonexclusionary time area and process are free of any action that is likely to embarrass or humiliate the student.

(b) Exclusionary or nonexclusionary time may not be used for a period that exceeds 1 minute for each year of a student's age or until the student is calm enough to return to his or her seat.

(c) Exclusionary or nonexclusionary time may not be used as

a punishment or negative consequence of a student's behavior.

(4) TRAINING.—

(a) Each school district shall report its procedures for training in the use of restraint to the department by publishing the procedures in the district's special policies and procedures manual.

(b) Training in the use of restraint must include all of the following:

1. Procedures for deescalating a problem behavior before the problem behavior increases to a level or intensity necessitating physical intervention.

2. Information regarding the risks associated with restraint and procedures for assessing individual situations and students in order to determine whether the use of restraint is appropriate and sufficiently safe.

3. The actual use of specific techniques that range from the least to most restrictive, with ample opportunity for trainees to demonstrate proficiency in the use of such techniques.

4. Techniques for implementing restraint with multiple staff members working as a team.

5. Techniques for assisting a student in reentering the instructional environment and reengaging in learning.

6. Instruction in the district's documentation and reporting requirements.

7. Procedures to identify and deal with possible medical emergencies arising during the use of restraint.

8. Cardiopulmonary resuscitation.

(5) STUDENT-CENTERED FOLLOWUP.—If a student is restrained

more than twice during a semester, the school shall conduct a review of:

(a) The incidents in which restraint was used and an analysis of how future incidents may be avoided;

(b) The student's functional behavioral assessment and positive behavioral intervention plan by the school personnel and parent within two weeks before the end of the semester; and

(c) The training provided to school personnel concerning the use of restraint.

(6) ~~(1)~~ DOCUMENTATION AND REPORTING.—

(a) At the beginning of each school year, a school district shall publicly post its policies on all emergency procedures, including its policies on the use of restraint.

(b) ~~(a)~~ A school shall prepare an incident report within 24 hours after a student is released from restraint or exclusionary or nonexclusionary time ~~seclusion~~. If the student's release occurs on a day before the school closes for the weekend, a holiday, or another reason, the incident report must be completed by the end of the school day on the day the school reopens.

(c) ~~(b)~~ The following must be included in the incident report:

1. The name of the student restrained or placed in exclusionary or nonexclusionary time ~~secluded~~.

2. The age, grade, ethnicity, and disability of the student restrained or placed in exclusionary or nonexclusionary time ~~secluded~~.

3. The date and time of the event and the duration of the restraint or exclusionary or nonexclusionary time ~~seclusion~~.

4. The location at which the restraint or exclusionary or nonexclusionary time ~~seclusion~~ occurred.

5. If a restraint is used, a description of the type of restraint used in terms established by the department ~~of Education~~.

6. The name of the person using or assisting in the restraint of or imposition of exclusionary or nonexclusionary time on ~~seclusion of~~ the student and the date the person was last trained in the use of restraint on students.

7. The name of any nonstudent who was present to witness the restraint or exclusionary or nonexclusionary time ~~seclusion~~.

8. A description of the incident, including all of the following:

a. The context in which the restraint or exclusionary or nonexclusionary time ~~seclusion~~ occurred.

b. The student's behavior leading up to and precipitating the decision to use ~~manual or physical~~ restraint or exclusionary or nonexclusionary time ~~seclusion~~, including an indication as to why there was an imminent risk of serious injury or death to the student or others if a student was subject to restraint.

c. The specific positive behavioral strategies used to prevent and deescalate the behavior.

d. What occurred with the student immediately after the termination of the restraint or exclusionary or nonexclusionary time ~~seclusion~~.

e. Any injuries, visible marks, or possible medical emergencies that may have occurred during the restraint or exclusionary or nonexclusionary time ~~seclusion~~, documented according to district policies.

f. Evidence of steps taken to notify the student's parent or guardian.

(d) ~~(c)~~ A school shall notify the parent or guardian of a student each time ~~manual or physical~~ restraint or exclusionary or nonexclusionary time ~~seclusion~~ is used. Such notification must be in writing and provided before the end of the school day on which the restraint or exclusionary or nonexclusionary time ~~seclusion~~ occurs. Reasonable efforts must also be taken to notify the parent or guardian by telephone or ~~computer~~ e-mail, or both, and these efforts must be documented. The school shall obtain, and keep in its records, the parent's or guardian's signed acknowledgment that he or she was notified of his or her child's restraint or exclusionary or nonexclusionary time ~~seclusion~~.

(e) ~~(d)~~ A school shall also provide the parent or guardian with the completed incident report in writing by mail within 3 school days after a student was ~~manually or physically~~ restrained or placed in exclusionary or nonexclusionary time ~~secluded~~. The school shall obtain, and keep in its records, the parent's or guardian's signed acknowledgment that he or she received a copy of the incident report.

(7) ~~(2)~~ MONITORING.—

(a) ~~Monitoring of~~ The use of ~~manual or physical~~ restraint or exclusionary or nonexclusionary time ~~seclusion~~ on students shall be monitored ~~occur~~ at the classroom, building, district, and state levels.

(b) Any documentation prepared by a school pursuant to ~~as required in~~ subsection (6) ~~(1)~~ shall be provided to the school principal, the district director of Exceptional Student

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

Education, and the bureau chief of the Bureau of Exceptional Education and Student Services electronically each month that the school is in session. Redacted copies of such documentation must be updated monthly and made available to the public through the department's website no later than October 1, 2018.

(c) The department shall maintain aggregate data of incidents of ~~manual or physical~~ restraint or exclusionary or nonexclusionary time ~~and seclusion~~ and disaggregate the data for analysis by county, school, student exceptionality, and other variables, including the type and method of restraint or exclusionary or nonexclusionary time ~~seclusion~~ used. This information must ~~shall~~ be updated monthly and made available to the public through the department's website beginning no later than October 1, 2018.

(d) The department shall establish and provide to school districts standards for documenting, reporting, and monitoring the use of ~~manual or physical~~ restraint ~~or mechanical restraint~~, and occurrences of exclusionary or nonexclusionary time ~~seclusion~~. ~~These standards shall be provided to school districts by October 1, 2011.~~

(8) ~~(3)~~ SCHOOL DISTRICT POLICIES AND PROCEDURES REGARDING RESTRAINT.—

(a) School districts shall develop policies and procedures that provide for the physical safety and security of all students and school personnel and which treat all students with respect and dignity in an environment that promotes a positive school culture and climate. Such ~~Each school district shall develop~~ policies and procedures must be ~~that are~~ consistent with this section and must ~~that~~ govern the following:

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1. A description of escalating behavioral strategies that may be used.

2. Allowable use of restraint on students.

3. Training procedures.

4.~~1.~~ Incident-reporting procedures.

5.~~2.~~ Data collection and monitoring, including when, where, and why students are restrained and ~~or secluded;~~ the frequency of occurrences of such restraint ~~or seclusion; and the prone or mechanical restraint that is most used~~.

6.~~3.~~ Monitoring and reporting of data collected.

7.~~4.~~ Training programs and procedures relating to ~~manual or physical~~ restraint ~~and seclusion~~.

8.~~5.~~ The district's plan for selecting personnel to be trained and the timeframe for completing such training pursuant to subsection (4).

9.~~6.~~ The district's plan for reducing the use of restraint, ~~and seclusion~~ particularly in settings in which it occurs frequently or with students who are restrained repeatedly~~, and for reducing the use of prone restraint and mechanical restraint~~. The plan must include a goal for reducing the use of restraint ~~and seclusion~~ and must include activities, skills, and resources needed to achieve that goal. Activities may include, but are not limited to, all of the following:

a. Additional training in positive behavioral support and crisis management.~~;~~

b. Parental involvement.~~;~~

c. Data review.~~;~~

d. Updates of students' functional behavioral analysis and positive behavior intervention plans.~~;~~

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e. Additional student evaluations.~~;~~

f. Debriefing with staff.~~;~~

g. Use of schoolwide positive behavior support.~~; and~~

h. Changes to the school environment.

10. Analysis of data to determine trends.

11. Ongoing reduction of the use of restraint.

(b) Any revisions a school district makes to its ~~to the district's~~ policies and procedures, which must be prepared as part of the school district's ~~its~~ special policies and procedures, must be filed with the bureau chief of the Bureau of Exceptional Education and Student Services ~~no later than January 31, 2012~~.

(9)~~(4)~~ PROHIBITED RESTRAINT.—School personnel may not use a mechanical restraint or a ~~manual or physical~~ restraint that restricts a student's breathing.

(10)~~(5)~~ SECLUSION.—School personnel may not place a student in seclusion ~~close, lock, or physically block a student in a room that is unlit and does not meet the rules of the State Fire Marshal for seclusion time-out rooms~~.

Section 2. Subsections (1) and (2) of section 1012.582, Florida Statutes, are amended to read:

1012.582 Continuing education and inservice training for teaching students with developmental and emotional or behavioral disabilities.—

(1) The Commissioner of Education shall develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, ~~and~~ other developmental disabilities, and emotional or behavioral disabilities into continuing education or inservice training requirements for

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

instructional personnel. These recommendations shall address:

(a) Early identification of, and intervention for, students who have autism spectrum disorder, Down syndrome, ~~or~~ other developmental disabilities, or emotional or behavioral disabilities.

(b) Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques.

(c) The use of available state and local resources.

(d) The use of positive behavioral supports to deescalate problem behaviors.

(e) Appropriate use of ~~manual~~ physical restraint and effective classroom behavior management strategies, including, but not limited to, differential reinforcement, precision commands, minimizing attention or access to other reinforcers, and exclusionary and nonexclusionary time methods ~~seclusion techniques~~.

(2) In developing the recommendations, the commissioner shall consult with the State Surgeon General, the Director of the Agency for Persons with Disabilities, representatives from the education community in the state, and representatives from entities that promote awareness about autism spectrum disorder, Down syndrome, ~~and~~ other developmental disabilities, and emotional or behavioral disabilities and provide programs and services to persons with ~~developmental~~ disabilities, including, but not limited to, regional autism centers pursuant to s. 1004.55.

Section 3. This act shall take effect July 1, 2018.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on the Environment and Natural Resources, *Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Environmental Preservation and Conservation
Health Policy
Rules

SENATOR LAUREN BOOK
Democratic Leader Pro Tempore
32nd District

February 13, 2018

Chair Lizbeth Benacquisto
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto,

I respectfully request that you place CS/SB 260, relating to Students with Disabilities in Public Schools, on the agenda of the Committee on Rules at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Senator Lauren Book
Senate District 32

cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 01, 2018
Meeting Date

260
Bill Number (if applicable)

Topic Students with Disabilities in Public Schools

Amendment Barcode (if applicable)

Name Dixie Sansom

Job Title Lobbyist

Address P.O. Box 98
Street

Phone 3215437195

Cocoa FL 32923
City *State* *Zip*

Email dixiesansom@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Arc of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/2018
Meeting Date

260
Bill Number (if applicable)

Topic Restraint and seclusion in K-12

Amendment Barcode (if applicable)

Name Jim DeBeaugrine

Job Title Consultant

Address 111 N. Calhoun
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-508-8908

Email jim-debeaugrine@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Centers for Independent Living

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.1.18
Meeting Date

260
Bill Number (if applicable)

Topic Students with Disabilities in Public Schools

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street
Street

Phone 510-9922

Tallahasssee FL 32301
City *State* *Zip*

Email Barney@BarneyBishop.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

260
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Nancy Lawther

Job Title _____

Address 1747 Orlando Central Parkway
Street

Orlando FL 32809
City *State* *Zip*

Phone 407 855-7604

Email legislation@flpta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 266
INTRODUCER:	Rules Committee and Senator Passidomo
SUBJECT:	Covenants and Restrictions
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Favorable**
2.	Davis	Cibula	JU	**Favorable**
3.	Cochran	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 266 addresses the covenants and restrictions of property owners' associations and makes the following changes:

- Extends statutes authorizing the preservation and revival of covenants and restrictions to a broader range of associations, notably commercial property owners' associations;
- Allows a homeowners' association to file a form notice with the clerk of court which preserves the association's covenants and restrictions;
- Repeals language that requires a two-thirds vote of the members of the board of directors to preserve existing covenants and restrictions;
- Authorizes parcel owners who were subject to covenants and restrictions, but who do not have a homeowners' association, to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions; and
- Requires a homeowners' association to annually consider preservation of the covenants and restrictions and requires that the association file a summary preservation every 5 years.

II. Present Situation:

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.[1] In general terms, MRTA provides that any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most claims or encumbrances against the land. In essence, MRTA serves as the ultimate land statute of limitations by eliminating older, unpreserved rights to an interest in real property.[2]
One unintended effect of MRTA, however, is that covenants and restrictions are extinguished 30 years after their creation. Therefore, homeowner associations' covenants and restrictions can expire and become unenforceable. In order to protect the covenants, MRTA has long provided a method for renewing the covenants. Even so, many homeowners' associations still fail to timely file a renewal of their covenants. In 2004, laws were enacted to provide a method for reviving the covenants and restrictions of a mandatory homeowners' association.[3] In 2007, nonmandatory homeowners' associations became eligible for revitalization.[4] Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.[5]

Two categories of property impacted by MRTA have not been included in the laws permitting renewal or revival of their covenants and restrictions: commercial land in office parks, industrial parks, and other commercial districts and neighborhoods having enforceable covenants but no formal homeowners' association. Owners of these properties, like the owners of property within a homeowners' association, enact and enforce covenants and restrictions regarding their property and that of their neighbors.

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

III. Effect of Proposed Changes:

Preservation of Existing Covenants

Present Situation

Sections 712.05 and 712.06, F.S., provide that a homeowners' association may timely preserve its covenants by complying with the following conditions:

- The board must give written notice to every parcel owner of the impending preservation of the covenants;[6]

[1] *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1227 (Fla. 2004).
[2] Gregory M. Cook, *The Marketable Record Title Act Made Easy*, The Florida Bar Journal, (Oct. 1992) available at https://www.floridabar.org/news/tfb-journal/?durl=/DIVCOM/JN/jnjournal01.nsf/cb53c80c8fabd49d85256b5900678f6c/E3897C8163A7258285256BD80071EED5!opendocument
[3] Ch. 2004-345, s. 11, Laws of Fla.
[4] Ch. 2007-173, s. 1, Laws of Fla.
[5] Sections 720.403, 720.404, 720.405, 720.406, and 720.407, F.S.
[6] Section 712.06(1)(b), F.S.

- The board must give written notice to every parcel owner of a meeting of the board of directors where the directors will decide whether to preserve the covenants;[7]
- The board of directors of the association must approve the renewal by a two-thirds vote;[8] and
- Notice of the renewal must be recorded in the official records of the county.[9]

Sections 3 and 4 of the bill change this procedure to:
- Provide that compliance by a homeowners' association with newly created s. 720.3032, F.S. (see discussion below) may substitute for the requirements of ss. 712.05 and 712.06, F.S.;
- Provide that an amendment to a community covenant or restriction indexed under the legal name of the property owners' association may also substitute for the requirements of ss. 712.05 and 712.06, F.S.;
- Repeal the requirement that a decision to preserve covenants be approved a two-thirds vote of the board; and
- Repeal the requirement that affected property owners be furnished notice of the board meeting to vote on preservation.

Preservation and Revitalization of Covenants by a Commercial Property Owners' Association

Present Situation

Current law provides for the preservation and revitalization of covenants by a homeowners' association.

Effect of the Bill

Section 2 provides a definition for the term "community covenant or restriction" and substitutes the term "property owners' association" for "homeowners' association." A property owners' association includes a homeowners' association as defined in s. 720.301, F.S., a corporation or entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, as well as an association of parcel owners authorized to enforce a community covenant or restriction. The bill also makes conforming changes for these new terms.

The bill replaces all uses of the term "homeowners' association" found in chapter 712, F.S., with the term "property owners' association." The effect is to expand MRTA laws on preservation and revitalization of covenants or restrictions to cover commercial associations.

Section 12 inserts language to provide that covenant revitalization, is intended to provide mechanisms for revitalization of covenants or restrictions by all types of communities and property associations, not just residential communities.

[7] Section 712.05(1), F.S.
[8] *Id.*
[9] Section 712.06(2), F.S.

Revitalization by an Owner Not Subject to Homeowners' Association

Present Situation

Some residential communities have recorded covenants and restrictions similar to those found in a homeowners' association, but never created an association. Current law permits individual owners to file a notice of preservation of covenants before they expire,[10] but there are no means of revitalizing those covenants and restrictions.

Effect of the Bill

Section 6 provides for covenant or restriction revitalization by parcel owners of a community who are not subject to a homeowners' association.

Under this section, parcel owners may use the process available to a homeowners' association[11] to revive covenants or restrictions that have lapsed under MRTA. The parcel owners do not need to provide articles of incorporation or bylaws to revive the covenants or restrictions and only need the approval of a majority of the affected parcel owners in writing. The organizing committee of the community may execute the revived covenants or restrictions in the name of the community and the community name can be indexed as the grantee of the covenants with the parcel owners listed as grantors.

A parcel owner who has ceased to be subject to covenants or restrictions as of October 1, 2018, may commence an action by October 1, 2019, to determine if revitalization would unconstitutionally deprive the parcel owner of right or property. Revived covenants or restrictions do not affect the rights of a parcel owner that are recognized by a court order in an action commenced by October 1, 2019, and may not be subsequently altered without the consent of the affected parcel owner. Although a parcel owner has from October 1, 2018, to October 1, 2019, to file a legal action objecting to the revitalization of a covenant or restriction, the bill does not provide any mechanism to inform parcel owners of this right. Moreover, the bill allows parcel owners seeking to revitalize an extinguished covenant or restriction to proceed after October 1, 2019.

Requirements on the Board of Directors of a Homeowners' Association

Present Situation

While it is probably good practice for a homeowners' association to regularly consider the need for preservation of the covenants and restrictions of their neighborhood, there is no statutory requirement that a board of directors of a homeowners' association do so.

Effect of the Bill

Section 7 amends s. 720.303(2), F.S., to require that the board of directors for a homeowners' association consider whether to file a notice to preserve the covenants and restrictions affecting the community from extinguishment pursuant to MRTA. This must be considered at the first board meeting after the annual meeting of the members.

[10] See sections 712.05 and 712.06, F.S.
[11] See sections 720.403- 720.407, F.S.

Section 8 creates s. 720.3032, F.S., which specifies procedures that any property owners' association may use to preserve its covenants from termination. Using these procedures, the association must file in the official records of the county in which it is located a notice detailing:

- The legal name of the association;
- The mailing and physical addresses of the association;
- The names of the affected subdivision plats and condominiums, or the common name of the community;
- The name, address, and telephone number for the current community association management company or manager, if any;
- An indication as to whether the association desires to preserve the covenants or restrictions affecting the community from extinguishment pursuant to MRTA;
- The name and recording information of those covenants or restrictions affecting the community which the association wishes to preserve;
- A legal description of the community affected by the covenants or restrictions; and
- The signature of a duly authorized officer of the association.

The section creates a statutory form for the notice. The bill further provides that the filing of the completed form is considered a substitute for the notice required for preservation of the covenants pursuant to ss. 712.05 and 712.06, F.S. As such, every 5-year filing of the form will have the effect of starting the MRTA 30-year period anew.

A copy of this notice to preserve covenants or restrictions must be included as a part of the next notice of meeting or other mailing sent to all members of the association. The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Other Changes Made by the Bill

Section 1 provides a short title of the "Marketable Record Title Act" for chapter 712, F.S.

Sections 5, 9, 10, 11, 13, 14, and 15 make changes to conform various statutory and definitional cross-references to the substantive changes made by the bill.

Section 16 provides an effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The State Constitution addresses the property rights of citizens in two pertinent provisions. Article 1, section 2 provides that all natural persons have the right to acquire, possess and protect property. Article 1, section 9 provides that "No person shall be deprived of life, liberty or property without due process of law . . . ." Additionally, the State Constitution, in Article 1, section 10, also prohibits any law that impairs the obligation of contracts.

Because of these constitutional property rights protections, two issues arise from the bill. The first is whether the expiration of covenants and restrictions vests additional property rights in the owner of a property. A vested right is defined as "an immediate, fixed right of present or future enjoyment."[12] For example, the expiration of covenants and restrictions might allow a property owner to build a nonconforming structure on the property or to use the property in a manner not allowed under the covenants and restrictions. The second issue is whether the bill, by allowing the reinstatement of expired covenants and restrictions, allows property rights to be taken in violation of the State Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who believes that the revitalization of an expired covenant or restriction is a taking of a vested property right or other constitutional violation may be required to spend substantial funds to vindicate his or her rights in court.

Section 8 of the bill requires associations to prepare and record a notice every 5 years. The recording fee is nominal ($10 for the first page, $8.50 for additional pages). Because the form is in statute, associations may be able to complete the task without assistance, or a community association manager can assist an association with preparation and filing without reference to a licensed attorney.

Providing mechanisms to preserve and revitalize covenants and restrictions may have a positive impact on property values in affected areas or communities.

[12] *Coral Lakes Cmty. Ass'n v. Busey Bank, N.A.*, 30 So. 3d 579, 583 (Fla. 2nd DCA 2010) (*quoting Pearsall v. Great N. Ry. Co.*, 161 U.S. 646, 673, (1896)).

C. Government Sector Impact:

The bill requires the recording of documents in the public records of the county. Recording is subject to a fee of $10.00 for the first page and $8.50 for every subsequent page, payable to the recording department (in most counties, the clerk of the court).[13] The net revenues to county recorders, after deductions for incremental costs of recording and indexing documents, are unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.01, 712.05, 712.06, 712.11, 720.303, 702.09, 702.10, 712.095, 720.403, 720.404, 720.405, and 720.407.

This bill creates the following sections of the Florida Statutes: 712.001, 712.12, and 720.3032.

IX. Additional Information:

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

CS by Rules on March 1, 2018:
Makes a technical change to correct "covenant" to "community covenant" in section 3 of the bill.

B. Amendments:

None.

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

[13] Section 28.24(12), F.S.

313106

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment

Delete line 131
and insert:
required under s. 720.3032(2); or an amendment to a community covenant or

By Senator Passidomo

28-00026A-18 2018266__

A bill to be entitled

An act relating to covenants and restrictions; creating s. 712.001, F.S.; providing a short title; amending s. 712.01, F.S.; defining and redefining terms; amending s. 712.05, F.S.; revising the notice filing requirements for a person claiming an interest in land and other rights; authorizing a property owners' association to preserve and protect certain covenants or restrictions from extinguishment, subject to specified requirements; providing that a failure in indexing does not affect the validity of the notice; extending the length of time certain covenants or restrictions are preserved; deleting a provision requiring a two-thirds vote by members of an incorporated homeowners' association to file certain notices; providing that a property owners' association or clerk of the circuit court is not required to provide certain additional notice for a specified notice that is filed; conforming provisions to changes made by the act; amending s. 712.06, F.S.; exempting a specified summary notice and amendment from certain notice content requirements; revising the contents required to be specified by certain notices; conforming provisions to changes made by the act; amending s. 712.11, F.S.; conforming provisions to changes made by the act; creating s. 712.12, F.S.; defining terms; authorizing the parcel owners of a community not subject to a homeowners' association to use specified procedures to revive certain covenants

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or restrictions, subject to certain exceptions and requirements; authorizing a parcel owner to commence an action by a specified date under certain circumstances for a judicial determination that the covenants or restrictions did not govern that parcel as of a specified date and that any revitalization of such covenants or restrictions as to that parcel would unconstitutionally deprive the parcel owner of rights or property; providing applicability; amending s. 720.303, F.S.; requiring a board to take up certain provisions relating to notice filings at the first board meeting; creating s. 720.3032, F.S.; requiring any property owners' association desiring to preserve covenants from potential termination after a specified period by certain operation to record in the official records of each county in which the community is located a notice subject to certain requirements; providing a document form for recording by an association to preserve certain covenants or restrictions; requiring a copy of the filed notice to be sent to all members; requiring the original signed notice to be recorded with the clerk of the circuit court or other recorder; amending ss. 702.09 and 702.10, F.S.; conforming provisions to changes made by the act; amending s. 712.095, F.S.; conforming a cross-reference; amending ss. 720.403, 720.404, 720.405, and 720.407, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 712.001, Florida Statutes, is created to read:

712.001 Short title.—This chapter may be cited as the "Marketable Record Title Act."

Section 2. Section 712.01, Florida Statutes, is reordered and amended to read:

712.01 Definitions.—As used in this chapter, the term ~~law~~:

(1) "Community covenant or restriction" means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which:

(a) Subjects the parcel to any use restriction that may be enforced by a property owners' association; or

(b) Authorizes a property owners' association to impose a charge or assessment against the parcel or the parcel owner.

(4)~~(1)~~ ~~The term~~ "Person" includes the ~~as used herein denotes~~ singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes and including any property owners' ~~homeowners'~~ association.

(6)~~(2)~~ "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person ~~and~~ which is the last title transaction to have been recorded at least 30 years before ~~prior to~~ the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.

(7)~~(3)~~ "Title transaction" means any recorded instrument or

court proceeding that ~~which~~ affects title to any estate or interest in land and that ~~which~~ describes the land sufficiently to identify its location and boundaries.

(5)~~(4)~~ "Property owners' association" ~~The term "homeowners' association"~~ means a homeowners' association as defined in s. 720.301, a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.

(3)~~(5)~~ ~~The term~~ "Parcel" means any real property that ~~which is used for residential purposes that is subject to exclusive ownership and which~~ is subject to any covenant or restriction of a property owners' ~~homeowners'~~ association.

(2)~~(6)~~ ~~The term~~ "Covenant or restriction" means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which subjects the parcel to any use or other restriction or obligation ~~which may be enforced by a homeowners' association or which authorizes a homeowners' association to impose a charge or assessment against the parcel or the owner of the parcel or which may be enforced by the Florida Department of Environmental Protection pursuant to chapter 376 or chapter 403~~.

Section 3. Section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A person claiming an interest in land or other right

subject to extinguishment under this chapter ~~a homeowners' association desiring to preserve a covenant or restriction~~ may preserve and protect such interest or right ~~the same~~ from extinguishment by the operation of this chapter ~~act~~ by filing for record, at any time during the 30-year period immediately following the effective date of the root of title, a written notice in accordance with s. 712.06 ~~this chapter~~.

(2) A property owners' association may preserve and protect a community covenant or restriction from extinguishment by the operation of this chapter by filing for record, at any time during the 30-year period immediately following the effective date of the root of title:

(a) A written notice in accordance with s. 712.06; or

(b) A summary notice in substantial form and content as required under s. 720.3032(2); or an amendment to a covenant or restriction that is indexed under the legal name of the property owners' association and references the recording information of the covenant or restriction to be preserved. Failure of a summary notice or amendment to be indexed to the current owners of the affected property does not affect the validity of the notice or vitiate the effect of the filing of such notice.

(3) A ~~Such~~ notice under subsection (1) or subsection (2) preserves an interest in land or other ~~such claim of~~ right subject to extinguishment under this chapter, or a ~~such~~ covenant or restriction or portion of such covenant or restriction, for not less than ~~up to~~ 30 years after filing the notice unless the notice is filed again as required in this chapter. A person's disability or lack of knowledge of any kind may not delay the commencement of or suspend the running of the 30-year period.

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Such notice may be filed for record by the claimant or by any other person acting on behalf of a claimant who is:

(a) Under a disability;

(b) Unable to assert a claim on his or her behalf; or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

~~Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association at least 7 days before such meeting.~~ The property owners' ~~homeowners'~~ association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3) for a notice filed under subsection (2). The preceding sentence is intended to clarify existing law.

(4) ~~(2)~~ It is ~~shall~~ not ~~be~~ necessary for the owner of the marketable record title, as described in s. 712.02 ~~herein defined~~, to file a notice to protect his or her marketable record title.

Section 4. Subsections (1) and (3) of section 712.06, Florida Statutes, are amended to read:

712.06 Contents of notice; recording and indexing.—

(1) To be effective, the notice referred to in s. 712.05,

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other than the summary notice and the amendment referred to in s. 712.05(2)(b), must ~~shall~~ contain:

(a) The name or description and mailing address of the claimant or the property owners' ~~homeowners'~~ association desiring to preserve any covenant or restriction ~~and the name and particular post office address of the person filing the claim or the homeowners' association~~.

(b) The name and mailing ~~post office~~ address of an owner, or the name and mailing ~~post office~~ address of the person in whose name the ~~said~~ property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for purpose of such notice, shall be deemed to be an owner; ~~provided,~~ however, if a property owners' ~~homeowners'~~ association is filing the notice, ~~then~~ the requirements of this paragraph may be satisfied by attaching to and recording with the notice an affidavit executed by the appropriate member of the board of directors of the property owners' ~~homeowners'~~ association affirming that the board of directors of the property owners' ~~homeowners'~~ association caused a statement in substantially the following form to be mailed or hand delivered to the members of that property owners' ~~homeowners'~~ association:

STATEMENT OF MARKETABLE TITLE ACTION

The [name of property owners' ~~homeowners'~~ association] (the "Association") has taken action to ensure that the [name of declaration, covenant, or restriction], recorded in Official Records Book ...., Page ...., of the public records of .... County, Florida, as may be amended from time to time, currently

burdening the property of each and every member of the Association, retains its status ~~as the source of marketable title~~ with regard to the affected real property ~~the transfer of a member's residence~~. To this end, the Association shall cause the notice required by chapter 712, Florida Statutes, to be recorded in the public records of .... County, Florida. Copies of this notice and its attachments are available through the Association pursuant to the Association's governing documents regarding official records of the Association.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument or a covenant or a restriction, ~~then~~ the description in such notice may be the same as that contained in such recorded instrument or covenant or restriction, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description, and extent of such claim or other right subject to extinguishment under this chapter or, in the case of a covenant or restriction, a copy of the covenant or restriction or a reference to the book and page or instrument number in which the same is recorded, except that it is ~~shall~~ not ~~be~~ necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim or other right subject to extinguishment under this chapter is based upon an instrument of record or a recorded covenant or restriction, such instrument of record or recorded covenant or restriction shall be deemed sufficiently described to identify the same if the notice includes a

reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this ...., mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

...(Clerk of the circuit court)...
of .... County, Florida,
By...(Deputy clerk)...

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

Section 5. Section 712.11, Florida Statutes, is amended to read:

712.11 Covenant revitalization.—A property owners' ~~homeowners'~~ association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 6. Section 712.12, Florida Statutes, is created to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.—

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

(a) "Community" means the real property that is subject to a covenant or restriction that is recorded in the county where the property is located.

(b) "Covenant or restriction" means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction

that may be enforced by a parcel owner.

(c) "Parcel" means real property that is used for residential purposes and that is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.

(d) "Parcel owner" means the record owner of legal title to a parcel.

(2) The parcel owners of a community not subject to a homeowners' association may use the procedures set forth in ss. 720.403-720.407 to revive covenants or restrictions that have lapsed under the terms of this chapter, except:

(a) A reference to a homeowners' association or articles of incorporation or bylaws of a homeowners' association under ss. 720.403-720.407 is not required to revive the covenants or restrictions.

(b) The approval required under s. 720.405(6) must be in writing, and not at a meeting.

(c) The requirements under s. 720.407(2) may be satisfied by having the organizing committee execute the revived covenants or restrictions in the name of the community.

(d) The indexing requirements under s. 720.407(3) may be satisfied by indexing the community name in the covenants or restrictions as the grantee and the parcel owners as the grantors.

(3) With respect to any parcel that has ceased to be governed by covenants or restrictions as of October 1, 2018, the parcel owner may commence an action by October 1, 2019, for a judicial determination that the covenants or restrictions did not govern that parcel as of October 1, 2018, and that any

revitalization of such covenants or restrictions as to that parcel would unconstitutionally deprive the parcel owner of rights or property.

(4) Revived covenants or restrictions that are implemented pursuant to this section do not apply to or affect the rights of the parcel owner which are recognized by any court order or judgment in any action commenced by October 1, 2019, and any such rights so recognized may not be subsequently altered by revived covenants or restrictions implemented under this section without the consent of the affected parcel owner.

Section 7. Paragraph (e) is added to subsection (2) of section 720.303, Florida Statutes, to read:

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

(2) BOARD MEETINGS.—

(e) At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.

Section 8. Section 720.3032, Florida Statutes, is created to read:

720.3032 Notice of association information; preservation from Marketable Record Title Act.—

(1) Any property owners' association desiring to preserve

covenants from potential termination after 30 years by operation of chapter 712 may record in the official records of each county in which the community is located a notice specifying:

(a) The legal name of the association.

(b) The mailing and physical addresses of the association.

(c) The names of the affected subdivision plats and condominiums or, if not applicable, the common name of the community.

(d) The name, address, and telephone number for the current community association management company or community association manager, if any.

(e) Indication as to whether the association desires to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712.

(f) A listing by name and recording information of those covenants or restrictions affecting the community which the association desires to be preserved from extinguishment.

(g) The legal description of the community affected by the covenants or restrictions, which may be satisfied by a reference to a recorded plat.

(h) The signature of a duly authorized officer of the association, acknowledged in the same manner as deeds are acknowledged for record.

(2) Recording a document in substantially the following form satisfies the notice obligation and constitutes a summary notice as specified in s. 712.05(2)(b) sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter

712.

Notice of ...(name of association)... under s. 720.3032, Florida Statutes, and notice to preserve and protect covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter 712, Florida Statutes.

Instructions to recorder: Please index both the legal name of the association and the names shown in item 3.

1. Legal name of association: ....

2. Mailing and physical addresses of association: ....

3. Names of the subdivision plats, or, if none, common name of community: ....

4. Name, address, and telephone number for management company, if any: .....

5. This notice does .... does not .... constitute a notice to preserve and protect covenants or restrictions from extinguishment under the Marketable Record Title Act.

6. The following covenants or restrictions affecting the community which the association desires to be preserved from extinguishment:

...(Name of instrument)...

...(Official Records Book where recorded & page)...

...(List of instruments)...

...(List of recording information)...

7. The legal description of the community affected by the listed covenants or restrictions is: ...(Legal description, which may be satisfied by reference to a recorded plat)...

This notice is filed on behalf of ...(Name of

association)... as of ...(Date)....

...(Name of association)...

By: ....

...(Name of individual officer)...

...(Title of officer)...

...(Notary acknowledgment)...

(3) A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.

(4) The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Section 9. Section 702.09, Florida Statutes, is amended to read:

702.09 Definitions.—For the purposes of ss. 702.07 and 702.08, the words "decree of foreclosure" shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word "mortgage" shall mean any written instrument securing the payment of money or advances and includes liens to secure payment of assessments arising under chapters 718 and 719 and liens created pursuant to the recorded covenants of a property owners' ~~homeowners'~~ association as defined in s. 712.01; the word "debt" shall include promissory notes, bonds, and all other written obligations given for the payment of money; the words "foreclosure proceedings" shall embrace every action in the

circuit or county courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and the word "property" shall mean and include both real and personal property.

Section 10. Subsection (1) of section 702.10, Florida Statutes, is amended to read:

702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.—

(1) A lienholder may request an order to show cause for the entry of final judgment in a foreclosure action. For purposes of this section, the term "lienholder" includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or property owners' ~~homeowners'~~ association, may file a lien against the real property subject to foreclosure. Upon filing, the court shall immediately review the request and the court file in chambers and without a hearing. If, upon examination of the court file, the court finds that the complaint is verified, complies with s. 702.015, and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the other parties named in the action to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for a hearing to show cause. The date for the hearing may not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. When service is obtained by publication, the date for the hearing may not be set sooner than

30 days after the first publication.

2. Direct the time within which service of the order to show cause and the complaint must be made upon the defendant.

3. State that the filing of defenses by a motion, a responsive pleading, an affidavit, or other papers before the hearing to show cause that raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure shall constitute cause for the court not to enter final judgment.

4. State that a defendant has the right to file affidavits or other papers before the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.

5. State that, if a defendant files defenses by a motion, a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing time will be used to hear and consider whether the defendant's motion, answer, affidavits, other papers, and other evidence and argument as may be presented by the defendant or the defendant's attorney raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure. The order shall also state that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

6. State that, if a defendant fails to appear at the hearing to show cause or fails to file defenses by a motion or by a verified or sworn answer or files an answer not contesting the foreclosure, such defendant may be considered to have waived the right to a hearing, and in such case, the court may enter a

default against such defendant and, if appropriate, a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale.

7. State that if the mortgage provides for reasonable attorney fees and the requested attorney fees do not exceed 3 percent of the principal amount owed at the time of filing the complaint, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable.

8. Attach the form of the proposed final judgment of foreclosure which the movant requests the court to enter at the hearing on the order to show cause.

9. Require the party seeking final judgment to serve a copy of the order to show cause on the other parties in the following manner:

a. If a party has been served pursuant to chapter 48 with the complaint and original process, or the other party is the plaintiff in the action, service of the order to show cause on that party may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant has not been served pursuant to chapter 48 with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the party in the same manner as provided by law for original process.

Any final judgment of foreclosure entered under this subsection is for in rem relief only. This subsection does not preclude the entry of a deficiency judgment where otherwise allowed by law. The Legislature intends that this alternative procedure may run

simultaneously with other court procedures.

(b) The right to be heard at the hearing to show cause is waived if a defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. The defendant's failure to file defenses by a motion or by a sworn or verified answer, affidavits, or other papers or to appear personally or by way of an attorney at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard. If a defendant files defenses by a motion, a verified answer, affidavits, or other papers or presents evidence at or before the hearing which raise a genuine issue of material fact which would preclude entry of summary judgment or otherwise constitute a legal defense to foreclosure, such action constitutes cause and precludes the entry of a final judgment at the hearing to show cause.

(c) In a mortgage foreclosure proceeding, when a final judgment of foreclosure has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney fees, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed on the note or mortgage at the time of filing, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages.

(d) If the court finds that all defendants have waived the right to be heard as provided in paragraph (b), the court shall promptly enter a final judgment of foreclosure without the need

for further hearing if the plaintiff has shown entitlement to a final judgment and upon the filing with the court of the original note, satisfaction of the conditions for establishment of a lost note, or upon a showing to the court that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that a defendant has not waived the right to be heard on the order to show cause, the court shall determine whether there is cause not to enter a final judgment of foreclosure. If the court finds that the defendant has not shown cause, the court shall promptly enter a judgment of foreclosure. If the time allotted for the hearing is insufficient, the court may announce at the hearing a date and time for the continued hearing. Only the parties who appear, individually or through an attorney, at the initial hearing must be notified of the date and time of the continued hearing.

Section 11. Section 712.095, Florida Statutes, is amended to read:

712.095 Notice required by July 1, 1983.—Any person whose interest in land is derived from an instrument or court proceeding recorded subsequent to the root of title, which instrument or proceeding did not contain a description of the land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose interest had not been extinguished prior to July 1, 1981, shall have until July 1, 1983, to file a notice in accordance with s. 712.06 to preserve the interest.

Section 12. Section 720.403, Florida Statutes, is amended to read:

720.403 Preservation of ~~residential~~ communities; revival of

declaration of covenants.—

(1) Consistent with required and optional elements of local comprehensive plans and other applicable provisions of the Community Planning Act, property owners ~~homeowners~~ are encouraged to preserve existing residential and other communities, promote available and affordable housing, protect structural and aesthetic elements of their ~~residential~~ community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the ~~residential~~ community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

(2) In order to preserve a ~~residential~~ community and the associated infrastructure and common areas for the purposes described in this section, the parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the ~~homeowners'~~ association for the community upon approval by the parcel owners to be governed thereby as provided in this act, and upon approval of the declaration and the other governing documents for the association by the Department of Economic Opportunity in a manner consistent with this act.

(3) Part III of this chapter is intended to provide mechanisms for the revitalization of covenants or restrictions for all types of communities and property associations and is

not limited to residential communities.

Section 13. Section 720.404, Florida Statutes, is amended to read:

720.404 Eligible ~~residential~~ communities; requirements for revival of declaration.—Parcel owners in a community are eligible to seek approval from the Department of Economic Opportunity to revive a declaration of covenants under this act if all of the following requirements are met:

(1) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;

(2) The revived declaration must be approved in the manner provided in s. 720.405(6); and

(3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:

(a) Have an effective term of longer duration than the term of the previous declaration;

(b) Omit restrictions contained in the previous declaration;

(c) Govern fewer than all of the parcels governed by the previous declaration;

(d) Provide for amendments to the declaration and other governing documents; and

(e) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.

Section 14. Subsections (1), (3), (5), and (6) of section

720.405, Florida Statutes, are amended to read:

720.405 Organizing committee; parcel owner approval.—

(1) The proposal to revive a declaration of covenants and an ~~a homeowners'~~ association for a community under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

(3) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived ~~homeowners'~~ association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

(5) A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the ~~homeowners'~~ association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing

documents of the ~~homeowners'~~ association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the votes of the property owners shall be certified by a court reporter or an attorney licensed to practice in the state.

Section 15. Subsection (3) of section 720.407, Florida Statutes, is amended to read:

720.407 Recording; notice of recording; applicability and effective date.—

(3) The recorded documents shall include the full text of the approved declaration of covenants, the articles of incorporation and bylaws of the ~~homeowners'~~ association, the letter of approval by the department, and the legal description of each affected parcel of property. For purposes of chapter 712, the association is deemed to be and shall be indexed as the grantee in a title transaction and the parcel owners named in the revived declaration are deemed to be and shall be indexed as the grantors in the title transaction.

Section 16. This act shall take effect October 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 10, 2018

I respectfully request that **Senate Bill #266**, relating to Covenants and Restrictions, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 296
INTRODUCER:	Regulated Industries Committee; Commerce and Tourism Committee; Regulated Industries Committee; and Senator Brandes
SUBJECT:	Beverage Law
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Fav/CS**
2.	Swift	McKay	CM	**Fav/CS**
3.	Oxamendi	McSwain	RI	**Fav/CS**
4.	Oxamendi	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 296 repeals the limits on the size of a wine container, which in current law may not hold more than one gallon, unless the container is reusable and holds 5.16 gallons.

The bill also repeals the limits on the size of a cider container, which in current law may not hold more than 32 ounces of cider. However, current law permits cider to be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

The bill amends the current provision that permits a restaurant patron to take home a partially consumed bottle of wine under certain conditions. It revises the requirement that a restaurant patron must purchase and consume a full course meal (consisting of an entrée, salad or vegetable, beverage, and bread) in order to be able to take home a partially consumed bottle of wine. The bill replaces that requirement with a requirement that a restaurant patron purchase only a meal with the bottle of wine.

Additionally, the bill revises certain provisions applicable to craft distilleries. First, the bill increases the current distilled spirits production limit to qualify as a craft distillery from 75,000 gallons to 250,000 gallons, but limits the amount that may be transferred to the craft distillery's souvenir gift shop for sale to consumers for off-premises consumption to 75,000 gallons.

Second, the bill repeals the six individual container limit on sales of each of the craft distillery's branded products to a consumer at a craft distillery's souvenir gift shop. Third, the bill codifies a recent declaratory statement issued to a craft distillery by the Division of Alcoholic Beverages of the Department of Business and Professional Regulation. The statement interprets current law to permit a craft distillery to blend distilled spirits produced at its licensed premises with distilled spirits produced elsewhere, provided the blended product is blended and filled in factory-sealed containers, at the craft distillery's licensed premises.

CS/CS/CS/SB 296 has no fiscal impact on state government. See Section V, Fiscal Impact Statement.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces[1] the Beverage Law,[2] which regulates the manufacture, distribution, and sale of wine, beer, and liquor[3]. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Wine and Cider Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.[4]

Section 564.055, F.S., prohibits the sale of cider[5] at retail in any individual container of more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

[1] Section 561.02, F.S.
[2] Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[3] *See* s. 561.14, F.S.
[4] Section 775.082(4), F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed $500.
[5] Section 564.06(4), F.S., provides that "cider" is "made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume." "Must" is the expressed juice of a fruit before and during fermentation. *See* https://www.merriam-webster.com/dictionary/must (last visited January 4, 2018).

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.[6]

Distilleries and Craft Distilleries

Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

A "distillery" is a manufacturer of distilled spirits,[7] and a "craft distillery" is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the division in writing of its decision to qualify as a craft distillery.[8]

All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying[9] distilled spirits must pay a state license tax for each plant or branch operating in Florida. Distilleries pay $4,000 annually for the license tax and craft distilleries pay $1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.[10]

Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products[11] distilled on the licensed premises. The products must be in factory-sealed containers that are filled at the distillery and sold for off-premises consumption.[12] The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises. The craft distillery is not required to obtain, in addition to its manufacturer's license, a vendor's license in order to sell distilled spirits to consumers.

[6] Section 564.09, F.S.
[7] Section 565.03(1)(c), F.S.
[8] Section 565.03(1)(b), F.S.
[9] Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* http://www.merriam-webster.com/dictionary/rectify (last visited January 10, 2018).
[10] Section 565.03(3), F.S.
[11] Section 565.03(1)(a), F.S., defines "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations."
[12] Section 565.03(2)(c), F.S.

A craft distillery must report to the division within five business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.[13]

A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.[14]

A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.[15] However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.[16]

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.[17]

Declaratory Statement

On January 19, 2018, the division issued a declaratory statement interpreting s. 565.03(2)(c), F.S., to permit a craft distillery to sell to consumers, at its souvenir gift shop, a product comprised of a blend of liquors distilled on the premises of the craft distillery and liquors distilled by other manufacturers away from the premises. The craft distillery may then, at the craft distillery, fill individual containers with the final, blended liquor product for sale at its souvenir gift shop.[18]

III. Effect of Proposed Changes:

Wine Containers

Section 1 repeals the wine container size limits in s. 564.05, F.S.

Cider Containers

Section 2 repeals the cider container size limits in s. 564.055, F.S.

[13] Section 565.03(2)(c)3., F.S.
[14] Section 565.03(2)(c)4., F.S.
[15] Section 565.03(2)(c)5., F.S.
[16] Section 565.03(2)(c)6., F.S.
[17] Section 565.03(5), F.S. Section 565.12, F.S., requires manufactures and distributors to pay an excise tax on alcoholic beverages, with the tax rate per gallon depending on the percent of alcohol by volume of the beverage. Section 565.13, F.S., requires every distributor selling spirituous beverages within the state to pay the tax to the division monthly on or before the 10th day of the following month.
[18] Final Order on Petition for Declaratory Statement, *In Re: Petition for Declaratory Statement Before the Division Of Alcoholic Beverages and Tobacco, On behalf of Drum Circle Distilling, LLC*, DS 2017-071 (DABT Case No. 2017-052675), January 19, 2018, (on file with Senate Committee on Regulated Industries).

Restaurants - Off-Premises Consumption of Wine

Section 3 amends s. 564.09, F.S., to revise the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

Craft Distilleries

Section 4 amends s. 565.03, F.S., to revise the definition of "branded product" to include distilled spirits manufactured on site and blended with other distilled spirits to codify the declaratory statement entered by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation on January 19, 2018.[19]

The bill revises the requirement that a craft distillery may only produce up to 75,000 gallons per calendar year, instead allowing for 250,000 or fewer gallons per calendar year. The bill also increases from 75,000 gallons to 250,000 gallons the maximum production per calendar year of distilled spirits a distillery affiliated with a craft distillery may produce on its premises or in any other state, territory, or country.

Under the bill, the amount allowed to be transferred to the craft distillery's souvenir gift shop for sale to consumers is limited to 75,000 gallons per calendar year.

Additionally, the bill repeals the limit of six individual containers of each branded product a consumer may purchase in a face-to-face transaction in the craft distillery's souvenir gift shop.

Effective Date

Section 5 provides the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[19] *See*, supra at note 18.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/CS/SB 296 increases from 75,000 gallons to 250,000 gallons the maximum production per calendar year to qualify as a craft distillery. Under current law, distilleries pay an annual $4,000 license tax and craft distilleries pay $1,000. There are 48 distilleries licensed in Florida. Thirty-eight of the distilleries are designated as craft distilleries and eight distilleries produce less than 75,000 gallons per calendar year but have not sought designation as craft distilleries. The remaining two distilleries produce, or are affiliated with distilleries that produce, more than the 250,000 gallons per calendar year production limit in the bill. Consequently, CS/CS/CS/SB 296 is not anticipated to have a fiscal impact.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provisions repealing the limits on the size of wine containers and revising the conditions under which a restaurant patron may be permitted to take home a partially consumed bottle of wine in CS/CS/CS/SB 296 are substantively identical to provisions in CS/CS/SB 388 (2017 Regular Session), by the Rules Committee, Regulated Industries Committee, and Senator Hutson, which were amended onto the bill by the Rules Committee and passed by the Senate.[21] The provisions in CS/CS/CS/SB 296 also were passed by the Regulated Industries Committee in CS/SB 400 during the 2017 Regular Session.[22]

VIII. Statutes Affected:

This bill repeals the following sections of the Florida Statutes: 564.05 and 564.055.

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[20] *See* 2018 Agency Legislative Bill Analysis issued by the DBPR for CS/CS/SB 296, dated January 18, 2018 (on file with Senate Committee on Regulated Industries) at page 4.

[21] *See* Amendment #379250 (2017 Regular Session) offered by Senator Brandes in the Rules Committee on April 12, 2017. The Senate passed CS/CS/SB 388 on April 19, 2017, by a vote of 36-1. (Subsequently, CS/CS/SB 388 was amended by the House of Representatives to remove provisions unrelated to provisions in SB 296 and died in Returning Messages.)

[22] *See* Substitute Amendment #323682 and Amendment #193132 to Substitute Amendment #323682 (both offered by Senator Brandes) to SB 400 by Senator Perry, which were adopted by the Regulated Industries Committee on March 16, 2016. (Those provisions subsequently were removed from CS/CS/SB 400 by Amendment #887606 offered by Senator Perry, which was adopted by the Senate on April 27, 2017. CS/CS/CS/HB 689 (2017 Regular Session) was substituted for CS/CS/SB 400 and CS/CS/SB 400 then was laid on the table. CS/CS/CS/HB 689 was enacted into law as Ch. 2017-137, Laws of Fla.)

This bill substantially amends the following sections of the Florida Statutes: 564.09 and 565.03.

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 Regulated Industries Committee on January 24, 2018:
The committee substitute:

- Revises the definition of "branded product" to include distilled spirits manufactured on site and blended with other distilled spirits.
- Repeals the limit of six individual containers of each branded product an individual may purchase at a craft distillery's souvenir gift shop.

CS/CS by Commerce and Tourism Committee on January 9, 2018:

- Adds to the bill the provision that craft distilleries may now produce 250,000 or fewer gallons and retain their craft distillery status.
- Retains the provision that craft distilleries may only sell up to 75,000 gallons at their souvenir shop.

CS by Regulated Industries Committee on December 7, 2017:
The committee substitute:

- Removes from the bill the provision permitting the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages;
- Repeals s. 564.055, F.S., relating to the container size limitations for cider; and
- Removes from the bill the provision that would permit a restaurant patron to take home a partially consumed and resealed bottle of beer.

B. Amendments:

None.

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

By the Committees on Regulated Industries; Commerce and Tourism; and Regulated Industries; and Senator Brandes

A bill to be entitled

An act relating to the Beverage Law; repealing s. 564.05, F.S., relating to limitations on the size of individual wine containers; repealing s. 564.055, F.S., relating to limitations on the size of individual cider containers; amending s. 564.09, F.S.; revising provisions authorizing a restaurant to allow a patron to remove bottles of wine from a restaurant for off-premises consumption; amending s. 565.03, F.S.; redefining the terms "branded product" and "craft distillery"; providing limitations on retail sales by a craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; providing that it is unlawful to transfer a distillery license, or ownership in a distillery license, for certain distilleries to certain individuals or entities; prohibiting a craft distillery from having its ownership affiliated with certain other distilleries; authorizing a craft distillery to transfer distilled spirits from certain locations to its souvenir gift shop; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. Section 564.055, Florida Statutes, is repealed.

Section 3. Section 564.09, Florida Statutes, is amended to

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

read:

564.09 Restaurants; off-premises consumption of wine.—Notwithstanding any other provision of law, a restaurant licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a ~~full course~~ meal ~~consisting of a salad or vegetable, entree, a beverage, and bread~~ and consumed a portion of the bottle of wine ~~with such meal~~ on the restaurant premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and ~~full course~~ meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

Section 4. Paragraphs(a) and (b) of subsection (1) and paragraph (c) of subsection (2) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

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

(a) "Branded product" means any distilled spirits product

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

manufactured on site, or manufactured on site and blended on site with other distilled spirits, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.

(b) "Craft distillery" means a licensed distillery that produces 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled spirits on its premises and is designated as a craft distillery by ~~has notified~~ the division upon notification in writing of its decision to qualify as a craft distillery.

(2)

(c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, up to 75,000 gallons per calendar year of branded products ~~distilled on its premises in this state~~ in factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized only on private property contiguous to the licensed distillery premises in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state.

1. A craft distillery may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions with consumers ~~who are making a purchase of no more than six individual containers of each branded product~~.

2. Each container sold in face-to-face transactions with

consumers must comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.

3. A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b). Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

4. A craft distillery may not ship or arrange to ship any of its distilled spirits to consumers and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

5. Except as provided in subparagraph 6., it is unlawful to transfer a distillery license for a distillery that produces 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

6. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 250,000 ~~75,000~~ or fewer gallons per calendar year of

distilled spirits on each of its premises in this state or in another state, territory, or country.

7. A craft distillery may transfer up to 75,000 gallons per calendar year of distilled spirits it manufactures from its federal bonded space, nonbonded space at its licensed premises, or storage areas to its souvenir gift shop.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill #296**, relating to **Beverage Law**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 358
INTRODUCER:	Senator Broxson and others
SUBJECT:	Transportation Facility Designations/Senator Greg Evers Memorial Highway
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Favorable**
2.	Price	Phelps	RC	**Favorable**

I. Summary:

SB 358 designates the portion of S.R. 4 between Munson Highway and S.R. 189 in Santa Rosa and Okaloosa Counties as "Senator Greg Evers Memorial Highway" and directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The estimated cost to the FDOT to install the designation markers required under this bill is $1,000. See the heading, "Fiscal Impact Statement" below for details.

The bill takes effect July 1, 2018.

II. Present Situation:

Section 334.071, F.S., provides that legislative designations of transportation facilities are for honorary or memorial purposes, or to distinguish a particular facility. Such designations are not to be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.[1]

When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility.[2]

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the

[1] Section 334.071(1), F.S.
[2] Section 334.071(2), F.S.

designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations before installation of the markers.[3]

III. Effect of Proposed Changes:

The bill designates the portion of S.R. 4 between Munson Highway and S.R. 189 in Santa Rosa and Okaloosa Counties as "Senator Greg Evers Memorial Highway" and directs the FDOT to erect suitable markers.

Senator Greg Evers was a fifth-generation northwest Floridian whose primary career was in agriculture. He served in the Florida House of Representatives from 2001 to 2010 and in the Florida Senate from 2010 to 2016. Throughout his legislative career, Senator Evers was recognized as a champion for law enforcement, first responders, and veterans. Senator Evers passed away on August 22, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The estimated cost to erect the designation markers required under this bill is $1,000, based on the assumption that two markers are required at a cost to the FDOT of no less than $500 each. The estimate includes sign fabrication, installation, and maintenance over time but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events.

[3] Section 334.071(3), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida Law.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senators Broxson, Book, and Baxley

16-00597-18 2018358__

A bill to be entitled

An act relating to transportation facility designations; providing honorary designation of a certain transportation facility in specified counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Senator Greg Evers Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of S.R. 4 between Munson Highway and S.R. 189 in Santa Rosa and Okaloosa Counties is designated as "Senator Greg Evers Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Senator Greg Evers Memorial Highway as described in subsection (1).

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 358
Bill Number (if applicable)

Topic Transportation Facility Designations - Senator Greg Evers Memorial Hwy

Amendment Barcode (if applicable)

Name Chris Dawson

Job Title

Address 301 E. Pine Street, Suite 1400
Street

Phone 407.843.8880

Orlando FL 32801
City *State* *Zip*

Email chris.dawson@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Evers Family

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 376
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; and Senator Book and others
SUBJECT:	Workers' Compensation Benefits for First Responders
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Little	McKay	CM	**Favorable**
3.	Johnson/Sanders/ Davis	Hansen	AP	**Fav/CS**
4.	Johnson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 376 revises the standards for determining compensability of employment-related post-traumatic stress disorder (PTSD) under workers' compensation for first responders, which includes volunteers or employees engaged as law enforcement officers, firefighters, emergency medical technicians, and paramedics. The bill allows first responders that meet certain conditions to access indemnity and medical benefits for PTSD without an accompanying physical injury. Current law provides only medical benefits for a mental or nervous injury without an accompanying physical injury and requires the first responder to incur a compensable physical injury to receive indemnity benefits for a mental or nervous injury. Generally, the bill will increase the likelihood of compensability for workers' compensation indemnity benefits for PTSD.

PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault. A diagnosis of PTSD requires direct or indirect exposure to an upsetting traumatic event.

The bill creates an exception to current law to authorize the compensation of indemnity benefits for PTSD, if the first responder:

- Has PTSD that resulted from the course and scope of employment; and
- Is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier due to the first responder experiencing one of the following qualifying events relating to minors or others:
  - Seeing for oneself a deceased minor;
  - Witnessing directly the death of a minor;
  - Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department, participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
  - Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
  - Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence; or
  - Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Medical and indemnity benefits for a first responder's PTSD are due regardless of whether the first responder incurred a physical injury, and the following provisions do not apply:
- "Apportionment" due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

The first responder must file the notice of injury with their employer or carrier within 90 days of the qualifying event, described above, or manifestation of the PTSD. However, the claim is barred if it is not filed within 52 weeks of the qualifying event.

The bill requires an employing agency of a first responder, including volunteer first responders, to provide educational training related to mental health awareness, prevention, mitigation, and treatment.

The bill provides that the Legislature determines and declares that this act fulfills an important state interest.

State and local governments may incur additional costs as a result of the implementation of this bill. The National Council on Compensation Insurance estimates the fiscal impact of the bill on Florida's workers' compensation system is approximately 0.2 percent, or approximately $7 million.

The bill is effective October 1, 2018.

II. Present Situation:

Florida Workers' Compensation System

Employers are required to pay compensation or furnish benefits that are required under ch. 440, F.S., if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment.[1] Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,[2] or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.[3]

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.[4] An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.[5] An injury or disease caused by a toxic substance is not an injury by accident arising out of employment unless there is clear and convincing evidence establishing that exposure to the specific substance caused the injury or diseases sustained by the employee.[6]

General Compensability for Mental or Nervous Injuries

Section 440.093, F.S., sets forth the conditions under which a mental or nervous injury is compensable. A mental or nervous injury due to only stress, fright, or excitement is not an injury by accident arising out of the employment. Mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable.

Further, s. 440.093, F.S., provides that mental or nervous injuries occurring as a manifestation of an injury compensable under ch. 440, F.S., must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary benefits for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement.

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.[7]

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[1] Section 440.09(1), F.S.
[2] Section 440.38, F.S.
[3] Section 627.311(5)(a), F.S.
[4] "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.
[5] Section 440.09(1), F.S.
[6] Section 440.02(1), F.S.
[7] Section 440.13(2)(a), F.S.

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.[8] These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),[9] up to the maximum weekly benefit established by law.[10] Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.[11]
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.[12]
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for five years.[13]

Section 440.15(3), F.S., provides that permanent impairment benefits are limited for a permanent psychiatric impairment to one percent permanent impairment.

First Responders' Compensability for Mental or Nervous Injuries

In 2007, the Legislature enacted significant changes in workers' compensation benefits for first responders that provide benefits and standards for determining benefits for employment-related accidents and injuries of first responders. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S.,[14] a firefighter as defined in s. 633.102, F.S.,[15] or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,[16] employed by state or local government.[17] Further, a volunteer law enforcement officer, firefighter, or emergency medical

[8] Section 440.12(1), F.S.
[9] An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.
[10] Section 440.15(1)-(4), F.S.
[11] Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specify that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in Westphal to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).
[12] Section 440.15(3), F.S.
[13] Section 440.15(1), F.S.
[14] "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
[15] "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services pursuant to s. 633.408, F.S.
[16] "Emergency medical technician" means a person who is certified by the Department of Health to perform basic life support pursuant to pt. III of ch. 401, F.S. "Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support pursuant to pt. III of ch. 401, F.S.
[17] Chapter 2007-1, Laws of Fla.

technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.[18]

In regards to compensability for a mental or nervous injury involving a first responder, s. 112.1815, F.S.:

- Requires that a mental or nervous injury occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence;
- Authorizes the payment of only medical benefits in employment-related cases involving a mental or nervous injury without an accompanying physical injury requiring medical treatment;
- Prohibits the payment of indemnity benefits unless a physical injury arising out of injury as a first responder accompanies the mental or nervous injury; and
- Provides that benefits for first responders are not subject to any limitation on temporary benefits under s. 440.93, F.S., or the one percent limitation on permanent psychiatric impairments benefits under s. 440.15, F.S.

State Survey of Compensability Laws for Workers' Compensation Mental Injuries

Often stress-related injuries do not result from a physical injury. These types of injuries are referred to as "mental-mental" injuries because they are caused by a purely mental stimulus that leads to a mental impairment, such as depression or post-traumatic stress disorder (PTSD). This stimulus could be witnessing, but not being physically injured by, a particularly horrific accident, workplace incident, or crime scene.

In 2017, the National Council on Compensation Insurance (NCCI) issued a report summarizing compensability for injuries[19] in the United States.[20] Highlights of the study include:

- ***Compensability for Mental-Mental Injuries:*** 27 jurisdictions, including Florida, have statutory language expressly allowing compensation for nonphysical mental (mental-mental) injuries or stress in limited circumstances.[21]
- ***Mental-Mental and Mental-Physical Exclusions:*** Montana is the only state that specially denies compensability for both mental-physical and mental-mental injuries.
- ***Personnel Actions:*** 21 states specify that stress arising out of a personnel action is not compensable.

Post-Traumatic Stress Disorder (PTSD)

The American Psychiatric Association provides diagnostic criteria for mental disorders, including PTSD, in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*

[18] Section 112.1815, F.S.
[19] Reference to mental injuries also includes mental impairments or disorders that are occupational diseases. The District of Columbia and Kansas laws do not expressly provide for compensation of mental injuries, but they do reference mental conditions and/or mental providers.
[20] NCCI, *Compensability for Workers' Compensation Mental Injuries* (2017) (on file with Senate Banking and Insurance Committee).
[21] Typically, compensable mental-mental injuries must be considered extraordinary and the predominate or substantial contributing cause.

(DSM-5).[22] PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault.[23] A diagnosis of PTSD requires exposure to an upsetting traumatic event. However, exposure could be indirect rather than first hand.[24] Symptoms generally begin within the first three months after the trauma, although there may be a delay of months or even years before the criteria for the diagnosis are met.[25]

Prevalence Rate

The exact prevalence rate for PTSD is difficult to ascertain. According to the National Center for PTSD, about seven or eight percent of the population will have PTSD at some point in their lives.[26] About eight million adults will have PTSD during a given year. About 10 percent of females develop PTSD during their lives compared with about four percent of males. The number of veterans with PTSD varies by service era. For example, about 15 percent of Vietnam veterans are diagnosed with PTSD at the time of the most recent study conducted in the late 1980s. It is estimated that 30 percent of Vietnam veterans have had PTSD in their lifetime. In contrast, about 12 percent of Gulf War veterans have PTSD in a given year.

The DSM-5 estimates approximately 8.7 percent of the U.S. population will develop PTSD in their lifetime.[27] Twelve-month prevalence among U.S. adults is approximately 3.5 percent. The PTSD rates are higher among veterans and others whose employment increases the risk of traumatic exposure, such as police, firefighters, and emergency medical personnel. The highest rates (ranging from one-third to more than one-half of those exposed) are found among survivors of rape, military combat and captivity, and ethnically or politically motivated internment and genocide.

Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are four to five times more likely to develop PTSD compared to the general population.[28] A 2016 report estimated 20 percent of firefighters and paramedics had PTSD.[29] Preexisting mental health conditions may be exacerbated and new mental health conditions may occur due to extremely emotionally and physically demanding working conditions.[30]

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[22] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, (5th, 2013). Commonly referred to as DSM-5.
[23] *See* American Psychiatric Association, *What is Posttraumatic Stress Disorder?* (Jan. 2017) (on file with Senate Banking and Insurance Committee).
[24] *Id*.
[25] DSM-5, *supra*, note 25 at 276.
[26] National Center for PTSD, *How Common is PTSD?* Available at: https://www.ptsd.va.gov/public/PTSD-overview/basics/how-common-is-ptsd.asp (last visited Jan. 12, 2018).
[27] DSM-5, *supra*, note 25, at 276.
[28] *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.
[29] EMS1.com News, *New study estimates 20 percent of firefighters and paramedics have PTSD* (Aug. 17, 2017) (on file with Senate Banking and Insurance Committee.
[30] Johns Hopkins Public Health Preparedness Programs, *First Responders, Mental Health Services, and the Law* (Apr. 25, 2013) (on file with Senate Committee on Banking and Insurance Committee).

A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.[31] Concern has been expressed that first responders may underreport mental health conditions as a result of stigma associated with seeking treatment for those conditions.

Prognosis

The onset of PTSD symptoms is usually in the first month after the traumatic event; however, in about 15 percent of the cases, there may be a delay of months or years before symptoms appear.[32] Further, although a high proportion of trauma survivors will initially develop symptoms of PTSD, a substantial number of these individuals recover without treatment in the following years, with a steep decline in PTSD rates occurring in the first year.[33] However, at least a third of the individuals who initially develop PTSD remain symptomatic for three years or longer, and are at risk of secondary problems such as substance abuse.[34]

2016 Pulse Shooting in Orlando, Florida

On June 12, 2016, 49 people were killed and at least 68 others were injured at a shooting at the Pulse nightclub in Orlando, Florida. The shooting has been characterized as one of the deadliest mass shootings in modern U.S. history.[35] One recently profiled police officer was diagnosed with post-traumatic stress disorder and has been out of work since shortly after the shooting.[36] The article noted that, while the City of Orlando Police Department was paying his full salary, Florida law did not require the employer to pay because workers' compensation compensability for PTSD must be accompanied by a physical injury, which the officer did not have.

Florida Retirement System

The Florida Retirement System (FRS)[37] offers members a choice between the Pension Plan (a defined benefit plan) and the Investment Plan (a defined contribution plan). Generally, FRS membership is compulsory for employees filling a regularly established position in a state agency, county agency, state university, state college, or district school board with some limited exceptions. Participation by cities, municipalities, special districts, charter schools, and metropolitan planning organizations, although optional, is generally irrevocable after the election to participate is made. The five classes of membership are Regular Class, Senior Management

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[31] FireRescue News, *Increasing suicide rates among first responders spark concerns* (Mar. 19, 2017) (on file with Senate Committee on Banking and Insurance Committee).
[32] National Collaborating Centre for Mental Health (UK). Post-Traumatic Stress Disorder: The Management of PTSD in Adults and Children in Primary and Secondary Care. Leicester (UK): Gaskell; 2005. (NICE Clinical Guidelines, No. 26.) Post-traumatic stress disorder. Available from: https://www.ncbi.nlm.nih.gov/books/NBK56506/ (last viewed Feb. 26, 2018).
[33] *Id.*
[34] *Id.*
[35] CBS News, *Report reveals dramatic new details from Orlando nightclub massacre*, (Apr. 14, 2017) available at http://www.cbsnews.com/news/orlando-nightclub-shooting-report-reveals-new-details-inside-pulse/ (last visited Jan. 12, 2018).
[36] Orlando Sentinel, *Proposed bills would cover first responders who have PTSD* (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).
[37] Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, available at http://www.myflorida.com/audgen/pages/pdf_files/2017-073.pdf (last visited Jan. 12, 2018).

Service Class, Special Risk Class, Special Risk Administrative Support Class, and Elected Officers' Class.

Special Risk Class of the FRS

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency medical care who meet statutory criteria for membership set for in s. 121.0515, F.S.[38] A person who is a member in the Special Risk Class may retire at an earlier age and is eligible to receive higher disability and death benefits than Regular Class members. In creating the Special Risk Class of membership within the FRS, the Legislature recognized that certain employees, as an essential function of their positions, must perform work that is physically demanding or that requires extraordinary agility and mental acuity.[39] The Legislature further found that, as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public and their coworkers.

Disability Benefits for Members of the FRS

The FRS provides disability benefits for its active members who are permanently, totally disabled from useful employment. The level of disability benefits to which an eligible disabled member is minimally entitled depends upon membership class, and whether the disabling injury or illness was job related. For Special Risk Class members retiring on or after July 1, 2000, the minimum in-line-of-duty disability benefit is 65 percent of average final compensation (AFC) as of the member's disability retirement date.

Section 121.091(4), F.S., provides that any FRS[40] member who is totally and permanently disabled due to a condition or impairment of health caused by an injury or illness (including tuberculosis, heart disease, or hypertension) is entitled to disability benefits. The disabling injury or illness must have occurred before the member terminated employment. If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member is entitled to in-line-of-duty disability benefits.

There are several important differences in the laws applicable to disability benefits, depending on whether the disability is found to be due to an injury or illness "suffered in the line of duty":

- *Eligibility* — A FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, the member must have eight years of creditable service[41] before becoming disabled in order to receive disability retirement benefits for any disability occurring other than in the line of duty.
- *Burden of Proof* — Proof of disability is required, including certification by two Florida-licensed physicians that the member's disability is total and permanent (i.e., that the member is prevented by reason of a medically determinable physical or mental impairment from

[38] Section 121.0515(1), F.S.
[39] *Id*.
[40] Members of both the FRS Pension Plan and the FRS Investment Plan are eligible for disability coverage.
[41] Until July 1, 2001, any member who joined the FRS on or after July 1, 1980, was required to complete 10 years of creditable service to qualify for disability benefits for a disability that was not job-related. Under current law, the 10-year service requirement has been reduced to eight years.

engaging in gainful employment of any type). It is the responsibility of the applicant to provide such proof. Unless a legal presumption applies such as the one provided under s. 112.18, F.S., to qualify to receive the higher in-line-of-duty disability benefits, the member must also show by competent evidence that the disability occurred in the line of duty.

- *Chapter 175, F.S., plans* — Pension plans for firefighters established pursuant to ch. 175, F.S., must provide a minimum line of duty benefit equal to the firefighter's accrued retirement benefit, but no less than 42 percent of his or her average monthly salary at the time of disability. Disability occurs when an injured plan member is wholly prevented from rendering useful and efficient service as a firefighter and is likely to remain so in the opinion of the board of trustees, after the member has been examined by a duly qualified doctor selected by the board. Local law plans may have enacted disability benefits that exceed the minimum requirements.

Existing In-Line-of-Duty Disability Presumptions

Section 112.18, F.S., establishes a presumption for state and local firefighters, law enforcement, correctional, and correctional probation officers regarding determinations of job-related disability. This statute provides that certain diseases (tuberculosis, heart disease, and hypertension) acquired by these officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer the burden of proving by competent evidence that the disabling disease was not related to the person's employment.

Section 175.231, F.S., provides a similar presumption for firefighters in any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under ch. 175, F.S., whose death or disability is the result of tuberculosis, heart disease, or hypertension. Section 185.34, F.S., provides a similar presumption for municipal police officers' pension plans.

Section 112.181, F.S., provides a presumption applicable to any emergency rescue or public safety worker, including a firefighter, that such employee qualifies for in the line of duty disability or death benefits if such disability or death is due to hepatitis, meningococcal meningitis, or tuberculosis.

Absent one of the existing presumptions, the FRS member has the burden of proof when claiming in-line-of-duty disability or death benefits. The employee must show by competent evidence that the death or disability occurred in the line of duty in order to receive the higher benefits.[42] If the employee or the employee's survivors cannot meet the burden of proof, the employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

Death Benefits Available for FRS Members

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members. Under s. 121.091(7), F.S., death benefits may be paid for an active member of the FRS Pension Plan who dies before retirement due to an injury or illness (including

[42] Sections 121.091(4)(c) and (7)(d), F.S.

tuberculosis, heart disease, or hypertension). If the injury or illness arises out of and in the actual performance of duty required by the job, the member's surviving spouse and/or eligible dependent(s) are entitled to in-line-of-duty death benefits. There are important differences in the laws applicable to death benefits, depending on whether the death is found to be due to an injury or illness "suffered in the line of duty."

From the first day on the job, an FRS Pension Plan member is eligible for in-line-of-duty death benefits that will pay a minimum monthly benefit to a survivor equal to half the member's last monthly salary. If the deceased member would have been entitled to a higher retirement benefit based on service credit, the higher benefit would be payable to his/her spouse or eligible dependent(s). The survivor benefit for Special Risk Class members killed in the line of duty is 100 percent of the member's base pay at the time of death if the member's death occurs on or after July 1, 2013. Unless a legal presumption applies such as those provided under s. 112.18, F.S., the eligible beneficiary must show by competent evidence that the death occurred in the line of duty to qualify to receive the higher in-line-of-duty death benefits.

Local Government Pension Plans

Chapters 175 and 185, F.S., provide funding mechanisms for pension plans of municipal firefighters and police officers, respectively. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters and local law enforcement officers participate in these plans. To be considered totally and permanently disabled, charter plan employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer.[43] Under local law plans, the standards may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351 and 185.35, F.S., respectively.

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S., to revise the standards for determining compensability of employment-related post-traumatic stress disorder (PTSD) under workers' compensation for first responders, which includes volunteers or employees engaged as law enforcement officers, firefighters, emergency medical technicians, and paramedics. The section creates an exception to the current prohibition on the payment of indemnity benefits unless a physical injury accompanies the mental or nervous injury by authorizing indemnity benefits for PTSD if certain conditions are met. A first responder is entitled to medical and indemnity benefits for PTSD, as an occupational disease, the PTSD resulted from the first responder acting within the course and scope of employment and is diagnosed by a licensed psychiatrist who is an authorized treating physician under ch. 440, F.S. The PTSD must be due to one of the following qualifying events relating to minors or others:

- Seeing for oneself a deceased minor;
- Witnessing directly the death of a minor;

[43] Sections 175.191 and 185.18, F.S.

- Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department, participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
- Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence; or
- Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Such medical and indemnity benefits for a first responder's PTSD are due:
- If the PTSD is proven by clear and convincing evidence;
- Regardless of whether the first responder incurred a physical injury;
- Without apportionment due to a preexisting PTSD;
- Without any limitation, thus the one percent on permanent psychiatric impairment benefits does not apply; and
- Without any limitation on temporary benefits under s. 440.093, F.S.

The first responder must file a first notice of injury with their employer or carrier within 90 days of the qualifying event, or manifestation of the PTSD. However, the claim is barred if the notice is not filed within 52 weeks after the qualifying event. The section defines the terms, "directly witnessing," "manually transporting," and "minor." The section also directs the Department of Financial Services to adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience.

Lastly, the section requires an employing agency of a first responder, including volunteer first responders, to provide educational training related to mental health awareness, prevention, mitigation, and treatment.

Current law provides that only medical benefits are payable for a mental or nervous injury of a first responder that is unaccompanied by a physical injury. Indemnity benefits are available only if the mental or nervous injury is accompanied by a physical injury.

Section 2 provides that the Legislature declares that this act fulfills an important state interest.

Section 3 provides the bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or

municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless:

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

The bill expressly finds that the law fulfills an important state interest. The bill applies to all first responders delineated under s. 112.1815, F.S and similarly situated, including state agencies, school boards, community colleges, counties, municipalities, special districts, and private entities.

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:

National Council on Compensation Insurance (NCCI) Analysis of CS/SB 376

According to the NCCI, the implementation of CS/SB 376 may result in an indeterminate increase in Florida's workers' compensation system costs for law enforcement officer, firefighter, emergency medical technician, and paramedic classifications in Florida.[44] However, the overall impact on workers' compensation costs was expected to be minimal, since the data reported to the NCCI show that first responders represent approximately 2.2 percent of statewide losses in Florida. The 2.2 percent may be an underestimate for the total population of Florida workers, as many entities that employ law enforcement officers, firefighters, and emergency medical technicians are self-insured and do not report data to the NCCI.

The ultimate system cost impact would be realized through future loss experience and reflected in subsequent NCCI rate filings in Florida. A minimal impact in this context is defined as an impact on overall system costs of less than 0.2 percent or approximately $7 million.[45]

[44] NCCI, *Analysis of SB 376* (Oct. 19, 2017) (on file with Senate Banking and Insurance Committee).
[45] NCCI correspondence (Dec. 4, 2017) (on file with Senate Committee on Banking and Insurance).

The NCCI is unable to quantify the expected increase in the number of post-traumatic stress disorder (PTSD)-related claims that would be entitled to indemnity benefits under CS/SB 376. According to the NCCI, the 2015 average total claim severity for an indemnity or lost-time claim[46] in Florida was $60,700 ($19,100 average indemnity claim severity plus $41,600 average medical claim severity).[47] However, due to the high prevalence of PTSD among first responders, the NCCI estimates that the increase in compensable PTSD-related claims could be significant for these occupational classifications.[48] If enacted, the bill could potentially result in increased litigation related to the confirmation of a PTSD diagnosis and the determination of whether the PTSD arose out of an activity performed within the course of employment. Any costs associated with increased litigation would be expected to exert upward pressure on overall workers' compensation system costs.

C. Government Sector Impact:

The fiscal impact on state and local governments is indeterminate. State and local governments may incur higher claim costs for workers' compensation benefits of first responders contingent upon the frequency and severity of the claims.[49] In regards to prevalence rate, estimates vary across occupations. One study noted that police officers incurred duty-related post-traumatic stress disorder (PTSD) rates ranging from seven to 19 percent.[50] In contrast, another study noted that about 20 percent of ambulance workers developed post-traumatic stress disorder (PTSD).[51] However, first responders are four to five times more likely to develop PTSD compared to the general population.[52] Other prevalence rates range from seven to 37 percent.[53]

According to the Department of Management Services (DMS), as of December 1, 2017, the total number of State Personnel System (SPS) employees in firefighter positions was 613 and the total number of SPS employees in law-enforcement officer positions was 4,342. This information does not include volunteers. According to the DMS, the SPS does not utilize paramedic or emergency medical technician classes, nor does it have volunteers perform firefighter or law enforcement duties.[54]

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[46] Lost-time claims are claims resulting in indemnity benefits and usually medical benefits being paid to or on behalf of the injured worker for time lost from work.
[47] NCCI correspondence (Feb. 26, 2018) (on file with Senate Committee on Banking and Insurance).
[48] According to NCCI, although events leading to PTSD cannot be predicted with certainty, the incidence of PTSD is estimated to be significantly higher for first responders compared to the general population. According to the U.S. Department of Veterans Affairs, about 55 percent of the population will experience at least one trauma in their lives and, as a result, about 7-8 percent of the population will have PTSD at some point in their lives. In comparison, the National Center for Biotechnical Information (NCBI) concluded that the prevalence of PTSD among Emergency Medical Technicians (EMTs) is greater than 20 percent, and various sources have reported the prevalence of PTSD among firefighters to be in the 7 percent to 37 percent range.
[49] *See* NCCI *Analysis of SB 376* in Private Sector Impact.
[50] Psychological Trauma: Theory, Research, Practice, and Policy, see note 30, p.500.
[51] *Id.*
[52] *Id.*
[53] NCCI, see note 53.
[54] Department of Management Services correspondence (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

There are approximately 177,724 first responders statewide. According to the Florida Department of Law Enforcement, there were 46,309 law enforcement officers, as of June 15, 2017.[55] The Florida Department of Health, Division of Medical Quality Assurance, notes there were 32,074 active emergency medical technicians and 29,242 paramedics, in Fiscal Year 2016-2017.[56] According to the Department of Financial Services, Division of State Fire Marshal, there were 46,322 certified firefighters and 23,777 certified volunteer firefighters, as of December 2017.[57]

Local Government Retirement Plans[58]

The DMS analysis of SB 376 indicated that version of the bill would expand workers compensation benefits for first responders to mental and nervous injuries, regardless of a physical injury, and workers' compensation documentation and coverage is considered in determining eligibility for chapters 175 or 185, F.S., in-line-of-duty disability and in-line-of-duty death benefits. For local law plans governed by chapters 175 and 185, F.S., total disability includes inability to provide useful and efficient service as a firefighter or police officer. This is a more liberal definition of total disability than the Florida Retirement System (FRS) standard and will likely result in higher incidence of in-line-of-duty disability and in-line-of-duty death benefit awards for chapters 175 and 185, F.S., than in FRS plans.

The cost impact on individual local law plans will require the completion of actuarial impact statements. However, with the revised criteria, the potential higher incidence of in-line-of-duty deaths will likely result in increased plan costs for chapters 175 and 185, F.S., plans above the de minimis level.

Florida Retirement System[59]

The DMS determined that the actuarial impact of SB 376 on the FRS was indeterminate. The DMS noted both a lack of data regarding how many members would be immediately eligible for enhanced in-line-of-duty disability benefits, as well as an absence of academic study regarding the incidence of mental and nervous injury, without accompanying physical injury, to estimate the potential ongoing cost arising from additional in-line-of-duty disability and in-line-of-duty death applications.

[55] See http://www.fdle.state.fl.us/CJSTC/Documents/Quarterly-Update_Summer-2017_small.aspx (last viewed Feb. 27, 2018)
[56] See http://mqawebteam.com/annualreports/1617/ (last viewed Feb. 27, 2018).
[57] Email from B.G. Murphy, Department of Financial Services, Re: HB 227 Question (Feb. 6, 2018)
[58] Department of Management Services, *Analysis of SB 376* (Jan. 23, 2018) (on file with Senate Banking and Insurance Committee).
[59] *Id.*

Department of Agriculture and Consumer Services (DACS)[60]

Since s. 112.1815, F.S., was enacted, the Florida Forest Service (FFS) and the Office of Agricultural Law Enforcement (OALE) have not received any workers' compensation claims for mental or nervous injuries. An increase in annual claims from first responders is highly probable; however, the limited level of exposure by the employees of the DACS to the scenarios and the requirements are likely to lessen the frequency of claims. A negative fiscal impact of unknown severity is likely. There are currently 211 special-risk positions in the OALE and 589 in FFS that are first responder positions. The FFS has a volunteer program; however, only a small portion of the FFS volunteers are classified as firefighters.

Department of Financial Services

Division of Risk Management[61]

Since the enactment of s. 112.1815, F.S., available records indicate that only one state employee has received medical benefits relating to a work-related mental condition without a physical injury. The DFS indicates there is a potential for small increases in claims costs. A state worker that is unable to return to work due to the extent of his mental injuries could result in a much higher cost depending on age and salary. These costs may include medical benefits, which are currently provided, as well as indemnity benefits. According to NCCI, the average indemnity claim severity is $19,100 plus $41,600 average medical claim severity.

Division of Workers' Compensation[62] ***(DWC)***

Using medical bills with dates of service in the last two fiscal years (July 1, 2015 through June 30, 2017), the Division of Workers' Compensation identified 203 first responder claims where one of the diagnoses is PTSD (unspecified) or PTSD (chronic). The vast majority of these claims (about 80 percent) have dates of accident between 2006 and 2017. For those, 80 percent or 162 claims, total medical was $13,430,645 ($82,905.22 average per claim) and total indemnity is $9,064,407 ($55,953.13 average per claim). Of the 162 claims, 110 claims had a payment for psychiatric care, which totaled $275,140.94 ($2,501.28 average per claim). There were 12 claims that had denials and all but one of those claims had medical and/or indemnity dollars paid on it. All of the claims that were denied had an associated physical injury.

[60] Department of Agriculture and Consumer Services, *Legislative Analysis of SB 376* (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).
[61] Department of Financial Services, *Legislative Analysis of SB 376* (Oct. 11, 2017) (on file with the Senate Committee on Banking and Insurance).
[62] Department of Financial Services, correspondences (Feb. 2018) (on file with the Senate Committee on Banking and Insurance).

Department of Highway Safety and Motor Vehicles (DHSMV)[63]

The DHSMV has averaged $73,500 in annual costs for injury-related workers' compensation benefits. There have not been any claims for mental or nervous injuries in recent years. If this bill is enacted, there could be an indeterminate, but possibly significant, increase in expenditures. The DHSMV has 1,974 FHP trooper positions, approximately 228 auxiliary volunteers and 50 reserve officers (volunteers). A reserve officer is a certified law enforcement officer appointed to serve without compensation and vested with the authority to bear arms and make arrests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.1815 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 27, 2018:
The committee substitute:

- Revises compensability requirements of first responders for PTSD under s. 112.1815, F.S., in the following manner:
  - Requires that the post-traumatic stress disorder (PTSD) must result from the first responder acting within his or her course of employment and the first responder must be examined and diagnosed with PTSD by a licensed psychiatrist, who is an authorized treating physician, due to one of the specified qualifying events. The PTSD must be demonstrated by clear and convincing evidence rather than a preponderance of evidence;
  - Provides that medical and indemnity benefits for PTSD are not subject to apportionment due to a preexisting PTSD; any limitation on permanent impairment benefits; or any limitation on temporary benefits under s. 440.093, F.S.;
  - Revises the evidentiary standard for compensability of PTSD from preponderance of evidence to clear and convincing evidence;
  - Requires first responder to file a notice of injury within 90 days of the qualifying event or manifestation of the PTSD. The claim is barred if it is not filed within 52 weeks of the qualifying event; and

[63] Department of Highway Safety and Motor Vehicles, *Legislative Analysis of SB 376* (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

- Provides that the Legislature determines and declares that this act fulfills an important state interest.
- Restores current law in its general application of mental and nervous injury benefits for first responders;
- Requires the Department of Financial Services to adopt rules; and
- Requires an employing agency of a first responder to provide educational training relating to mental health awareness.

CS by Banking and Insurance on December 5, 2017:
The CS:

- Lowers the evidentiary standard for compensability of mental nervous injuries of first responders, defined in s. 112.1815, F.S., from clear and convincing evidence to preponderance of evidence.
- Revises compensability requirements of law enforcement officer, firefighter, emergency medical technician, and paramedics for PTSD under ch. 440, F.S., in the following manner:
  - Requires that such an employee must have been acting within the course of employment and the person witnessed, or arrived at the scene of, a murder, suicide, fatal injury, child death, or mass casualty incident.
  - Eliminates the requirement that such an employee must initiate mental health treatment within 15 days after the incident.
  - Requires that the mental nervous injury of such an employee must be demonstrated by a preponderance of evidence, rather than a clear and convincing evidence, by a licensed psychiatrist to meet the criteria for PTSD as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, published by the American Psychiatric Association.
- Changes the effective date of the bill from July 1 to October 1, 2018.

B. Amendments:

None.

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

By the Committees on Appropriations; and Banking and Insurance; and Senators Book, Young, Taddeo, Montford, Stewart, Rader, and Campbell

A bill to be entitled

An act relating to workers' compensation benefits for first responders; amending s. 112.1815, F.S.; providing that, under certain circumstances, posttraumatic stress disorder suffered by a first responder is an occupational disease compensable by workers' compensation benefits; specifying the evidentiary standard for demonstrating such disorder; specifying that benefits do not require a physical injury and are not subject to certain apportionment or limitations; providing a time for notice of injury or death; providing definitions; requiring the Department of Financial Services to adopt certain rules; requiring an employing agency to provide specified mental health training; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsections (5) and (6) are added to section 112.1815, Florida Statutes, to read:

112.1815 Firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.—

(5)(a) For the purposes of this section and chapter 440, and notwithstanding sub-subparagraph (2)(a)3. and ss. 440.093 and 440.151(2), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association,

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

suffered by a first responder is a compensable occupational disease within the meaning of subsection (4) and s. 440.151 if:

1. The posttraumatic stress disorder resulted from the first responder acting within the course of his or her employment as provided in s. 440.091; and

2. The first responder is examined and subsequently diagnosed with such disorder by a licensed psychiatrist who is an authorized treating physician as provided in chapter 440 due to one of the following events:

a. Seeing for oneself a deceased minor;

b. Directly witnessing the death of a minor;

c. Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;

d. Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;

e. Manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;

f. Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;

g. Directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience;

h. Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence;

i. Directly witnessing an injury, including an attempted

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

suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;

j. Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or

k. Manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

(b) Such disorder must be demonstrated by clear and convincing medical evidence.

(c) Benefits for a first responder under this subsection:

1. Do not require a physical injury to the first responder; and

2. Are not subject to:

a. Apportionment due to a preexisting posttraumatic stress disorder;

b. Any limitation on temporary benefits under s. 440.093; or

c. The 1-percent limitation on permanent psychiatric impairment benefits under s. 440.15(3).

(d) The time for notice of injury or death in cases of compensable posttraumatic stress disorder under this subsection is the same as in s. 440.151(6) and is measured from one of the

qualifying events listed in subparagraph (a)2. or the manifestation of the disorder, whichever is later. A claim under this subsection must be properly noticed within 52 weeks after the qualifying event.

(e) As used in this subsection, the term:

1. "Directly witnessing" means to see or hear for oneself.

2. "Manually transporting" means to perform physical labor to move the body of a wounded person for his or her safety or medical treatment.

3. "Minor" has the same meaning as in s. 1.01(13).

(f) The Department of Financial Services shall adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience for the purposes of this subsection.

(6) An employing agency of a first responder, including volunteer first responders, must provide educational training related to mental health awareness, prevention, mitigation, and treatment.

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

Section 3. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/01/2018
Meeting Date

CS/CS/SB 376
Bill Number (if applicable)

Topic WORKERS COMPENSATION FOR FIRST RESPONDERS

Amendment Barcode (if applicable)

Name ROBERT CHAPMAN

Job Title STATE EMPLOYEE

Address 4128 LYNBROOK DRIVE
Street

Phone

ZEPHYRHILLS FLORIDA 33540
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03-01-18
Meeting Date

SB 376
Bill Number (if applicable)

Topic Workers' Comp Benefits 1st Responders

Amendment Barcode (if applicable)

Name Ray Colburn

Job Title Executive Director

Address 880 Airport Rd
Street

Ormond Beach FL 32174
City *State* *Zip*

Phone 407-468-6622

Email rayc@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

3/1/18
Meeting Date

376
Bill Number (if applicable)

Topic Workers' Compensation Benefits for First Responders

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Legislative Affairs Director

Address 200 E. Gaines Street
Street

Phone 850-413-2890

Tallahassee FL 32399
City *State* *Zip*

Email bg.murphy@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Patronis/Department of Financial Services

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)

3/1/18
Meeting Date

Topic Workers Comp First Responders Bill Number 376 *(if applicable)*

Name Jim Tolley Amendment Barcode _____ *(if applicable)*

Job Title President Florida Prof Firefighters

Address 343 west madison st Phone 850 224 7333
Street

Tallahassee FL 32301 E-mail jimtfpff@gmail.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Firefighters

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

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

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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)

3/1/18
Meeting Date

SB 376
Bill Number (if applicable)

Topic Workers Comp First Responders

Amendment Barcode (if applicable)

Name Jim Millican

Job Title Chief

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Street

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St Pete FL 33714
City *State* *Zip*

Email jmillican@leelmanfire.com

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

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

Representing Florida Fire Marshals

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/2018
Meeting Date

376
Bill Number (if applicable)

Topic Workman's Comp. For First Responders

Amendment Barcode (if applicable)

Name Linda L. Benoway

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Street

Phone 813/ 909-2139

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City *State* *Zip*

Email Benoway@AOL.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing (Stevie LaDue, Firefighter)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/2018
Meeting Date

376
Bill Number (if applicable)

Topic Workman Comp for First Responders

Amendment Barcode (if applicable)

Name Edward R. Benoway

Job Title

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing (Steve LaDue, Firefighter)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

376
Bill Number (if applicable)

Topic First Responders PTSD

Amendment Barcode (if applicable)

Name Megan Vila

Job Title

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Lutz FL 33558
City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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 520
INTRODUCER:	Rules Committee; Health Policy Committee and Senators Young and Campbell
SUBJECT:	Optometry
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Loe	Hansen	AP	**Favorable**
3.	Rossitto-Van Winkle	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 520 eliminates the requirement in current law that any person desiring an optometry license in Florida must file an application for licensure and subsequently take and successfully pass the licensure exam. Under the bill, an applicant may submit an application and proof of having successfully passed the licensure examination within three years before the date of the application or after the submission of the application. This process applies to a new licensee in the practice of optometry as well as to a person who is licensed to practice optometry in another state who desire licensure in Florida.

The bill requires the Board of Optometry (board) to approve the licensure examination and clarifies that the board may, by rule, offer a practical examination in addition to a written examination.

The bill may increase state expenditures by an indeterminate amount. The Department of Health (DOH) may experience an increase in workload if the board elects to offer a practical examination in addition to a written examination; however, these costs can be absorbed within existing resources.

The bill takes effect upon becoming law.

II. Present Situation:

The Practice of Optometry

The DOH is responsible for the regulation of optometrists in Florida for the preservation of the health, safety, and welfare of the public. The board was established to ensure that every person engaged in the practice of optometry meets minimum requirements for safe practice.[1]

Optometry is the diagnosis of conditions of the human eye and its appendages.[2] The practice of optometry includes the employment of any objective or subjective means or methods to assist in the diagnosis of conditions of the human eyes and its appendages, including:

- The administration of ocular pharmaceutical agents for the purpose of determining the refractive powers of the human eyes, or any visual, muscular, neurological, or anatomic anomalies of the human eyes and their appendages; and
- The prescribing and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, light frequencies, and any other means or methods, including ocular pharmaceutical agents,[3] for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages.[4]

Licensed optometrists who are not certified may only use topical anesthetics for the purpose of glaucoma examinations and are otherwise prohibited from administering or prescribing ocular pharmaceutical agents.[5] A licensed optometrist is required to post in his or her practice location a sign, which states: "I am a Licensed Practitioner, not a Certified Optometrist, and I am not able to prescribe ocular pharmaceutical agents."[6]

All optometrists initially licensed after July 1, 1993,[7] are now required to be certified and may administer and prescribe ocular pharmaceutical agents for the diagnosis and treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.[8]

Licensure and Certification

Pursuant to ch. 456, F.S., the general provisions applicable to all professions regulated by the Division of Medical Quality Assurance within the DOH, the DOH must provide for the

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[1] Section 463.001, F.S., and The Department of Health, *Florida Board of Optometry*, available at: http://floridasoptometry.gov/, (last visited Mar.1, 2018).
[2] Section 463.002(10), F.S. "Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus.
[3] Section 463.002(5), F.S. "Ocular pharmaceutical agent" means a pharmaceutical agent that is administered topically or orally for the diagnosis or treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.
[4] Section 463.002(7), F.S.
[5] Section 463.0055(1)(a), F.S.
[6] Section 463.002(3), F.S.
[7] Section 463.002(3), F.S. The 1986 Legislature amended ch. 463, F.S., to require that anyone applying for an optometrist license after July 1, 1993, become a Certified Optometrist. The legislation required all applicants after that date to meet additional education and examination requirements. *See also* the Department of Health, Board of Optometry, *Licensing and Registration*, available at http://floridasoptometry.gov/licensing/, (last visited Mar. 1, 2018).
[8] Sections 463.002(4) and 463.0055, F.S.

development, preparation, administration, scoring, score reporting, and evaluation of all examinations in consultation with the appropriate board. For each examination developed by the DOH or a contracted vendor, the board must specify by rule:

- The general areas to be covered by each examination;
- The relative weight to be assigned in grading each area tested; and
- The score necessary to achieve a passing grade.[9]

The board and the DOH may not administer a state-developed written examination if a national examination has been certified by the DOH.[10] The board may administer a state-developed practical or clinical examination, if required by the applicable practice act, if all costs are paid by the candidate. If a national practical or clinical examination is available and certified by the DOH, the board may administer the national examination.[11]

Currently, any person desiring to be a certified optometrist in Florida must apply to the DOH to take the licensure and certification examinations.[12] To be certified as an optometrist the applicant must:

- Submit a completed application form;
- Submit an application and examination fee;
- Be at least 18 years of age;
- Graduate from a school or college of optometry approved by the board;
- Provide proof of at least 110 hours of transcript quality course work and clinical training in general and ocular pharmacology;
- Have completed at least one year of supervised experience in differential diagnosis of eye disease or disorders as part of the optometric training or in a clinical setting as part of the optometric experience;
- Successfully pass all four parts of the Florida Licensure Examination, consisting of:
  - Part I – the Applied Basic Science (ABS) portion of the examination developed by the National Board of Examiners in Optometry (NBEO);
  - Part II – the Patient Assessment and Management (PAM) portion of the examination developed by the NBEO which includes an embedded Treatment and Management of Ocular Disease examination;
  - Part III – the Clinical Skills Examination (CSE) portion of the examination developed by the NBEO; and
  - Part IV – a written examination on applicable Florida laws and rules governing the practice of optometry; and
- If the applicant is, or has ever been, licensed in another state, he or she must also submit a licensure verification from each state.[13]

An applicant who fails to achieve a passing score on Part I, Part II, Part III, or Part IV of the licensure examination may retake any part. Reexamination is limited to an 18-month period from

[9] Section 456.017(1)(a) and (b), F.S.
[10] Section 456.017(1)(c)2., F.S.
[11] Section 456.017, F.S.
[12] Section 463.006(1), F.S.
[13] The Department of Health, Board of Optometry, *Licensure Requirements*, available at: http://floridasoptometry.gov/licensing/certified-optometrist/, (last visited Mar. 1, 2018).

the date of the original failure. The board may grant an extension of one year to allow an additional retake based on a medical disability substantiated by documentation from the applicant's physician.[14]

Florida schools of optometry, and several out of state colleges, include the 4-part examination in the school curriculum and spread the four parts over the course of the four years of education and training required by the program.[15]

Prior to April 14, 2017, the DOH and board had, by rule,[16] accepted licensure applicants' passing scores on Part I, Part II, Part III, and Part IV of the licensure examination that had been obtained within the seven-year period immediately preceding licensure application. This practice was challenged in 2016[17] at the Division of Administrative Hearings, and the administrative law judge found that the petitioners had demonstrated that the rule's look-back period for test scores was an invalid exercise of delegated authority in violation of section 120.52(8)(b) and (c), F.S.; "and that should this result be onerous, the answer [was] a legislative change."[18] As a result of this decision, graduating students applying for licensure in Florida were required to retake examinations they had previously taken and passed while in school or college, and all out-of-state applicants were required to retake the examination.[19]

Renewal of Licensure and Certification

A licensed optometrist must renew his or her license every two years, pay a renewal fee not to exceed $300, and demonstrate his or her professional competence by completing 30 hours of continuing education during the preceding two-year period before license renewal. Certified optometrists must also complete 30 hours of continuing education during the preceding two years, but their hours must include six or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases.[20]

III. Effect of Proposed Changes:

Section 1 amends s. 463.006, F.S., to eliminate the requirement that applicants for licensure must take, and successfully pass, the licensure examinations after an application for licensure is submitted. The bill permits an applicant for licensure to submit an application for licensure that includes proof of specific items, and to also submit proof that he or she has successfully passed all parts of the licensure examination within three years prior to the date of application or after submission of the application. This allows graduates from a board approved, accredited school or college, and some out-of-state practitioners to proceed with licensure without taking the licensure examination a second time if the applicant successfully passed the examination within the prior three years.

[14] Rule 64B13-4.002, F.A.C.
[15] See Department of Health, *Senate Bill 520 Analysis* (Oct. 12, 2017) (on file with the Senate Committee on Health Policy).
[16] Rule 64B13-4.001, F.A.C.
[17] See Department of Administrative Hearings, *Final Order, Yontz & Johnson, v. DOH*, Case No. 16-6663RX (April 14, 2017), *available at* https://www.doah.state.fl.us/ROS/2016/16006663.pdf (last visited Mar. 1, 2018).
[18] Id. at page 42.
[19] *Supra* note 15.
[20] Section 463.007, F.S.

The bill requires the board to approve the licensure examination that meets certain requirements, and clarifies that the board may offer a practical examination in addition to a written examination.

Section 2 amends s. 463.0057, F.S., to make a conforming cross-reference change.

Section 3 provides the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

New licensees to the optometry profession, as well as some optometrists licensed in other states seeking licensure in Florida, may avoid the cost of retaking the required examinations if they successfully passed the examinations within three years prior to submitting an application. The estimated cost of the examination, not including travel and overnight accommodations to North Carolina, the only location Part III is given, is approximately $2,500.[21]

C. Government Sector Impact:

The DOH may incur additional expenses in the development, preparation, administration, scoring, score reporting and evaluation of the examinations if the board elects to offer its own practical examination; however, these costs can be absorbed within its existing resources.

[21] *Supra* note 15.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 31-35 of the bill contains existing statutory language that establishes caps for fees required for the licensure and certification of optometrists in Florida. The DOH no longer offers a state examination; therefore, fees required related to examinations are no longer collected, and the current statutory language can be deleted. The existing statutory language does not establish caps for a licensure application fee or a licensure fee. The current statutory language should be revised to include these fees in order to comply with section 456.025, F.S.

The bill permits three years to lapse since successful passage of the required licensure examination, either prior to the date of application or after the submission of an application, for licensure as an optometrist. It is not clear if the intent of this requirement is to limit the time period to three years or six years based on how the language is currently drafted. This language should be amended to clarify the intent of the restriction on the time permitted to lapse to qualify for licensure. Nonetheless, the restriction on the time permitted to lapse to qualify for licensure could deter the licensure of experienced optometrists who wish to move to Florida and continue practicing if more time has lapsed since they initially passed the examination. The restriction on the time permitted to lapse to qualify for licensure could be removed by incorporating similar language contained in the chiropractic practice act,[22] or the time frame could be extended to allow more time to lapse prior to requiring an optometrist licensed in another state to retake the licensure examination.

VIII. Statutes Affected:

This bill substantially amends sections 463.006 and 463.0057, of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on March 1, 2018:
The CS clarifies that an optometry applicant must submit to the board, rather than to the DOH, appropriate documentation for an initial optometry license; and changes the effective date from July 1, 2018, to upon becoming law.

B. **CS by Health Policy on December 5, 2017:**
The original bill amended s. 463.006, F.S., to authorize an optometry student, attending a board approved, accredited school of optometry, to submit his or her application for licensure and certification during the 24 months preceding his or her graduation. The CS removes this language and permits a graduate from a board-approved, accredited

[22] Section 460.406(5), F.S.

school or college, and certain out-of-state optometrists seeking licensure in Florida, to submit an application for licensure and proof that the applicant has passed all parts of the licensure examination within three years before the date of application or after the application submission. The CS also requires the board to approve the licensure examination.Amendments:

None.

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

373208

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Amendment

Delete lines 65 - 83
and insert:
board that he or she has met the requirements of subsection (1), who successfully passes the licensure examination within 3 years before the date of application or after the submission of an application, and who otherwise meets the requirements of this chapter is entitled to be licensed as a practitioner and to be certified to administer and prescribe ocular pharmaceutical agents in the diagnosis and treatment of ocular conditions.

373208

Section 2. Subsection (3) of section 463.0057, Florida Statutes, is amended to read:

463.0057 Optometric faculty certificate.—

(3) The holder of a faculty certificate may engage in the practice of optometry as permitted by this section but may not administer or prescribe topical ocular pharmaceutical agents unless the certificateholder has satisfied the requirements of s. 463.006(1)(e) and (f) ~~s. 463.006(1)(b)4. and 5~~. If a certificateholder wishes to administer or prescribe oral ocular pharmaceutical agents, the certificateholder must also satisfy the requirements of s. 463.0055(1)(b).

Section 3. This act shall take effect upon becoming a law.

By the Committee on Health Policy; and Senators Young and Campbell

588-01802-18 2018520c1

A bill to be entitled

An act relating to optometry; amending s. 463.006, F.S.; requiring an applicant for licensure as an optometrist to submit proof to the Department of Health that she or he meets certain requirements; removing a requirement that the department examine an applicant who meets specified requirements for licensure and certification; requiring the Board of Optometry to approve a licensure examination that meets certain requirements; clarifying that the board may offer a practical examination in addition to a written examination under certain circumstances; providing that an applicant must pass the licensure examination within a specified timeframe as a condition of licensure as an optometrist and certification to administer and prescribe ocular pharmaceutical agents; amending s. 463.0057, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 463.006, Florida Statutes, is amended to read:

463.006 Licensure and certification by examination.—

(1) Any person desiring to be a licensed practitioner pursuant to this chapter must ~~shall~~ apply to the department and must submit proof to ~~take the licensure and certification examinations.~~ the department that she or he ~~shall examine each~~

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

588-01802-18 2018520c1

~~applicant who the board determines has~~:

(a) Has completed the application forms as required by the board, remitted an application fee for certification not to exceed $250, remitted an examination fee for certification not to exceed $250, and remitted an examination fee for licensure not to exceed $325, all as set by the board.

(b) ~~Submitted proof satisfactory to the department that she or he:~~

~~1.~~ Is at least 18 years of age.

(c)~~2.~~ Has graduated from an accredited school or college of optometry approved by rule of the board.

(d)~~3.~~ Is of good moral character.

(e)~~4.~~ Has successfully completed at least 110 hours of transcript-quality coursework and clinical training in general and ocular pharmacology as determined by the board, at an institution that:

1.~~a.~~ Has facilities for both didactic and clinical instructions in pharmacology; and

2.~~b.~~ Is accredited by a regional or professional accrediting organization that is recognized and approved by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education.

(f)~~5.~~ Has completed at least 1 year of supervised experience in differential diagnosis of eye disease or disorders as part of the optometric training or in a clinical setting as part of the optometric experience.

(2) The board shall approve a licensure examination consisting ~~shall consist~~ of the appropriate subjects and~~,~~ including applicable state laws and rules and general and ocular

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

pharmacology with emphasis on the use and side effects of ocular pharmaceutical agents. The board may by rule substitute a national examination as part or all of the examination and, notwithstanding chapter 456, may by rule offer a practical examination in addition to a ~~the~~ written examination.

(3) Each applicant who submits proof satisfactory to the department that he or she has met the requirements of subsection (1), who successfully passes the licensure examination within 3 years before the date of application or after the submission of an application, and who otherwise meets the requirements of this chapter is entitled to be licensed as a practitioner and to be certified to administer and prescribe ocular pharmaceutical agents in the diagnosis and treatment of ocular conditions.

Section 2. Subsection (3) of section 463.0057, Florida Statutes, is amended to read:

463.0057 Optometric faculty certificate.—

(3) The holder of a faculty certificate may engage in the practice of optometry as permitted by this section but may not administer or prescribe topical ocular pharmaceutical agents unless the certificateholder has satisfied the requirements of s. 463.006(1)(e) and (f) ~~s. 463.006(1)(b)4. and 5~~. If a certificateholder wishes to administer or prescribe oral ocular pharmaceutical agents, the certificateholder must also satisfy the requirements of s. 463.0055(1)(b).

Section 3. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

January 24, 2018

Senator Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 520 relating to Optometry has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

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

Sincerely,

Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Senate Rules Committee

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

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

520
Bill Number (if applicable)

Topic Optometry

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title

Address 108 E. Jefferson St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone

Email

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

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

Representing Luxottica

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

520
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic OPTOMETRY

Name DAVID RAMBA

Job Title ATTORNEY

Address 120 S. MONROE ST.
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850.727.7687

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA OPTOMETRIC ASSOCIATION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 536
INTRODUCER:	Community Affairs Committee; Judiciary Committee; and Senator Passidomo
SUBJECT:	Limitations of Actions Other Than for the Recovery of Real Property
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Fav/CS**
2.	Present	Yeatman	CA	**Fav/CS**
3.	Stallard	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 536 addresses two issues regarding the timeframes for bringing a lawsuit based on a defect in the design, planning, or construction of a building or other improvement to real property. First, the bill specifies that a person who is served with a pleading may file a related counterclaim, cross-claim, or third-party claim within 1 year, regardless of whether the filing of the claim would otherwise be time barred.

Second, the bill causes the timeframes for filing a construction-defect lawsuit[1] to begin and end sooner, in some circumstances, than under current law. Both under the bill and current law, the timeframes in which a property owner may file a construction-defect lawsuit begin to run at the latest of four events set forth in statute. One of these events is the completion of the construction contract.

Recent case law suggests that such a contract is not complete, and thus the timeframes for bringing a lawsuit cannot begin to run, until all punch-list or other follow-up work is complete. The bill substantially counters this case law by effectively providing that a construction contract performed pursuant to a building permit is complete when a final certificate of occupancy or certificate of completion is issued. After that point, the correction or repair of completed work

[1] The term "construction-defect lawsuit" will often be used in this Analysis in lieu of the very long, if more precise, statutory description of the type of lawsuit at issue: a "lawsuit based on a defect in the design, planning, or construction of an improvement to real property."

that is within the scope of the building permit and final certificate does not delay the running of the timeframes in which a construction-defect action may be filed.

II. Present Situation:

Overview

A lawsuit based on a defect resulting from the design, planning, or construction of a building or other improvement to real property must be filed within statutory timeframes, which vary depending on whether the defect is a latent defect or a nonlatent defect. If a lawsuit involves a nonlatent defect, the lawsuit must be filed within 4 years after the latest of four events set forth in statute, such as the issuance of a certificate of occupancy or the "completion . . . of the contract" with the builder. If a lawsuit involves a latent defect, the lawsuit must be filed within 4 years after the defect is discovered or should have been discovered through due diligence. Regardless of when a defect was discovered or should have been discovered, a lawsuit based on the defect must be filed within 10 years after the latest of the events listed in statute, including completion of the construction contract. However, current law does not specify what exactly constitutes completion of a construction contract.

Timeframes for Filing a Lawsuit Based on a Defect in an Improvement to Real Property

A construction-defect lawsuit must be filed within the timeframes set forth in s. 95.11(3)(c), F.S. If the suit involves a nonlatent defect, it must be filed within 4 years after the latest of:

- 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.

If a lawsuit instead involves a latent defect, the 4-year timeframe does not begin to run until the date on which the defect is discovered or the date on which the defect should have been discovered by the exercise of due diligence.

However, regardless of when a defect was discovered or should have been discovered, a lawsuit based on the defect must be filed within 10 years after the latest of:

- 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.

What constitutes the completion of a construction contract has been the subject of litigation and legislation in recent years. In 2015, the Fifth District Court of Appeal held that the contract at issue in the case before it was not completed until the final payment was made under the contract. The court 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.[2]

Thus, a buyer's delay in making a payment under the contract could prolong a builder's liability for construction defects.

In response to the DCA opinion, the Legislature amended s. 95.11(3)(c), F.S., to state:

> 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 was made.[3]

But in 2017, the Fifth DCA decided another case involving the issue of what "completion . . . of the contract" means in s. 95.11(3)(c), F.S.[4] In that case, the builder argued that the homeowner's complaint was filed more than 10 years after closing on the construction contract at issue, and thus was time-barred. However, the DCA noted that the contract expressly contemplated that work under the contract could occur after closing. The court essentially held that the closing on a contract is not equivalent to contract completion. As such, under this case, a builder's liability for construction defects may be prolonged by at least some construction activities after the closing on a contract.[5]

Though this case was decided before the effective date of the 2017 amendment to s. 95.11(3)(c), F.S., it does not appear that the court would have decided the case differently under the new language.

III. Effect of Proposed Changes:

The bill addresses two issues regarding the timeframes for bringing a lawsuit based on a defect in the design, planning, or construction of a building or other improvement to real property. First, the bill specifies that a person who is served with a pleading may file a related counterclaim, cross-claim, or third-party claim within 1 year, regardless of whether the filing of the claim would otherwise be time barred.

Second, the bill causes the timeframes for filing a construction-defect lawsuit to begin and end sooner, in some circumstances, than under current law. Both under the bill and current law, the timeframes in which a property owner may file a construction-defect lawsuit begin to run at the latest of four events set forth in statute. One of these events is the completion of the construction contract. Recent case law suggests that such a contract is not complete, and thus the timeframes for bringing a lawsuit cannot begin to run, until all punch-list or other follow-up work is

[2] *Cypress Fairway Condo. v. Bergeron Constr. Co.*, 164 So. 3d 706, 707 (Fla. 5th DCA 2015).
[3] *See* Ch. 2017-101, s. 1, Laws of Fla.
[4] *Busch v. Lennar Homes, LLC*, 219 So. 3d 93 (Fla. 5th DCA 2017).
[5] *See id.* at 95.

complete. The bill substantially counters this case law by effectively providing that a construction contract performed pursuant to a building permit is complete when a final certificate of occupancy or certificate of completion is issued. After that point, the correction or repair of completed work that is within the scope of the building permit and final certificate does not delay the running of the timeframes in which a construction-defect action may be filed.

The bill provides that amendments to s. 95.11(3)(c), F.S., made by this act apply to any action commenced on or after July 1, 2018, regardless of when the cause of action accrued.

Additionally, any action that would have been permissible under s. 95.11(3)(c), F.S., prior to the amendments made by this act may be commenced before July 1, 2019. However, if such action is not commenced by July 1, 2019, and is barred by the amendments to s. 95.11(3)(c), F.S., made by this act, it shall be barred.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As the bill further specifies the timeframes in which a construction lawsuit may be filed, it may eliminate the need to litigate the issue in certain cases, thus reducing the cost of litigating these cases. On the other hand, the bill will reduce timeframes for some property owners to seek redress in court for construction defects.

C. Government Sector Impact:

As the bill specifies what constitutes completion of a contract, it may reduce the amount of the courts' resources that must be spent adjudicating whether given cases are time-barred.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 95.11 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on February 6, 2018:

- Provides that amendments to s. 95.11(3)(c), F.S., made by this act apply to any action commenced on or after July 1, 2018, regardless of when the cause of action accrued; and
- Provides that any action that would have been permissible under s. 95.11(3)(c), F.S., prior to the amendments made by this act may be commenced before July 1, 2019. However, if such action is not commenced by July 1, 2019, and is barred by the amendments to s. 95.11(3)(c), F.S., made by this act, it shall be barred.

CS by Judiciary on January 25, 2018:
The committee substitute allows a person 1 year from the date the person is served with a pleading in a construction-defect lawsuit to file a related counterclaim, cross-claim, or third-party claim, regardless of whether the claim would otherwise be time-barred. The underlying bill allowed 45 days to file the related claims. Also, the committee substitute further delineates what constitutes work that is necessary for the completion of a construction contract, which is an event that can commence the timeframe for filing a lawsuit.

B. Amendments:

None.

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

By the Committees on Community Affairs; and Judiciary; and Senator Passidomo

578-02921-18 2018536c2

A bill to be entitled

An act relating to limitations of actions other than for the recovery of real property; amending s. 95.11, F.S.; authorizing the commencement, within a specified timeframe, of counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction or occurrence set out or attempted to be set out in a pleading for which such claims relate; specifying that certain corrections and repairs do not extend the period of time within which an action must be commenced; providing applicability; 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 of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is

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578-02921-18 2018536c2

latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been 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 of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred. With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced. 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

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

made.

Section 2. The amendments to s. 95.11(3)(c), Florida Statutes, made by this act shall apply to any action commenced on or after July 1, 2018, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(3)(c), Florida Statutes, prior to the amendments made by this act may be commenced before July 1, 2019, and if it is not commenced by that date and is barred by the amendments to s. 95.11(3)(c), Florida Statutes, made by this act, it shall be barred.

Section 3. This act shall take effect July 1, 2018.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 9, 2018

I respectfully request that **Senate Bill #536**, 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.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

536
Bill Number (if applicable)

Topic Statute of Repose

Amendment Barcode (if applicable)

Name Rusty Payton

Job Title CEO

Address 2600 Centennial Place
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 567-1073

Email rpayton@fhba.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/01/2018
Meeting Date

536
Bill Number (if applicable)

Topic Limitations of Actions Other Than for the Recovery of Real Property

Amendment Barcode (if applicable)

Name Warren Husband

Job Title

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee FL 32302
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 582
INTRODUCER:	Senator Rader
SUBJECT:	Write-in Candidate Qualifying
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	**Favorable**
2.	Cochran	Yeatman	CA	**Favorable**
3.	Fox	Phelps	RC	**Favorable**

I. Summary:

SB 582 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,[1] 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.[2]

In practice, this situation arises when the only candidates qualifying for an office have the same major party affiliation.

The general election ballot contains a blank line for qualified write-in candidates.[3] 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.

[1] The amendment passed with 64.1% favorable vote, almost 2-to-1. Florida Division of Elections web site, https://results.elections.myflorida.com/DetailRpt.Asp?ELECTIONDATE=11/3/1998&RACE=A11&PARTY=&DIST=&GRP=&DATAMODE= ("Election Results" tab, General Election 1998, Constitutional Amendments) (last visited Feb. 15, 2018).

[2] Art. VI, s. 5(b), FLA. CONST.

[3] Section 101.151(2)(b), F.S.

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.[4] (Multiple district and appellate courts have since confirmed the Division's legal position.)[5]

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*.[6]

In February 2016, the Florida Supreme Court struck down the statute as unconstitutional. In *Brinkmann v. Francois,*[7] 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).[8]

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.

B. Public Records/Open Meetings Issues:

None.

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[4] DOE Opinion 2000-06 (May 11, 2000).
[5] *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).
[6] Ch. 2007-30, s. 56, LAWS OF FLA.
[7] 184 So. 3d 504 (Fla. 2016).
[8] Fla Const., Art. VIII, §1(e); see also, *Francois v. Brinkmann*, 147 So. 3d 613, 615 (Fla 4th 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).

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.)

None.

B. Amendments:

None.

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

By Senator Rader

29-00350-18 2018582__

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.

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: February 21, 2018

I respectfully request that **Senate Bill # 582**, relating to Write-In Candidate Qualifying, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Kevin Rader

Senator Kevin J. Rader
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 622
INTRODUCER:	Rules Committee; Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senators Grimsley and Bean
SUBJECT:	Health Care Facility Regulation
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Kidd	Williams	AHS	**Recommend: Fav/CS**
3.	Kidd	Hansen	AP	**Fav/CS**
4.	Looke	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 622 amends numerous provisions related to the regulation of health care facilities by the Agency for Health Care Administration (AHCA or agency). The bill's provisions include, but are not limited to:

- Eliminating obsolete language and terms such as mobile surgical facility and provisions related to specialty definitions for rural hospitals, and certificate of need requirements for hospitals wanting to add adult open-heart services.
- Eliminating the requirement that health care facility risk managers be licensed by the state.
- Amending various statutes related to home health agencies, nurse registries, assisted living facilities (ALF), and general licensing requirements.
- Amending the pediatric cardiovascular technical advisory panel to add nonvoting members and to require additional reports. The bill also requires hospitals providing pediatric cardiology services meet certain guidelines.
- Requiring the AHCA to contract with certain entities to provide information about hospital's pediatric cardiac programs on AHCA's webpage.
- Exempting certain hospitals from volume requirements needed to provide Level I adult cardiovascular services (ACS).
- Specifying training that staff must have in hospitals providing ACS if the experience was not obtained in a hospital with a surgical center.

- Repealing the subscriber assistance program.
- Repealing state licensure of clinical laboratories in favor of deferring to federal requirements.
- Eliminating both statewide and district Ombudsman Committees.
- Extending from five to six years the period in which a Florida cancer center seeking NCI designation may participate in the Florida Consortium of National Cancer Institute Centers Program as a Tier 3 cancer center.

The bill will reduce state revenues by approximately $2.05 million annually as a result of the elimination of the risk manager application fees and the clinical laboratory licensing fees. This includes reductions of $1.6 million from the Health Care Trust Fund in ACHA, $0.3 million from the Grants and Donations Trust Fund in the Department of Health and $0.15 million from the General Revenue Fund.

The bill becomes effective on July 1, 2018.

II. Present Situation:

The Agency for Health Care Administration (AHCA) is created in s. 20.42, F.S, as the chief health policy and planning entity for the state and is responsible for, among other things, health facility licensure, inspection, and regulatory enforcement. AHCA licenses or certifies and regulates 40 different types of health care providers, including hospitals, nursing homes, ALFs, and home health agencies. In total, the agency licenses, certifies, regulates or provides exemptions for more than 42,000 providers. [1]

Generally applicable provisions of health care provider licensure are addressed in the Health Care Licensing Procedures Act in part II of ch. 408, F.S. Additional chapters or sections in the Florida Statutes provide specific licensure or regulatory requirements pertaining to health care providers in this state. [2]

Due to the many diverse issues addressed by the bill, pertinent background is provided within the **Effect of Proposed Changes** portion of this analysis for the reader's convenience.

III. Effect of Proposed Changes:

This bill amends numerous statutes related to the AHCA.

Public Health Trust Facilities

Section 2 creates s. 154.13, F.S., to specify that any designated facility owned or operated by a public health trust and located within the boundaries of a municipality is under the exclusive jurisdiction of the county creating the public health trust and not within the municipality's jurisdiction. The Public Health Trust of Miami-Dade County is the only public health trust that owns/operates health care providers. Jackson Health System consists of three hospitals: Jackson Memorial, Jackson North Medical Center and Jackson South Community Hospital. These are the

[1] *See* the Agency for Health Care Administration, *Division of Health Quality Assurance*, available at: http://ahca.myflorida.com/MCHQ/index.shtml (last visited Nov. 29, 2017).
[2] *See* s. 408.802, F.S., for the health care provider types and applicable licensure statutes.

only hospitals owned by a public health trust, Public Health Trust of Miami-Dade County. According to the license information, there is also a nursing home, Jackson Memorial Perdue Medical Center and five hospital-based clinical laboratories that are part of Jackson Health System.[3]

Florida Consortium of National Cancer Institute Centers Program

A National Cancer Institute (NCI) designated center performs research related to cancer and delivers cutting-edge cancer treatments to patients.[4] NCI-designated cancer centers are recognized for their scientific leadership, resources, and the depth and breadth of their research.[5]

In 2014, the Legislature established the Florida Consortium of National Cancer Institute Centers Program to enhance the quality and competitiveness of cancer care in Florida, further a statewide biomedical research strategy directly responsive to the health needs of Florida's citizens, and capitalize on the potential educational opportunities available to students.[6] The DOH is directed to make quarterly distributions to Florida-based cancer centers that are NCI-designated cancer centers or comprehensive cancer centers, as well as cancer centers working toward achieving such designation.[7]

The law directs the DOH to calculate an allocation in combination with tier-allocated weights for distributing funds to participating cancer centers.[8] The tier-allocated weights are based on the NCI status of the center, as follows:[9]

- Tier I: NCI-designated comprehensive cancer center;
- Tier 2: NCI-designated cancer center; and
- Tier 3: Cancer center seeking designation as either an NCI-designated cancer center or NCI-designated comprehensive cancer center.

There are currently 3 participating cancer centers: H. Lee Moffitt Cancer Center, University of Florida Shands Cancer Hospital, and University of Miami Sylvester Comprehensive Cancer Center.[10] The H. Lee Moffitt Cancer Center is the only NCI-designated comprehensive cancer center in Florida and there are no NCI-designated cancer centers in the state.[11] The cancer

[3] Agency for Health Care Administration, *Senate Bill 622 Analysis* (Nov. 15, 2017) (on file with the Senate Committee on Health Policy.)
[4] National Cancer Institute, NCI-Designated Cancer Centers, available at https://www.cancer.gov/research/nci-role/cancer-centers (last visited Mar. 1, 2018).
[5] Id.
[6] Chapter 2014-165, Laws of Fla., codified at s. 381.915, F.S.
[7] Id. Such distributions are subject to an appropriation by the Legislature.
[8] Department of Health, Florida Consortium of National Cancer Institute Centers Program, Report to the Cancer Control and Research Advisory Council, p. 2, (July 1, 2017), available at http://www.floridahealth.gov/provider-and-partner-resources/research/NCI%20Report%202017.pdf (last visited Mar. 1, 2018).
[9] Section 381.915(4), F.S.
[10] Supra note 60.
[11] National Cancer Institute, Find a Cancer Center, available at https://www.cancer.gov/research/nci-role/cancer-centers/find#Florida (last visited Mar. 1, 2018).

centers at University of Florida and University of Miami are currently seeking NCI designation.[12]

To be eligible to continue receiving funding under the program, a cancer center seeking NCI-designation must:[13]

- Conduct cancer-related basic scientific research and cancer-related population scientific research;
- Offer and provide the full range of diagnostic and treatment services on site, as determined by the Commission on Cancer of the American College of Surgeons;
- Host or conduct cancer-related interventional clinical trials that are registered with the NCI's Clinical Trials Reporting Program;
- Offer degree-granting programs or affiliate with universities through degree-granting programs accredited or approved by a nationally recognized agency and offered through the center or through the center in conjunction with another institution accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;
- Provide training to clinical trainees, medical trainees accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, and postdoctoral fellows recently awarded a doctorate degree; and
- Have more than $5 million in annual direct costs associated with their total NCI peer-reviewed grant funding.

A cancer center may only participate in Tier 3 for 5 years.[14]

Section 10 amends s. 381.915, F.S., to allow a cancer center to participate in Tier 3 for six years, rather than five years.

Birth Centers

Section 17 amends s. 383.313, F.S., to require that any birthing center that performs laboratory tests on its patients must be federally certified by the Federal Centers for Medicare and Medicaid Services (CMS) under the federal Clinical Laboratory Improvement Amendments (CLIA) and federal rules adopted thereunder. Currently, birthing centers are exempt from the requirement to be licensed as a clinical laboratory under part I of ch. 483, F.S.,[15] if the birth center has no more than five physicians and the tests are conducted exclusively for the diagnosis and treatment of clients of the birth center.

Section 18 repeals s. 383.335, F.S., which provides obsolete exemptions to certain rules related to birth centers. Currently, no providers meet these exemptions.[16]

[12] Supra note 60.
[13] Section 381.915(4)(c), F.S.
[14] Id.
[15] Part I of ch. 483, F.S., is repealed in this bill.
[16] Supra note 3

Mobile Surgical Facilities

Sections 23, 24, 25, 28, 29, 61, and 124 amend ss. 395.001, 395.002, 395.003, 395.0161, 395.0163, 408.036, and 766.118, F.S., respectively, to repeal obsolete provisions related to mobile surgical facilities. No license has been issued for a mobile surgical facility and none are anticipated. The Florida Department of Corrections operates one hospital: Reception and Medical Center Hospital in Lake Butler. The hospital does not offer surgical services directly to its inmates, but contracts with U.S. Medical Group, Inc., via its licensed Ambulatory Surgical Center, Modular Freestanding Surgery Center. This Ambulatory Surgical Center has been licensed since September 24, 2002, and is stationary on the premises of the correctional facility. A separate license type is not needed in order to meet the surgical needs of the inmate population.[17]

Alternate-Site Testing

Section 27 creates s. 395.0091, F.S., to define the term "alternate-site testing" to mean any laboratory testing done under the administrative control of a hospital, but performed out the of physical or administrative confines of the hospital's central laboratory. This section also requires the AHCA, in consultation with the Board of Clinical Laboratory Personnel, to adopt rules for criteria for alternate-site testing. The section establishes minimum criteria the rules must address and requires alternate-site testing locations to register when the associated hospital applies to renew its license. This change will keep the requirements in place for alternate-site testing after the repeal of provisions related to clinical laboratory state licensure.[18]

Deregulation of Risk Managers

Current law requires every hospital, ambulatory surgical center, and Health Maintenance Organization providing direct services to employ a state licensed health care risk manager to oversee the facility's risk management program. No other state requires licensure of risk managers. Other Florida licensed facilities such as nursing homes are not required to employ a licensed risk manager and can employ anyone meeting the facility's qualifications for their risk manager positions.

The health care risk manager licensure requirements have multiple pathways, including being licensed as a health care professional such as a nurse, respiratory therapist, physical therapist or emergency medical technician. Physician assistants and other professions licensed by the Florida Department of Health may not qualify unless they also meet another pathway. There are no licensure examinations, no continuing education requirements, and no method for the agency to determine a licensee's continued competency in health care risk management. Licensees are required to renew their license biennially. As there are no requalification requirements to renew a license, the process involves verification of contact information, employment, if applicable, and background screening status. Professional certification is available through the American Society for Healthcare Risk Management, but is not required for licensure.

[17] Supra note 3
[18] Supra note 3

The agency currently licenses 2,458 health care risk managers, of which only 602 (24.5 percent) report working in a licensed capacity for at least one hospital or ambulatory surgical center. A licensed health care risk manager may also appoint an unlicensed delegate to assist with risk management functions. On-the-job training is a common pathway to licensure. On average for the past 5 years, approximately 174 initial applications are received and 181 licensees fail to renew each year. Roughly 50 of the 1,200 applications (initial and renewal) reviewed each year are withdrawn from consideration because the applicant does not submit all of the required documentation.[19]

Sections 30, 35, 94, and 117 amend ss. 395.0197, 395.10973, 458.307, and 641.55, F.S., respectively and **sections 33, 34, 36, and 37** repeal ss. 395.10971, 395.10972, 395.10974, and 395.10975, F.S., respectively, to eliminate the requirement that health care facility risk managers be licensed by the state. The bill continues to require risk managers and that risk managers demonstrate competence in specified areas, as determined by each health care facility. The bill eliminates all provisions related to licensure of risk managers by the AHCA but continues to require the AHCA to develop a model risk management program for health care facilities that will satisfy the requirements of s. 395.0197, F.S.

Complaint Investigation Procedures

Section 31 repeals s. 395.1046, F.S., relating to the complaint investigation procedures for alleged violation of the emergency access to care provisions found in s. 395.1041, F.S. The state's emergency access to care provisions are similar to the federal Emergency Medical Treatment and Labor Act, commonly known as EMTALA.[20] The agency enforces the emergency access to care requirements through the uniform complaint investigation procedure used for all license types and these complaints are given top priority. Section 395.1046, F.S., duplicates the complaint investigation procedures found in the general licensing provisions in part II of ch. 408, F.S. Also, s. 395.1046, F.S., provides confidentiality protections and a public records exemption for the results in the investigation report, which the agency proposes is an unnecessary level of confidentiality.[21]

AHCA Rules for Certain Healthcare Services

Section 32 amends s. 395.1055, F.S., to require the agency to adopt rules to ensure that all hospitals providing organ transplantation, neonatal intensive care services, inpatient psychiatric services, inpatient substance abuse services, or comprehensive medical rehabilitation meet the minimum licensure requirements adopted by the agency. The licensure requirement must include quality of care, nurse staffing, physician staffing, physical plant, equipment, emergency

[19] Supra note 3

[20] EMTALA, also known as the patient antidumping statute, was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272. Section 1867 of the Act sets forth requirements for medical screening examinations for individuals who come to the emergency department of a hospital and request examination or treatment for an emergency medical condition, regardless of ability to pay. The statute further provides that, if a hospital finds that such an individual has an emergency medical condition, it is obligated to provide that individual with either necessary stabilizing treatment or an appropriate transfer to another medical facility. *See* the CMS.gov website at: https://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/index.html (last visited Dec. 1, 2017).

[21] Supra note 3

transportation, and data reporting standards. The section also requires the AHCA to mandate level 2 background screening for personnel of distinct part nursing units of hospitals.

Pediatric Cardiovascular Technical Advisory Panel

Prior to the 2001 Regular Session, a Cardiac Advisory Council existed in the Division of Children's Medical Services.[22] The Cardiac Advisory Council was appointed by the secretary of the department and included eight members with technical expertise in cardiac medicine who were charged with:

- Recommending standards for personnel and facilities rendering cardiac services;
- Receiving reports of the periodic review of cardiac personnel and facilities to determine if established standards for cardiac care are met;
- Making recommendations to the director as to the approval or disapproval of reviewed personnel and facilities; and
- Providing input on all aspects of the Children's Medical Services cardiac program, including the rulemaking process.[23]

The statute was repealed effective June 30, 2001, as part of an exhaustive review of more than three dozen boards, committees, commissions, and councils to determine whether to continue or abolish each entity.[24] The department recommended the repeal of the Cardiac Advisory Council and indicated it would absorb the functions of the Cardiac Advisory Council in 2001.[25]

Chapter 2017-151, L.O.F., reestablished a technical advisory panel on pediatric cardiovascular procedures. The law provided for the membership of the panel and required the AHCA to adopt rules based on the recommendations of the panel.

Section 32 amends s. 395.1055, F.S., to revise the requirement that the AHCA establish a technical advisory panel to develop procedures and standards for measuring outcomes of pediatric cardiac catheterization programs and pediatric cardiovascular surgery programs. The bill requires members of the panel to have expertise in pediatric cardiac medicine and to serve without compensation, including without reimbursement for per diem or travel expenses.

The bill also requires that each of the ten voting members, appointed by the ten children's hospitals statewide, have an alternate member appointed and that if the appointing hospital fails to maintain its pediatric certificate of need (CON) or fails to meet required standards that hospital's member may only serve as a nonvoting member until the hospital restores its certificate and compliance with the required standards.

The bill allows the Secretary of the AHCA to appoint nonvoting members to the panel including:

- The Secretary of Health Care Administration.
- The Surgeon General.

[22] *See* s. 391.222, F.S. (2000).
[23] *Id.*
[24] Chapter 2001-89, s. 27, Laws of Fla.
[25] Senate Committee on Governmental Oversight and Productivity, *CS/SB 1410 Staff Analysis and Economic Impact*, p. 9 (Mar. 28, 2001) *available at* http://archive.flsenate.gov/data/session/2001/Senate/bills/analysis/pdf/2001s1410.go.pdf (last visited Jan. 31, 2018).

- The Deputy Secretary of Children's Medical Services.
- Any current or past Division Director of Children's Medical Services.
- A parent of a child with congenital heart disease.
- An adult with congenital heart disease.
- A representative from each of the following organizations:
  - The Florida Chapter of the American Academy of Pediatrics;
  - The Florida Chapter of the American College of Cardiology;
  - The Greater Southeast Affiliate of the American Heart Association;
  - The Adult Congenital Heart Association;
  - The March of Dimes;
  - The Florida Association of Children's Hospitals; and
  - The Florida Society of Thoracic and Cardiovascular Surgeons.

The panel is required to meet at least biannually or upon the call of the Secretary of AHCA and meetings can be held telephonically or electronically. The panel is tasked with recommending to the AHCA standards for quality of care, personnel, physical plant, equipment, emergency transportation, and data reporting for hospitals that provide pediatric cardiac services. Starting on January 1, 2020, and annually thereafter the panel must submit a report to the Governor, the Legislature, the Secretary of AHCA, and the State Surgeon General summarizing the panel's activities during the preceding year and including data and performance measures on surgical morbidity and mortality for all pediatric cardiac programs.

The bill revises the rules the AHCA is required to adopt based on the recommendations of the panel to include:

- Standards for pediatric cardiac catheterization services and pediatric cardiovascular surgery including quality of care, personnel, physical plant, equipment, emergency transportation, data reporting, and appropriate operating hours and timeframes for mobilization for emergency procedures.
- Outcome standards consistent with nationally established levels of performance in pediatric cardiac programs.
- Specific steps to be taken by the agency and licensed facilities when the facilities do not meet the outcome standards within a specified time, including time required for detailed case reviews and development and implementation of corrective action plans.

The bill also requires that a pediatric cardiac program:

- Be located in a hospital licensed under this chapter and include the following co-located components: a pediatric cardiology clinic, a pediatric cardiac catheterization laboratory, and a pediatric cardiovascular surgery program.
- Have a risk adjustment surgical procedure protocol following the guidelines established by the Society of Thoracic Surgeons.
- Have quality assurance and quality improvement processes in place to enhance clinical operation and patient satisfaction with services.
- Participate in the clinical outcome reporting systems operated by the Society of Thoracic Surgeons and the American College of Cardiology.

Section 63 amends s. 408.05, F.S. to require the AHCA contract with the Society of Thoracic Surgeons and the American college of Cardiology to obtain data reported pursuant to s. 395.1055 for publication on the AHCA's website in a manner that will allow consumers to be informed of the aggregate data and to compare pediatric cardiac programs.

Repealing Obsolete Provisions Relating to Rural Hospitals

Section 38 amends s. 395.602, F.S., relating to rural hospitals, to remove the definitions of "emergency care hospital," "essential access community hospital," "inactive rural hospital bed," and "rural primary care hospital." These definitions relate to obsolete rural hospital programs that are no longer available or applicable to rural hospitals. Hospitals are authorized to make changes to their bed inventory at will so there is no longer a need to maintain an inventory of inactive rural hospital beds for CON purposes.[26] Current law classifies a sole community hospital as a rural hospital regardless of the number of beds.[27]

Section 39 amends s. 395.603, F.S., to remove provisions relating to the deactivation of general hospital beds in order to seek licensure for programs that are now obsolete.

Section 40 repeals s. 395.604, F.S., relating to licensing hospitals for these obsolete programs.

Section 41 repeals s. 395.605, F.S., relating to licensing emergency care hospitals, which is now an obsolete program.

Hospital Annual Assessments

Sections 42 and 66 amend ss. 395.701 and 408.20, F.S., relating to hospital assessments on inpatient and outpatient services. Current law excludes hospitals operated by the agency or the DOC. The bill expands the exclusion to any hospital operated by a state agency, to specifically exclude hospitals operated by the Department of Children and Families.[28]

Nursing Homes

Section 44 amends s. 400.0625, F.S., to delete language that required a nursing home to accept clinical laboratory tests performed by a clinical laboratory prior to admission in lieu of routine examinations and any clinical laboratory tests ordered by a physician as required upon admission. This section also conforms provisions to the repeal of part I of ch. 483, F.S.

Section 45 amends s. 400.191, F.S., to require the AHCA to post nursing home survey and deficiency information that is older than 30 months in its nursing home guide.

[26] Supra note 3
[27] Currently, no rural hospital has over 100 beds. See Florida Health Finder list of rural hospitals, available at http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx, (last visited on Dec. 1, 2017).
[28] Supra note 3.

Home Health Agencies

Home health agencies are health care providers that provide skilled services (by nurses, therapists, and social workers) and/or unskilled services (by home health aides, certified nursing assistants, homemaker, and companions) to patients in their homes. A home health agency may also provide staffing to health care facilities on a temporary basis.[29]

Section 46 amends s. 400.464, F.S., to require that any license issued for a home health agency on or after July 1, 2018, must specify the services that the home health agency is authorized to perform. Any advertising or provision of services by the home health agency that the home health agency is not licensed to perform constitutes unlicensed activity. The section eliminates a 10-day grace period for the cessation of unlicensed activity after receiving notification of such from the AHCA and ties penalties for unlicensed activity to s. 408.812, F.S.[30] The section also authorizes a voluntary process for applying for a certificate of exemption from licensure for a person providing home health services who is exempt from licensure as a home health agency. The agency may charge a fee of $100 or the actual cost of processing this certificate. The certificate of exemption is valid for up to 2 years.

Section 47 amends s. 400.471, F.S., to require application for a change of ownership or for the addition of skilled services. Applicants for license renewal no longer need to provide volume data. Under this section, evidence of contingency funding refers to the general licensing provisions in part II of ch. 408, F.S., to eliminate an inconsistency between the two chapters. Under current law, a home health agency that is not Medicare or Medicaid certified and does not provide skilled care is exempt from providing proof of accreditation. This section provides the exemption only if the home health agency does not provide skilled care. The section further clarifies that the accrediting organization must be recognized by the agency, the survey must demonstrate compliance with Florida laws pertaining to home health agencies and must be continuously maintained.

Sections 47 and 48 amend ss. 400.471 and 400.474, F.S., respectively, to clarify that a licensed home health agency must provide the services specified in the written agreement with the patient except in emergency situations that are beyond the provider's control that make it impossible to provide the services.

Section 49 amends s. 400.476, F.S., to require a home health agency that provides skilled nursing care to have a director of nursing. Current law exempts a home health agency from this requirement if it is Medicare or Medicaid certified or provides only physical, occupational, or speech therapy. This exemption is repealed.

Section 50 amends s. 400.484, F.S., renaming deficiencies as violations with respect to providing care by home health agencies and tying these violations to the general licensing provisions for health care facilities in part II of ch. 408, F.S.

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[29] Home Health Agencies, AHCA webpage, available at http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Home_Care/HHA/index.shtml, (last visited on Nov. 29, 2017).

[30] Section 408.812, F.S., prohibits unlicensed activity and provides penalties for violations including fines of up to $1,000 a day, injunctive relief, and potential application of licensure violations as if the operator were licensed.

Nurse Registries

As of October 1, 2017, there were 593 nurse registries licensed by the agency responsible for securing health-care-related contracts for private duty (in home) or health care facility staffing services by independently contracted caregivers within Florida.

In accordance with s. 400.506(5)(a), F.S., the continued operation of an unlicensed nurse registry for more than 10 days after agency notification is considered a second degree misdemeanor. Each day of continued non-compliance is considered a separate offense, with each offense carrying the potential for imprisonment of up to 60 days. In addition to the criminal actions, s. 400.506(5)(b), F.S., authorizes the agency to impose a $500 fine for each day of continued non-compliance. While it does not make unlicensed activity a criminal offense, the Health Care Licensing Procedures Act of Chapter 408, Part II, F.S., prevails over s. 400.506, F.S., and authorizes the agency to impose a $1000 per day fine for each day of continued operation after agency notification.

Agency records show that 37 complaints alleging nurse registry unlicensed activity were filed between January 1, 2012, and present. Upon investigation, 11 of the complaints were substantiated. Of the 11 substantiated complaints, the agency imposed an administrative fine of $46,000 for one unlicensed nurse registry that failed to discontinue operations after notification.

Nurse registries are not eligible for participation in the Medicare program and are only authorized to participate in Florida Medicaid through the Long Term Care Waiver program. Currently, s. 400.506, F.S., specifically prohibits licensed nurse registries who bill Florida Medicaid or the Medicare program from giving remuneration to certain named parties who are involved in the discharge of patients from health care facilities such as hospitals and nursing homes from which the registry receives referrals. Likewise, a nurse registry is prohibited from giving remuneration to physicians, physicians' office staff members, and immediate family members of physicians if the nurse registry received a referral from the physician or his or her office within the previous 12 months.[31]

Section 52 amends s. 400.506, F.S., to eliminate a 10-day grace period for the cessation of unlicensed activity after receiving notification of such from the AHCA, and ties penalties for unlicensed activity to s. 408.812, F.S.[32] In addition, the section removes the prohibitions on a nurse registry providing remuneration to a case manager, discharge planner, facility based staff member, third party vendor, physician, member of the physician's office staff, or an immediate family member of a physician for referrals. Current law exempts nurse registries from this prohibition if they do not bill Medicare or Medicaid or share a controlling interest with any entity that bills Medicare or Medicaid. In addition to s. 400.506, F.S., s. 817.505(1)(a), F.S., makes it unlawful for any health care provider or health care facility, including nurse registries, to "offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement whatsoever, to induce the referral of a patient or patronage to or from a health care provider or health care facility."[33] The bill also clarifies that a

[31] Supra note 3
[32] Supra note 3
[33] Supra note 3

nurse registry may not monitor, supervise, manage or train a caregiver or a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker or home health aide referred for contract under this chapter. The bill also restricts nurse registries from monitoring, supervising, managing, or training a caregiver and specifies that a caregiver referred by a nurse registry is not considered an employee of the nurse registry under any chapter.

Hospices

Section 53 amends s. 400.606, F.S., to eliminate the requirement that applicants for hospice licensure that are existing health care providers submit a profit-loss statement and the most recent licensure inspection report. The requirement to provide a profit-loss statement is duplicative of general health care licensing statutes that require uniform proof of financial ability to operate and the requirement to provide an inspection report is unnecessary since all inspection reports are available to the public online.[34]

Home Medical Equipment Providers

Section 54 amends s. 400.925, F.S., to make technical clarifying changes to the definition of home medical equipment.

Section 55 amends s. 400.931, F.S., to require a licensed home medical equipment provider to notify the AHCA of a change in the general manager within the timeframes established in part II of ch. 408, F.S., which is 21 days, rather than the 45-day timeframe provided in this section of law.

Health Care Service Pools

Section 57 amends s. 400.980, F.S., to require changes of information contained on the original registration application to be submitted to the agency within the timeframes established in part II of ch. 408, F.S., rather than 14 days prior to the change as required in this section of law.

Health Care Clinic Exemptions

Section 59 amends s. 400.9935, F.S., to make certificates of exemption from licensure valid for up to 2 years. Currently, such exemptions are valid indefinitely. This change is intended to improve the integrity of the exemption process.[35]

Adult Cardiovascular Services

Hospitals are regulated by the AHCA under ch. 395, F.S., and the general licensure provisions of part II of ch. 408, F.S. Hospitals are subject to the certificate of need (CON) provisions in part I of ch. 408, F.S. A CON is a written statement issued by the AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service.[36]

[34] Supra note 3
[35] Supra note 3
[36] Section 408.032(3), F.S.

Adult cardiovascular services (ACS), including percutaneous coronary intervention (PCI), were previously regulated through the CON program.[37] However, in 2004, the Legislature established a licensure process for adult interventional cardiology services (the predecessor terminology for ACS), dependent upon rulemaking, in lieu of the CON procedure.[38] Among other things, that law required the rules to establish two hospital program licensure levels: a Level I program authorizing the performance of adult primary PCI for emergency patients without onsite cardiac surgery, and a Level II program authorizing the performance of PCI with onsite cardiac surgery.[39] Additionally the rules must require compliance with the most recent guidelines of the American College of Cardiology and American Heart Association guidelines for staffing, physician training and experience, operating procedures, equipment, physical plant, and patient-selection criteria to ensure quality and safety.[40] Current law requires that a hospital seeking a Level I program must demonstrate that it has, in the most recent 12-month period, provided a minimum of 300 adult inpatient and outpatient diagnostic cardiac catheterizations or discharged at least 300 patients with the principal diagnosis of ischemic heart disease and has a transfer agreement with a Level II hospital within 60 minutes transfer time.

The AHCA adopted rules for Level I ACS[41] and Level II ACS.[42] Staffing rules for both levels require the nursing and technical catheterization laboratory staff to meet the following:

- Be experienced in handling acutely ill patients requiring intervention or balloon pump;
- Have at least 500 hours of previous experience in dedicated cardiac interventional laboratories at a hospital with a Level II ACS program;[43]
- Be skilled in all aspects of interventional cardiology equipment; and
- Participate in a 24-hour-per-day, 365 day-per-year call schedule.

One of the authoritative sources referenced in the AHCA's rulemaking is The American College of Cardiology/American Heart Association Task Force on Practice Guidelines' report: ACC/AHA/SCAI 2005 Guideline Update for PCI.[44] Table 15 in that report provides criteria for the performance of primary PCI at hospitals without onsite cardiac surgery. It states:

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[37] *See* s. 408.036(3)(m) and (n), F.S., allowing for an exemption from the full review process for certain adult open-heart services and PCI services.
[38] Chapter 2004-383, s. 7, Laws of Fla.
[39] Level I and Level II ACS programs may also perform adult diagnostic cardiac catheterization in accordance with Rule 59A-3.2085(13), F.A.C. Adult diagnostic cardiac catheterization involves the insertion of a catheter into one or more heart chambers for the purpose of diagnosing cardiovascular diseases.
[40] *See* s. 408.0361(3), F.S.
[41] Rule 59A-3.2085(16), F.A.C.
[42] Rule 59A-3.2085(17), F.A.C.
[43] The standard in the CON exemption in s. 408.036(3)(n), F.S., for providing PCI in a hospital without an approved adult open-heart-surgery program required previous experience in dedicated interventional laboratories or surgical centers.
[44] Smith SC Jr, Feldman TE, Hirshfeld JW Jr, Jacobs AK, Kern MJ, King SB III, Morrison DA, O'Neill WW, Schaff HV, Whitlow PL, Williams DO. *ACC/AHA/SCAI 2005 guideline update for percutaneous coronary intervention: a report of the American College of Cardiology/American Heart Association Task Force on Practice Guidelines (ACC/AHA/SCAI Writing Committee to Update the 2001 Guidelines for Percutaneous Coronary Intervention). the Society for Cardiovascular Angiography and Interventions* (2005), *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwizrYy2zubKAhUBfSYKHafZCiAQFggvMAI&url=http%3A%2F%2Fwww.scai.org%2Fasset.axd%3Fid%3Da1d96b40-b6c7-42e7-9b71-1090e581b58c%26t%3D634128854999430000&usg=AFQjCNF0t0334L9yMm_XLA5rl0pXoCvPDw (last visited Nov. 29, 2017).

> The nursing and technical catheterization laboratory staff must be experienced in handling acutely ill patients and must be comfortable with interventional equipment. They must have acquired experience in dedicated interventional laboratories at a surgical center.

In 2014, the Society for Cardiovascular Angiography and Interventions, the American College of Cardiology Foundation, and the American Heart Association, Inc., issued the SCAI/ACC/AHA Expert Consensus Document: 2014 Update on PCI Without On-Site Surgical Backup.[45] That report acknowledged advances and best practices in PCI performed in hospitals without onsite surgery. Table IV in that report addresses personnel requirements for PCI programs without onsite surgery. It recommends the program have experienced nursing and technical laboratory staff with training in interventional laboratories. The report does not reference a requirement that the training or experience should occur in a dedicated interventional laboratory at a surgical center.

As of October 31, 2017, there are 56 Florida hospitals providing Level I ACS services and 79 Florida hospitals providing Level II ACS services.[46]

Section 61 amends s. 408.036, F.S., to remove the exemption from certificate of need for hospitals wanting to add adult open-heart services. This exemption is no longer necessary due to the creation of licensure standards in 2004.

Section 62 amends s. 408.0361, F.S., to exempt a hospital located more than 100 road miles from the closest Level II ACS from the requirement to meet ischemic heart disease diagnosis volume requirements if the hospital demonstrates that it has, for the most recent 12-month period as reported to the agency, provided a minimum of 100 adult inpatient and outpatient diagnostic cardiac catheterizations or that, for the most recent 12-month period, it has discharged or transferred at least 300 patients with the principal diagnosis of ischemic heart disease. This change will allow Lower Keys Medical Center to become a Level I provider.[47]

The section also requires AHCA licensure rules for hospitals providing ACS to include, at a minimum, a requirement that all nursing and technical staff have demonstrated experience in handling acutely ill patients requiring PCI in dedicated cardiac interventional laboratories or surgical centers. Currently, pursuant to AHCA rules, the experience must have been acquired in a hospital with a surgical center. The section states that, if a staff member's previous experience was in a dedicated cardiac interventional laboratory at a hospital that did not have an approved adult open-heart-surgery program, the laboratory must meet the following criteria in order for the staff member's experience to qualify. The laboratory must have:

- Had an annual volume of 500 or more PCI procedures;
- Achieved a demonstrated success rate of 95 percent or higher for PCI;
- Experienced a complication rate of less than 5 percent for PCI; and

[45] Gregory J. Dehmer, et.al, *available at* http://circ.ahajournals.org/content/129/24/2610.full.pdf+html (last visited Nov. 29, 2017).
[46] *See* The AHCA FloridaHealthFinder.gov *available at* http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx, (last visited Nov. 29, 2017).
[47] Id.

- Performed diverse cardiac procedures, including, but not limited to, balloon angioplasty and stenting, rotational atherectomy, cutting balloon atheroma remodeling, and procedures relating to left ventricular support capability.

Subscriber Assistance Program

The subscriber assistance panel (SAP) was created in 1985 to assist members of managed care entities whose grievances or appeals were not satisfactorily resolved by the managed care entity upon exhaustion of the managed care entity's internal grievance and appeal process. Under the federal Patient Protection and Affordable Care Act (PPACA),[48] managed care entities were given an option to either comply with the state's external review requirement or opt-out and participate in the federal external review program. The majority of health plans in Florida elected to use the federal program and the SAP program experienced a significant decrease in the number of cases being reviewed by the panel.[49]

The SAP is currently available to members of managed care entities with coverage by: Statewide Medicaid Managed Care, Healthy Kids, Prepaid Health Clinics, or grandfathered policies[50] that have not elected to have all of their health insurance policies subject to an external review process by independent review organization(s). Medicaid recipients in managed care can file for an external review through a Medicaid Fair Hearing and members with grandfathered commercial policies may appeal through independent review organizations.[51]

Repeal of the SAP eliminates this program as an external appeal option for members in Healthy Kids and Prepaid Health Clinics, although according to the agency, no Prepaid Health Clinic members have used the SAP. At this time, these members do not have another avenue in which to file an external appeal.[52]

Section 67 repeals s. 408.7056, F.S., relating to the subscriber assistance program.

General Licensing Provisions

Section 69 amends s. 408.803, F.S., to add a definition of "relative." This addition is to clarify the meaning of the term when used in the newly created s. 408.810(1), F.S., (see Section 70, below).

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[48] Pub. Law No. 111-148 (Mar. 23, 2010) amended by Pub. Law. No. 111-152 (Mar. 30, 2010).

[49] According to the agency, between FY 2011-2012 and FY 2012-2013, when the majority of plans opted to use the federal external review program, the number of cases received by the SAP dropped from 415 to 213. The number of cases heard by the SAP dropped from 74 to 17. There was an uptick in both number of cases received by the subscriber assistance program and the number of cases heard by the panel for FY 2014-2015 and FY 2015-2016; however, FY 2016-2017 showed a decline in the number of cases received and heard from 350 to 253 and 53 to 28, respectively. The predominant outcome of the cases in FY 2016-2017 was a determination of non-jurisdiction (165), followed by submission of an incomplete application (24) and resolved prior to panel hearing (26). *See* the chart prepared by the agency for activity since FY 2009-2010 at supra note 1.

[50] A grandfathered health plan is a plan that existed on March 23, 2010, the date that the PPACA was enacted, and that at least one person had been continuously covered for 1 year. Plans or policies may lose their "grandfathered" status if they make certain significant changes that reduce benefits or increase costs to consumers. *See* Healthcare.gov, *Grandfathered Health Plans*, https://www.healthcare.gov/glossary/grandfathered-health-plan/ (last visited Nov. 28, 2017).

[51] Supra note 3.

[52] *Id.*

Section 70 amends s. 408.806, F.S., to authorize a licensee that holds a license for multiple providers licensed by the agency to request alignment of all license expiration dates. In order to accomplish this, the agency is authorized to issue a license for an abbreviated licensure period with a prorated licensure fee.

Section 71 amends s. 408.809, F.S., to apply background screening provisions to all controlling interests in a health care facility. Current law only requires background screening of controlling interests if the AHCA has reason to believe that such a person has been convicted of a prohibited offense. The section also requires background screening for contractors with a licensee or provider who work for 20 hours or more per week and have access to client funds, personal property, or living areas.

Section 72 amends s. 408.810, F.S., to exempt an applicant for a change of ownership from submitting proof of financial ability to operate, if the provider has been licensed for at least 5 years and the change is the result of a corporate reorganization under which the controlling interest is unchanged or solely due to the death of a controlling interest, and the surviving controlling interest continue to hold at least 51 percent of the ownership.

The agency is authorized to adopt rules to address the circumstances under which a controlling interest, an administrator, an employee, a contractor, or a representative thereof who is not a relative of the patient or client may act as a legal representative, agent, health care surrogate, power of attorney, or guardian of a patient or client. According to the agency, licensure regulations are currently inconsistent in this area. Due to the vulnerability of persons receiving health or custodial care, allowing the paid caregiver to control finances or health care decisions of the patient can result in exploitation or abuse. In some cases, the facility has a surety bond, but this is not required for all provider types.[53]

The section also requires that the licensee must ensure that no person holds any ownership interest who has a disqualifying offense[54] or who holds any ownership interest in a provider that had a license revoked or application denied. This provision does not apply to shareholders in a publicly traded corporation.

Section 73 amends s. 408.812, F.S., relating to unlicensed activity, to specify that unlicensed activity constitutes abuse and neglect, as defined in s. 415.102, F.S.[55] The section removes the requirement that a person or entity must apply for a license after receiving notification from the agency that the person or entity is engaging in unlicensed activity. If a controlling interest or licensee has more than one provider and fails to license all providers that require licensure, the agency may impose a fine, regardless of correction, as one of the authorized sanctions.

[53] Supra note 1.
[54] Pursuant to s. 408.809, F.S.
[55] In summary, s. 415.102, F.S., defines "abuse" as any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health; and that abuse includes acts and omissions. "Neglect" is defined as the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult. Refer to s. 415.102(16), F.S., for additional acts that constitute neglect.

Background Screening

Sections 76 and 89 amend ss. 409.907 and 435.04, F.S., respectively, to move certain disqualifying offenses from the Medicaid requirements into background screening standards. This move allows Medicaid applicants to apply for an exemption to a disqualifying offense in the same manner as other persons required to be screened under these provisions.[56] The section also provides more specificity as to which offenses are disqualifying.

Section 89 also amends s. 435.04, F.S., to disqualify persons from employment as a health care worker who have been arrested for and are awaiting final disposition of an offense related to domestic violence. This change conforms to the language used in subsection (2) disqualifying persons from employment for all other enumerated offenses.

Assisted Living Facilities

ALFs provide full-time living arrangements in the least restrictive and most home-like setting. Facilities can include individual apartments or rooms that a resident has alone or shares with another person. These facilities can also range in size from one resident to several hundred residents.

The basic services provided by an ALF include, but are not limited to:
- Housing, nutritional meals, and special diets;
- Personal care (help with bathing, dressing, eating, walking, physical transfer);
- Give medications (by a nurse employed at the facility or arranged by contract) or help residents give themselves medications;
- Supervise residents;
- Arrange for health care services;
- Provide or arrange for transportation to health care services;
- Health monitoring;
- Respite care;
- Social and leisure activities; and
- Mental Health services.

Section 80 amends s. 429.04, F.S., relating to exemptions from licensure, to clarify and expand the exemptions to include facilities licensed by the Agency for Persons with Disabilities, mental health facilities, licensed hospitals, nursing homes, inpatient hospices, homes for special services,[57] intermediate care facilities, or transitional living facilities. Additionally, the section assigns the burden of providing documentation substantiating an exemption to the person or entity asserting an exemption in response to an agency investigation of unlicensed activity.

A current exemption includes any person who provides housing, meals, or one or more personal services on a 24-hour basis in the person's own home to not more than two adults who do not receive optional state supplementation. The section specifies that in addition to owning or renting

[56] Supra n. 3
[57] Homes for special services is defined in s. 400.801, F.S., as a site licensed by the agency prior to January 1, 2006, where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

the home, the person who provides these services must have established the home as the person's permanent residence. If the person holds a homestead exemption at a different address, a presumption exists that the person has not established permanent residence as required by this section. Furthermore, the section provides that the exemption does not apply to a person or entity who previously held licensure issued by the agency and such license was revoked or licensure renewal was denied by final order, or when the license was voluntarily relinquished during agency enforcement proceedings.

Section 81 amends s. 429.08, F.S., relating to unlicensed facilities, to clarify and create a felony of the third degree penalty for renting or otherwise maintaining a building or property that operates or maintains an unlicensed ALF. This section now provides that any person who owns, operates, or maintains an unlicensed ALF after receiving notice from the agency that licensure is required and to cease such operation commits a felony of the third degree. Current law provides a 6-month window after a statutory or rule change takes place if the change placed the person in the position of violating this provision before the violation occurs. This 6-month timeframe is repealed in the bill.

Section 82 amends s. 429.176, F.S., to prohibit an ALF from operating for more than 120 consecutive days without an administrator who has completed the core educational requirements.

Section 84 amends s. 429.24, F.S., to specify that new services added to a resident's contract for which the resident was not previously charged do not require a 30-day written notice of rate increase.

Section 85 amends s. 429.28, F.S., to specify that residents in an ALF have the right to "assistance with" obtaining access to adequate and appropriate health care. Current law provides the resident with the right to "access to adequate and appropriate health care." The section further specifies that "adequate and appropriate health care" includes management of medications, assistance in making appointments for health care services, the provision of or arrangement of transportation to health care appointments, and the performance of health care services in accordance with s. 429.255, F.S.[58]

Sections 85 and 87 amend ss. 429.28 and 429.34, F.S., to strike provisions from the "resident's bill of rights" section that are related to AHCA inspections of ALFs and move the provisions into the section related to AHCA right of entry and inspection powers.

Section 86 amends s. 429.294, F.S., to conform the requirement that ALFs provide copies of medical records to the provisions requiring nursing homes to provide such records. Current law requires ALFs to provide the records within 10 days while nursing homes have 30 days to provide the records.[59]

[58] Section 429.255, F.S., specifies the types of care that may be provided by various staff in an ALF, including nursing and medical staff, and includes provisions for emergency situations.
[59] See s. 400.145, F.S.

Section 88 amends s. 429.52, F.S., to specify that an ALF administrator must complete staff training, including passing the competency test, within 90 days of the date of employment.

Clinical Laboratories

The CMS regulates all laboratory testing (except research) performed on humans in the U.S. through the Clinical Laboratory Improvement Amendments (CLIA).[60] Facilities that provide clinical laboratory services are required to be certified by the CMS CLIA laboratory certification program, which operates in conjunction with the Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC). Certain laboratories may qualify as a waived testing laboratory and receive a CLIA Certificate of Waiver.[61]

Clinical laboratories in the state performing non-waived tests must also obtain a state license from the AHCA and comply with part I of ch. 483, F.S., relating to clinical laboratories, and the general licensing provisions in part II of ch. 408, F.S. This requirement also applies to a clinical laboratory operated by one or more practitioners such as physicians, chiropractors, podiatrists, optometrists, or dentists, exclusively in connection with the diagnosis and treatment of their own patients.[62]

As of July 1, 2017, the agency licenses 3,904 clinical laboratories and collects an average of $1,540,000 per year in recurring licensure fees and an average of $321,900 per year in recurring biennial assessments required by s. 408.033, F.S. In addition, the CLIA program certifies another 18,446 Florida based laboratories that only perform "waived" testing and therefore, are exempt from state licensure requirements.[63]

Section 91 amends s. 456.054, F.S., to move anti-kickback language for clinical laboratories from s. 483.245, F.S., which is being repealed, into the general provisions for healthcare practitioners.

Section 97 repeals part I of ch. 483, F.S., relating to the licensure and regulation of clinical laboratories by the agency. Part I includes ss. 483.011 - 483.26, F.S. Laboratories will continue to be certified by, or receive a certificate of waiver from, the CMS under the CLIA. Included within the repeal is a requirement that laboratory results must be reported directly to the licensed practitioner or other authorized person who requested it, and the authorization for a laboratory to disclose the results without a patient's consent to other health care practitioners and providers involved in the care or treatment of the patient as specified in s. 456.057(7)(a), F.S.

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[60] CMS.gov, *Clinical Laboratory Improvement Amendments (CLIA)* (April 5, 2017) https://www.cms.gov/Regulations-and-Guidance/Legislation/CLIA/index.html?redirect=/CLIA (last visited Nov. 29, 2017).

[61] Waived testing laboratories: employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, pose no reasonable risk of harm to the patient if the test is performed incorrectly, use tests that are cleared by the FDA for home use, and conduct testing that is considered non-technical requiring little or no difficulty. *See* Agency for Health Care Administration, Waived Laboratories: http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Laboratory_Licensure/waived_apps.shtml (last visited Nov. 29, 2017).

[62] Section 483.035(1), F.S.

[63] Supra note 3.

Section 99 amends s. 483.801, F.S., to exempt from licensure persons engaged in testing performed by laboratories that are wholly owned and operated by one or more practitioners who are licensed under Florida law as allopathic or osteopathic physicians, chiropractors, podiatrists, optometrists, or dentists and who practice in the same group practice, and in which no clinical laboratory work is performed for patients referred by a health care provider who is not a member of the same group.

Managed Care Ombudsman Committees

The Statewide Managed Care Ombudsman Committee (statewide committee) and the district managed care ombudsman committees (district committees) were established in 1996.[64] The statewide committee is created within the agency as a consumer protection and advocacy organization on behalf of managed care subscribers. The statewide committee has administrative authority over the district committees and consists of the chairpersons of the district committees.

A district committee is created in s. 641.65, F.S., in each district of the agency that has staff assigned for the regulation of managed care programs. Each district committee must have no fewer than nine members or more than 16 members, including at least four physicians, one licensed under each of chs. 458, 459, 460, and 461; one psychologist; one registered nurse; one clinical social worker; one attorney; and one consumer.[65]

According to the agency, due to the very stringent committee composition requirements, the majority of districts could not form district committees. The first committee was established in 1999 and only three other districts were able to meet committee requirements. The last activity on record was in 2010, and there are currently no active committees.[66]

Sections 118-123 repeal ss. 641.60, 641.65, 641.67, 641.68, 641.70, and 641.75, F.S., to eliminate the statewide and district Managed Care Ombudsman Committees.

Miscellaneous Provision

Section 64 amends s. 408.061, F.S., relating to data collection by the agency from health care facilities, to conform cross-references and to exclude hospitals operated by state agencies from the requirement to submit certain financial reports.

Technical and Conforming Sections

The following sections make technical changes to the Florida statutes to conform its provisions to other changes made by this bill:

Section 56 amends s. 400.933, F.S., to make a technical change specifying that it is the Department of Business and Professional Regulation, not the DOH, that issues medical oxygen retail establishment permits.

[64] Chapter 96-391, Laws of Fla.
[65] Section 641.65(2), F.S.
[66] Supra note 3

Section 79 amends s. 492.02, F.S., to make technical grammatical changes to the section.

Sections 1, 3-9, 11-16, 18, 20, 21-23, 26, 41, 51, 58, 60, 65, 68, 74, 75, 77-78, 83, 90, 92-96, 98, 100-117, and 124-128

These sections amend ss. 20.43, 220.1845, 376.30781, 376.86, 381.0031, 381.0034, 381.004, 381.0405, 383.14, 383.30, 383.301, 383.302, 383.305, 383.309, 383.33, 384.31, 385.211, 394.4787, 395.001, 395.009, 395.7015, 400.497, 400.9905, 408.033, 408.07, 408.802, 408.820, 409.905, 409.9116, 409.975, 429.19, 456.001, 456.057, 456.076, 458.307, 458.345, 459.021, 483.294, 483.803, 483.813, 483.823, 491.003, 627.351, 627.602, 627.6406, 627.64194, 627.6513, 627.6574, 641.185, 641.31, 641.312, 641.3154, 641.51, 641.511, 641.515, 641.55, 766.118, 766.202, 945.36, 1009.65, and 1011.52, F.S., respectively.

Effective Date

Section 129 provides the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Repealing the licensure requirement for health care risk managers will save each risk manager the cost of the licensure fee, which is $104.54 for initial applicants and $52.78 for renewal applicants.[67]

Repealing clinical laboratory licensure will save each clinical laboratory that was required to be licensed and is accredited $100 biennially. If not accredited the fee is

[67] *See* the Application checklist available at: http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/risk_manager.shtml (last visited Nov. 29, 2017).

between $400 - $3,919 biennially, depending upon the annual volume of non-waived tests performed.[68]

Allowing cancer centers seeking NCI designation to participate in the Florida Consortium of National Cancer Institute Centers Program as a Tier 3 cancer center for an additional year may have an indeterminate positive fiscal impact on such cancer centers.

C. Government Sector Impact:

State Revenues

With the elimination of the risk manager application fees and the laboratory licensure application fees, overall revenue to the state will decrease by approximately $2.05 million annually. This includes reductions of $1.6 million from the Health Care Trust Fund in ACHA, $0.3 million from the Grants and Donations Trust Fund in the Department of Health and $0.15 million from the General Revenue Fund.

Of the $2.05 million reductions noted above, $64,866 per year is attributable to the elimination of the risk manager application fees and $1,540,000 per year is attributable to the laboratory licensure application fees.[69] The AHCA collects assessments pursuant to s. 408.033, F.S., and transfers these assessments to the Grants and Donations Trust Fund within the Department of Health (DOH) to fund the Local Health Councils. The estimated reduction to the transfer to DOH associated with the laboratory assessments is $304,950. The estimated reduction to General Revenue is $152,785 relating to the General Revenue surcharge in s. 215.20, F.S.

State Expenditures

The bill reduces the workload on AHCA staff relating to the licensure of clinical laboratories. The AHCA anticipates reallocating such resources to other areas of AHCA providing regulatory functions.

VI. Technical Deficiencies:

The title of the bill does not include language stricken from s. 400.0625, F.S., on lines 1182-1186.

The bill amends s. 408.0361, F.S., to mandate the establishment of rules to require nursing and technical staff in hospitals performing adult cardiovascular services to have specified experience. This change appears to apply to both hospitals providing Level I and Level II services, however, this is placed within a statutory paragraph only relating to a hospital seeking a Level I program license. As such, it is unclear whether the staff training requirement applies to both hospitals providing Level I and Level II services or only to hospitals providing Level I services. The bill may need to be amended to clearly indicate to which hospitals the requirement applies.

[68] *See* AHCA Clinical laboratory fees, available at: http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Laboratory_Licensure/fees.shtml (last visited Nov. 29, 2017).
[69] Supra n. 3

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.43, 220.1845, 376.30781, 376.86, 381.0031, 381.0034, 381.004, 381.0405, 381.915, 383.14, 383.30, 383.301, 383.302, 383.305, 383.309, 383.313, 383.33, 384.31, 385.211, 394.4787, 395.001, 395.002, 395.003, 395.009, 395.0161, 395.0163, 395.0197, 395.1055, 395.10973, 395.602, 395.603, 395.701, 395.7015, 400.0625, 400.191, 400.464, 400.471, 400.474, 400.476, 400.484, 400.497, 400.506, 400.606, 400.925, 400.931, 400.933, 400.980, 400.9905, 400.9935, 408.033, 408.036, 408.0361, 408.05. 408.061, 408.07, 408.20, 408.7056, 408.802, 408.803, 408.806, 408.809, 408.810, 408.812, 408.820, 409.905, 409.907, 409.9116, 409.975, 429.02, 429.04, 429.08, 429.176, 429.19, 429.24, 429.28, 429.294, 429.34, 429.52, 435.04, 456.001, 456.054, 456.057, 456.076, 458.307, 458.345, 459.021, 483.294, 483.801, 483.803, 483.813, 483.823, 491.003, 627.351, 627.602, 627.6406, 627.64194, 627.6513, 627.6574, 641.185, 641.31, 641.312, 641.3154, 641.51, 641.511, 641.515, 641.55, 766.118, 766.202, 945.36, 1009.65, and 1011.52.

This bill creates the following sections of the Florida Statutes: 154.13 and 395.0091.

This bill repeals the following sections of the Florida Statutes: 383.335, 395.1046, 395.10971, 395.10972, 395.10974, 395.10975, 395.604, 395.605, 483.011, 483.021, 483.031, 483.035, 483.041, 483.051, 483.061, 483.091, 483.101, 483.111, 483.172, 483.181, 483.191, 483.201, 483.221, 483.23, 483.245, 483.26, 641.60, 641.65, 641.67, 641.68, 641.70, and 641.75.

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 March 1, 2018:
The committee substitute amends s. 381.915, F.S., to allow a Florida cancer center seeking NCI designation to participate in the Florida Consortium of National Cancer Institute Centers Program as a Tier 3 cancer center for six years, rather than for five years.

CS by Appropriations on January 31, 2018:
The committee substitute:

- Clarifies the duties of nurse registries.
- Removes obsolete language related to adult open-heart surgery certificate of need requirements.
- Removes section 88 of the bill relating to background screening.
- Revises the pediatric cardiac technical advisory panel in s. 396.1055, F.S., to:
  - Require that hospitals appointing members maintain a CON and licensure criteria;
  - Allow the Secretary of the AHCA to appoint nonvoting members;
  - Revise the requirements for the panel to create and submit reports;

  - Revise requirements for the AHCA to adopt rules based on the panel's reports; and
  - Require hospitals providing pediatric cardiology services meet certain guidelines.
- Requires the AHCA to contract with certain groups to provide information regarding pediatric cardiac programs at hospitals on the AHCA's webpage.
- Specifies that caregivers referred by a nurse registry are not employees of the nurse registry.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2018	.	
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The Committee on Rules (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 3786 and 3787
insert:

Section 128. Subject to federal approval of the application to be a site for the Program of All-inclusive Care for the Elderly (PACE), the Agency for Health Care Administration shall contract with an additional nonprofit organization to serve individuals and families in Miami-Dade County. The nonprofit organization must have a history of primarily serving the Hispanic population by providing primary care services,

561258

nutrition, meals, and adult day care to the senior population. The nonprofit organization shall leverage existing community-based care providers and health care organizations to provide PACE services to the frail elderly who reside in Miami-Dade County. The organization is exempt from the requirements of chapter 641, Florida Statutes. Subject to the appropriation of funds by the Legislature, the agency, in consultation with the Department of Elderly Affairs, shall approve up to 250 initial enrollees in the PACE established by this organization to serve the frail elderly who reside in Miami-Dade County.

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

And the title is amended as follows:

Delete line 303

and insert:

provisions to changes made by the act; requiring the agency to contract with a nonprofit organization in Miami-Dade County, which must meet certain requirements, to be a site for the Program for All-inclusive Care for the Elderly (PACE), subject to federal approval of the application to become a site; requiring the nonprofit organization to provide PACE services to the frail elderly in Miami-Dade County; exempting the organization from chapter 641, F.S., relating to health care service programs; requiring the agency, in consultation with the Department of Elderly Affairs, to approve up to a certain number of initial enrollees in PACE at the new site, subject to an appropriation; providing an

111816

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
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The Committee on Rules (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 3786 and 3787
insert:

Section 128. Paragraph (c) of subsection (4) of section 381.915, Florida Statutes, is amended to read:

381.915 Florida Consortium of National Cancer Institute Centers Program.—

(4) Tier designations and corresponding weights within the Florida Consortium of National Cancer Institute Centers Program are as follows:



(c) Tier 3: Florida-based cancer centers seeking designation as either a NCI-designated cancer center or NCI-designated comprehensive cancer center, which shall be weighted at 1.0.

1. A cancer center shall meet the following minimum criteria to be considered eligible for Tier 3 designation in any given fiscal year:

a. Conducting cancer-related basic scientific research and cancer-related population scientific research;

b. Offering and providing the full range of diagnostic and treatment services on site, as determined by the Commission on Cancer of the American College of Surgeons;

c. Hosting or conducting cancer-related interventional clinical trials that are registered with the NCI's Clinical Trials Reporting Program;

d. Offering degree-granting programs or affiliating with universities through degree-granting programs accredited or approved by a nationally recognized agency and offered through the center or through the center in conjunction with another institution accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

e. Providing training to clinical trainees, medical trainees accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, and postdoctoral fellows recently awarded a doctorate degree; and

f. Having more than $5 million in annual direct costs associated with their total NCI peer-reviewed grant funding.

2. The General Appropriations Act or accompanying legislation may limit the number of cancer centers which shall

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receive Tier 3 designations or provide additional criteria for such designation.

3. A cancer center's participation in Tier 3 shall be limited to 6 ~~5~~ years.

4. A cancer center that qualifies as a designated Tier 3 center under the criteria provided in subparagraph 1. by July 1, 2014, is authorized to pursue NCI designation as a cancer center or a comprehensive cancer center for 6 ~~5~~ years after qualification.

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

And the title is amended as follows:

Delete line 303

and insert:

provisions to changes made by the act; amending s. 381.915, F.S.; increasing the number of years that a cancer center may participate in Tier 3 of the Florida Consortium of National Cancer Institute Centers Program; increasing the number of years after qualification that a certain Tier 3 cancer center may pursue specified NCI designations; providing an

138360

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/01/2018	.	
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The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 3703 and 3704
insert:

Section 125. Section 651.091, Florida Statutes, is amended to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(1) Each continuing care facility shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility which have been



filed with or issued by any governmental agency. A copy of each report shall be retained for at least 5 years after the date the report is filed or issued. Each facility shall also maintain as public information, available upon request, all annual statements that have been filed with the office. For purposes of this section, a management company or operator is considered an agent of the provider.

(2) Every continuing care facility shall:

(a) Display the certificate of authority in a conspicuous place inside the facility.

(b) Post in a prominent position in the facility which is accessible to all residents and the general public a concise summary of the last examination report issued by the office, with references to the page numbers of the full report noting any deficiencies found by the office, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.

(c) Post in a prominent position in the facility which is accessible to all residents and the general public a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services must also be posted.

(d) Distribute a copy of the full annual statement and a copy of the most recent third party financial audit filed with the annual report to the president or chair of the residents' council within 30 days after filing the annual report with the office, and designate a staff person to provide explanation thereof.



(e) Notify the residents' council of any plans filed with the office to obtain new financing, additional financing, or refinancing for the facility and of any applications to the office for any expansion of the facility.

(f) Deliver to the president or chair of the residents' council a summary of entrance fees collected and refunds made during the time period covered in the annual report and the refund balances due at the end of the report period.

(g) Deliver to the president or chair of the residents' council a copy of each quarterly statement within 30 days after the quarterly statement is filed with the office if the facility is required to file quarterly.

(h) Upon request, deliver to the president or chair of the residents' council a copy of any newly approved continuing care or continuing care at-home contract within 30 days after approval by the office.

(i) A copy of the resident's rights as described in s. 651.083.

(j) Notice of the issuance of an examination report by the office or the initiation of any legal or administrative proceeding by the office or the department, including where the public report or filing may be inspected in the facility, and that upon request, an electronic copy or specific website address of the office or department will be provided where the public document can be downloaded at no cost.

(k) Notice of a resident's right to rescind a continuing care contract pursuant to s. 651.055(2).

(l) If the provider operates multiple facilities, a disclosure of any existing plans of distribution of assets or



income between facilities that may occur and the manner in which such distributions would be made, or a statement that such distributions are not expected to occur.

(m) Notice of any holding company system or obligated group of which the provider is a member.

(3) Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

(a) The contract to furnish continuing care or continuing care at-home.

(b) The summary listed in paragraph (2)(b).

(c) All ownership interests and lease agreements, including information specified in s. 651.022(2)(b)8.

(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans does not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

(e) Copies of the rules and regulations of the facility and an explanation of the responsibilities of the resident.

(f) The policy of the facility with respect to admission to and discharge from the various levels of health care offered by the facility.



(g) The amount and location of any reserve funds required by this chapter, and the name of the person or entity having a claim to such funds in the event of a bankruptcy, foreclosure, or rehabilitation proceeding.

(h) A copy of s. 651.071.

(i) A copy of the resident’s rights as described in s. 651.083.

(4) A true and complete copy of the full disclosure document to be used must be filed with the office before use. A resident or prospective resident or his or her legal representative may inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

Section 126. Section 651.105, Florida Statutes, is amended to read:

651.105 Examination ~~and inspections~~.—

(1) The office may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for the examination of insurance companies pursuant to s. 624.316. For a provider as defined in s. 651.028, such examinations shall take place at least once every 5 years. Such



examinations shall be made by a representative or examiner designated by the office whose compensation will be fixed by the office pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the office; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, are deemed adequate. The final written report of each examination must be filed with the office and, when so filed, constitutes a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the office may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

(2) Any duly authorized officer, employee, or agent of the office may, upon presentation of proper identification, have access to, and inspect, any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.

(3) Reports of the results of such financial examinations must be kept on file by the office. Any investigatory records, reports, or documents held by the office are confidential and exempt from the provisions of s. 119.07(1), until the investigation is completed or ceases to be active. For the purpose of this section, an investigation is active while it is being conducted by the office with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the office is proceeding with reasonable



dispatch and has a good faith belief that action could be initiated by the office or other administrative or law enforcement agency.

(4) The office shall notify the provider and the executive officer of the governing body of the provider in writing of all deficiencies in its compliance with the provisions of this chapter and the rules adopted pursuant to this chapter and shall set a reasonable length of time for compliance by the provider. In addition, the office shall require corrective action or request a corrective action plan from the provider which plan demonstrates a good faith attempt to remedy the deficiencies by a specified date. If the provider fails to comply within the established length of time, the office may initiate action against the provider in accordance with the provisions of this chapter.

(5) A provider must respond to written correspondence from the office and provide data, documents, financial statements, records, and other information as requested by the office. The office has standing to petition a circuit court to compel access to and require the provider to produce such data, documents, financial statements, records, and other information requested by the office. The office may petition the circuit court in the county in which the facility is situated or the Circuit Court of Leon County to enforce this section.

(6) ~~(5)~~ At the time of the routine examination, the office shall determine if all disclosures required under this chapter have been made to the president or chair of the residents' council and the executive officer of the governing body of the provider.



(7)~~(6)~~ A representative of the provider must give a copy of the final examination report and corrective action plan, if one is required by the office, to the executive officer of the governing body of the provider within 60 days after issuance of the report.

Section 127. Section 651.024, Florida Statutes, is amended to read:

651.024 Acquisition.—

(1) A person who seeks to assume the role of general partner of a provider or otherwise assume ownership or possession of, or control over, 10 percent or more of a provider's assets, based on the balance sheet from the most recent financial audit filed with the office, or who seeks to acquire 10 percent or more of the ownership interest of a is subject to the provisions of s. 628.4615 and is not required to make filings pursuant to s. 651.022 or s. 651.023.

(2) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the provider or facility, as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the provider or facility is relieved of any duty to register or report under this section which may arise out of the provider's or facility's relationship with the person, unless



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the office disallows the disclaimer.

(3) In addition to the facility or the controlling company, the office has standing to petition a circuit court as described in s. 628.4615(9) ~~issued a certificate of authority to operate a continuing care facility or a provisional certificate of authority shall be subject to the provisions of s. 628.4615~~.

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

And the title is amended as follows:

Delete line 291

and insert:

testimony; amending s. 651.091, F.S.; revising requirements for continuing care facilities; revising disclosure requirements for a provider and his or her agent; amending s. 651.105, F.S.; requiring a provider to respond and provide certain information to the Office of Insurance Regulation; amending s. 651.024, F.S.; revising provisions related to the acquisition of a continuing care facility; amending s. 945.36, F.S.; authorizing law

By the Committee on Appropriations; and Senators Grimsley and Bean

576-02719A-18 2018622c1

A bill to be entitled

An act relating to health care facility regulation; creating s. 154.13, F.S.; providing that a designated facility owned or operated by a public health trust and located within the boundaries of a municipality is under the exclusive jurisdiction of the county creating the public health trust; amending ss. 381.0031, 381.004, 384.31, 395.009, 400.0625, and 409.905, F.S.; eliminating state licensure requirements for clinical laboratories; requiring clinical laboratories to be federally certified; amending s. 383.313, F.S.; requiring a birth center to be federally certified and meet specified requirements to perform certain laboratory tests; repealing s. 383.335, F.S., relating to partial exemptions from licensure requirements for certain facilities that provide obstetrical and gynecological surgical services; amending s. 395.002, F.S.; revising and deleting definitions to remove the term "mobile surgical facility"; conforming a cross-reference; creating s. 395.0091, F.S.; requiring the Agency for Health Care Administration, in consultation with the Board of Clinical Laboratory Personnel, to adopt rules establishing criteria for alternate-site laboratory testing; requiring specifications to be included in the criteria; defining the term "alternate-site testing"; amending ss. 395.0161 and 395.0163, F.S.; deleting licensure and inspection requirements for mobile surgical facilities to conform to changes made

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576-02719A-18 2018622c1

by the act; amending s. 395.0197, F.S.; requiring the manager of a hospital or ambulatory surgical center internal risk management program to demonstrate competence in specified administrative and health care service areas; conforming provisions to changes made by the act; repealing s. 395.1046, F.S., relating to hospital complaint investigation procedures; amending s. 395.1055, F.S.; requiring hospitals that provide specified services to meet agency licensure requirements; providing standards to be included in licensure requirements; conforming a provision to changes made by the act; requiring a level 2 background screening for personnel of distinct part nursing units; requiring the agency to adopt rules establishing standards for pediatric cardiac catheterization and pediatric cardiovascular surgery programs located in licensed hospitals; providing requirements for such programs; establishing minimum standards for rules for such pediatric cardiac programs; requiring hospitals with pediatric cardiac programs to participate in the clinical outcome reporting systems; revising duties and membership of the pediatric cardiac technical advisory panel; repealing ss. 395.10971 and 395.10972, F.S., relating to the purpose and the establishment of the Health Care Risk Manager Advisory Council, respectively; amending s. 395.10973, F.S.; removing requirements relating to agency standards for health care risk managers to conform provisions to changes made by the

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act; repealing s. 395.10974, F.S., relating to licensure of health care risk managers, qualifications, licensure, and fees; repealing s. 395.10975, F.S., relating to grounds for denial, suspension, or revocation of a health care risk manager's license and an administrative fine; amending s. 395.602, F.S.; deleting definitions for the terms "emergency care hospital," "essential access community hospital," "inactive rural hospital bed," and "rural primary care hospital"; amending s. 395.603, F.S.; deleting provisions relating to deactivation of general hospital beds by certain rural and emergency care hospitals; repealing s. 395.604, F.S., relating to other rural hospital programs; repealing s. 395.605, F.S., relating to emergency care hospitals; amending s. 395.701, F.S.; revising the definition of the term "hospital" to exclude hospitals operated by a state agency; amending s. 400.191, F.S.; removing the 30-month reporting timeframe for the Nursing Home Guide; amending s. 400.464, F.S.; requiring that a license issued to a home health agency on or after a specified date specify the services the organization is authorized to perform and whether the services constitute skilled care; providing that the provision or advertising of certain services constitutes unlicensed activity under certain circumstances; authorizing certain persons, entities or organizations providing home health services to voluntarily apply for a certificate of exemption from licensure by

providing certain information to the agency; providing that the certificate is valid for a specified time and is nontransferable; authorizing the agency to charge a fee for the certificate; amending s. 400.471, F.S.; revising home health agency licensure requirements; providing requirements for proof of accreditation for home health agencies applying for change of ownership or the addition of skilled care services; removing a provision prohibiting the agency from issuing a license to a home health agency that fails to satisfy the requirements of a Medicare certification survey from the agency; amending s. 400.474, F.S.; revising conditions for the imposition of a fine against a home health agency; amending s. 400.476, F.S.; requiring a home health agency providing skilled nursing care to have a director of nursing; amending s. 400.484, F.S.; imposing administrative fines on home health agencies for specified classes of violations; amending s. 400.497, F.S.; requiring the agency to adopt, publish, and enforce rules establishing standards for certificates of exemption; amending s. 400.506, F.S.; specifying a criminal penalty for any person who owns, operates, or maintains an unlicensed nurse registry that fails to cease operation immediately and apply for a license after notification from the agency; revising provisions authorizing the agency to impose a fine on a nurse registry that fails to cease operation after agency notification; revising circumstances under which the agency is authorized to deny, suspend,

or revoke a license or impose a fine on a nurse registry; prohibiting a nurse registry from monitoring, supervising, managing, or training a certain caregiver who is an independent contractor; amending s. 400.606, F.S.; removing a requirement that an existing licensed health care provider's hospice licensure application be accompanied by a copy of the most recent profit-loss statement and licensure inspection report; amending s. 400.925, F.S.; revising the definition of the term "home medical equipment"; amending s. 400.931, F.S.; requiring a home medical equipment provider to notify the agency of certain personnel changes within a specified timeframe; amending s. 400.933, F.S.; requiring the agency to accept the submission of a valid medical oxygen retail establishment permit issued by the Department of Business and Professional Regulation in lieu of an agency inspection for licensure; amending s. 400.980, F.S.; revising the timeframe within which a health care services pool registrant must provide the agency with certain changes of information; amending s. 400.9935, F.S.; specifying that a voluntary certificate of exemption may be valid for up to 2 years; amending s. 408.036, F.S.; conforming provisions to changes made by the act; deleting obsolete provisions relating to certificate of need requirements for specified services; amending s. 408.0361, F.S.; providing an exception for a hospital to become a Level I Adult Cardiovascular provider if

certain requirements are met; amending s. 408.05, F.S.; requiring the agency to contract with the Society of Thoracic Surgeons and the American College of Cardiology for the collection of certain data for publication on the agency's website for certain purposes; amending s. 408.061, F.S.; excluding hospitals operated by state agencies from certain financial reporting requirements; conforming a cross-reference; amending s. 408.07, F.S.; deleting the definition for the term "clinical laboratory"; amending s. 408.20, F.S.; exempting hospitals operated by any state agency from assessments against the Health Care Trust Fund to fund certain agency activities; repealing s. 408.7056, F.S., relating to the Subscriber Assistance Program; amending s. 408.803, F.S.; defining the term "relative" for purposes of the Health Care Licensing Procedures Act; amending s. 408.806, F.S.; authorizing licensees who hold licenses for multiple providers to request that the agency align related license expiration dates; authorizing the agency to issue licenses for an abbreviated licensure period and to charge a prorated licensure fee; amending s. 408.809, F.S.; expanding the scope of persons subject to a level 2 background screening to include any employee of a licensee who is a controlling interest and certain part-time contractors; amending s. 408.810, F.S.; providing that an applicant for change of ownership licensure is exempt from furnishing proof of financial ability to

operate if certain conditions are met; authorizing the agency to adopt rules governing circumstances under which a controlling interest may act in certain legal capacities on behalf of a patient or client; requiring a licensee to ensure that certain persons do not hold an ownership interest if the licensee is not organized as or owned by a publicly traded corporation; defining the term "publicly traded corporation"; amending s. 408.812, F.S.; providing that certain unlicensed activity by a provider constitutes abuse and neglect; clarifying that the agency may impose a fine or penalty, as prescribed in an authorizing statute, if an unlicensed provider who has received notification fails to cease operation; authorizing the agency to revoke all licenses and impose a fine or penalties upon a controlling interest or licensee who has an interest in more than one provider and who fails to license a provider rendering services that require licensure in certain circumstances; amending s. 408.820, F.S.; deleting certain exemptions from part II of ch. 408, F.S., for specified providers to conform provisions to changes made by the act; amending s. 409.907, F.S.; removing the agency's authority to consider certain factors in determining whether to enter into, and in maintaining, a Medicaid provider agreement; amending s. 429.02, F.S.; revising definitions of the terms "assisted living facility" and "personal services"; amending s. 429.04, F.S.; providing additional exemptions from licensure as an

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assisted living facility; requiring a person or entity asserting the exemption to provide documentation that substantiates the claim upon agency investigation of unlicensed activity; amending s. 429.08, F.S.; providing criminal penalties and fines for a person who rents or otherwise maintains a building or property used as an unlicensed assisted living facility; providing criminal penalties and fines for a person who owns, operates, or maintains an unlicensed assisted living facility after receiving notice from the agency; amending s. 429.176, F.S.; prohibiting an assisted living facility from operating for more than a specified time without an administrator who has completed certain educational requirements; amending s. 429.24, F.S.; providing that 30-day written notice of rate increase for residency in an assisted living facility is not required in certain situations; amending s. 429.28, F.S.; revising the assisted living facility resident bill of rights to include assistance with obtaining access to adequate and appropriate health care; defining the term "adequate and appropriate health care"; deleting a requirement that the agency conduct at least one monitoring visit under certain circumstances; deleting provisions authorizing the agency to conduct periodic followup inspections and complaint investigations under certain circumstances; amending s. 429.294, F.S.; deleting the specified timeframe within which an assisted living facility must provide complete copies of a resident's

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records in an investigation of resident's rights; amending s. 429.34, F.S.; authorizing the agency to inspect and investigate assisted living facilities as necessary to determine compliance with certain laws; removing a provision requiring the agency to inspect each licensed assisted living facility at least biennially; authorizing the agency to conduct monitoring visits of each facility cited for prior violations under certain circumstances; amending s. 429.52, F.S.; requiring an assisted living facility administrator to complete required training and education within a specified timeframe; amending s. 435.04, F.S.; providing that security background investigations must ensure that a person has not been arrested for, and is not awaiting final disposition of, certain offenses; requiring that security background investigations for purposes of participation in the Medicaid program screen for violations of federal or state law, rule, or regulation governing any state Medicaid program, the Medicare program, or any other publicly funded federal or state health care or health insurance program; specifying offenses under federal law or any state law that the security background investigations must screen for; amending s. 456.054, F.S.; prohibiting any person or entity from paying or receiving a kickback for referring patients to a clinical laboratory; prohibiting a clinical laboratory from providing personnel to perform certain functions or duties in a

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health care practitioner's office or dialysis facility; providing an exception; prohibiting a clinical laboratory from leasing space in any part of a health care practitioner's office or dialysis facility; repealing part I of ch. 483, F.S., relating to clinical laboratories; amending s. 483.294, F.S.; removing a requirement that the agency inspect multiphasic health testing centers at least once annually; amending s. 483.801, F.S.; providing an exemption from regulation for certain persons employed by certain laboratories; amending s. 483.803, F.S.; revising definitions of the terms "clinical laboratory" and "clinical laboratory examination"; removing a cross-reference; amending s. 641.511, F.S.; revising health maintenance organization subscriber grievance reporting requirements; repealing s. 641.60, F.S., relating to the Statewide Managed Care Ombudsman Committee; repealing s. 641.65, F.S., relating to district managed care ombudsman committees; repealing s. 641.67, F.S., relating to a district managed care ombudsman committee, exemption from public records requirements, and exceptions; repealing s. 641.68, F.S., relating to a district managed care ombudsman committee and exemption from public meeting requirements; repealing s. 641.70, F.S., relating to agency duties relating to the Statewide Managed Care Ombudsman Committee and the district managed care ombudsman committees; repealing s. 641.75, F.S., relating to immunity from liability and limitation on

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testimony; amending s. 945.36, F.S.; authorizing law enforcement personnel to conduct drug tests on certain inmates and releasees; amending ss. 20.43, 220.1845, 376.30781, 376.86, 381.0034, 381.0405, 383.14, 383.30, 383.301, 383.302, 383.305, 383.309, 383.33, 385.211, 394.4787, 395.001, 395.003, 395.7015, 400.9905, 408.033, 408.802, 409.9116, 409.975, 429.19, 456.001, 456.057, 456.076, 458.307, 458.345, 459.021, 483.813, 483.823, 491.003, 627.351, 627.602, 627.6406, 627.64194, 627.6513, 627.6574, 641.185, 641.31, 641.312, 641.3154, 641.51, 641.515, 641.55, 766.118, 766.202, 1009.65, and 1011.52, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (g) of subsection (3) of section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(3) The following divisions of the Department of Health are established:

(g) Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

1. The Board of Acupuncture, created under chapter 457.

2. The Board of Medicine, created under chapter 458.

3. The Board of Osteopathic Medicine, created under chapter

459.

4. The Board of Chiropractic Medicine, created under chapter 460.

5. The Board of Podiatric Medicine, created under chapter 461.

6. Naturopathy, as provided under chapter 462.

7. The Board of Optometry, created under chapter 463.

8. The Board of Nursing, created under part I of chapter 464.

9. Nursing assistants, as provided under part II of chapter 464.

10. The Board of Pharmacy, created under chapter 465.

11. The Board of Dentistry, created under chapter 466.

12. Midwifery, as provided under chapter 467.

13. The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.

14. The Board of Nursing Home Administrators, created under part II of chapter 468.

15. The Board of Occupational Therapy, created under part III of chapter 468.

16. Respiratory therapy, as provided under part V of chapter 468.

17. Dietetics and nutrition practice, as provided under part X of chapter 468.

18. The Board of Athletic Training, created under part XIII of chapter 468.

19. The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.

20. Electrolysis, as provided under chapter 478.

21. The Board of Massage Therapy, created under chapter 480.

22. The Board of Clinical Laboratory Personnel, created under part II ~~III~~ of chapter 483.

23. Medical physicists, as provided under part IV of chapter 483.

24. The Board of Opticianry, created under part I of chapter 484.

25. The Board of Hearing Aid Specialists, created under part II of chapter 484.

26. The Board of Physical Therapy Practice, created under chapter 486.

27. The Board of Psychology, created under chapter 490.

28. School psychologists, as provided under chapter 490.

29. The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

30. Emergency medical technicians and paramedics, as provided under part III of chapter 401.

Section 2. Section 154.13, Florida Statutes, is created to read:

154.13 Designated facilities; jurisdiction.—Any designated facility owned or operated by a public health trust and located within the boundaries of a municipality is under the exclusive jurisdiction of the county creating the public health trust and is not within the jurisdiction of the municipality.

Section 3. Paragraph (k) of subsection (2) of section 220.1845, Florida Statutes, is amended to read:

220.1845 Contaminated site rehabilitation tax credit.—

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(2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(k) In order to encourage the construction and operation of a new health care facility as defined in s. 408.032 or s. 408.07, or a health care provider as defined in s. 408.07 ~~or s. 408.7056~~, on a brownfield site, an applicant for a tax credit may claim an additional 25 percent of the total site rehabilitation costs, not to exceed $500,000, if the applicant meets the requirements of this paragraph. In order to receive this additional tax credit, the applicant must provide documentation indicating that the construction of the health care facility or health care provider by the applicant on the brownfield site has received a certificate of occupancy or a license or certificate has been issued for the operation of the health care facility or health care provider.

Section 4. Paragraph (f) of subsection (3) of section 376.30781, Florida Statutes, is amended to read:

376.30781 Tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority; revocation authority.—

(3)

(f) In order to encourage the construction and operation of a new health care facility or a health care provider, as defined in s. 408.032 or~~,~~ s. 408.07, ~~or s. 408.7056,~~ on a brownfield site, an applicant for a tax credit may claim an additional 25 percent of the total site rehabilitation costs, not to exceed $500,000, if the applicant meets the requirements of this paragraph. In order to receive this additional tax credit, the applicant must provide documentation indicating that the

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construction of the health care facility or health care provider by the applicant on the brownfield site has received a certificate of occupancy or a license or certificate has been issued for the operation of the health care facility or health care provider.

Section 5. Subsection (1) of section 376.86, Florida Statutes, is amended to read:

376.86 Brownfield Areas Loan Guarantee Program.—

(1) The Brownfield Areas Loan Guarantee Council is created to review and approve or deny, by a majority vote of its membership, the situations and circumstances for participation in partnerships by agreements with local governments, financial institutions, and others associated with the redevelopment of brownfield areas pursuant to the Brownfields Redevelopment Act for a limited state guaranty of up to 5 years of loan guarantees or loan loss reserves issued pursuant to law. The limited state loan guaranty applies only to 50 percent of the primary lenders loans for redevelopment projects in brownfield areas. If the redevelopment project is for affordable housing, as defined in s. 420.0004, in a brownfield area, the limited state loan guaranty applies to 75 percent of the primary lender's loan. If the redevelopment project includes the construction and operation of a new health care facility or a health care provider, as defined in s. 408.032 or~~,~~ s. 408.07, ~~or s. 408.7056,~~ on a brownfield site and the applicant has obtained documentation in accordance with s. 376.30781 indicating that the construction of the health care facility or health care provider by the applicant on the brownfield site has received a certificate of occupancy or a license or certificate has been

issued for the operation of the health care facility or health care provider, the limited state loan guaranty applies to 75 percent of the primary lender's loan. A limited state guaranty of private loans or a loan loss reserve is authorized for lenders licensed to operate in the state upon a determination by the council that such an arrangement would be in the public interest and the likelihood of the success of the loan is great.

Section 6. Subsection (2) of section 381.0031, Florida Statutes, is amended to read:

381.0031 Epidemiological research; report of diseases of public health significance to department.—

(2) Any practitioner licensed in this state to practice medicine, osteopathic medicine, chiropractic medicine, naturopathy, or veterinary medicine; any hospital licensed under part I of chapter 395; or any laboratory appropriately certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder which ~~licensed under chapter 483 that~~ diagnoses or suspects the existence of a disease of public health significance shall immediately report the fact to the Department of Health.

Section 7. Subsection (3) of section 381.0034, Florida Statutes, is amended to read:

381.0034 Requirement for instruction on HIV and AIDS.—

(3) The department shall require, as a condition of granting a license under chapter 467 or part II ~~III~~ of chapter 483, that an applicant making initial application for licensure complete an educational course acceptable to the department on human immunodeficiency virus and acquired immune deficiency

syndrome. Upon submission of an affidavit showing good cause, an applicant who has not taken a course at the time of licensure shall be allowed 6 months to complete this requirement.

Section 8. Paragraph (c) of subsection (4) of section 381.004, Florida Statutes, is amended to read:

381.004 HIV testing.—

(4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS; REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM REGISTRATION.—No county health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immune deficiency syndrome or human immunodeficiency virus status without first registering with the Department of Health, reregistering each year, complying with all other applicable provisions of state law, and meeting the following requirements:

(c) The program shall have all laboratory procedures performed in a laboratory <u>appropriately certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder</u> ~~licensed under the provisions of chapter 483~~.

Section 9. Paragraph (f) of subsection (4) of section 381.0405, Florida Statutes, is amended to read:

381.0405 Office of Rural Health.—

(4) COORDINATION.—The office shall:

(f) Assume responsibility for state coordination of the Rural Hospital Transition Grant Program~~, the Essential Access Community Hospital Program,~~ and other federal rural health care programs.

Section 10. Paragraph (a) of subsection (2) of section

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383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(2) RULES.—

(a) After consultation with the Genetics and Newborn Screening Advisory Council, the department shall adopt and enforce rules requiring that every newborn in this state shall:

1. Before becoming 1 week of age, be subjected to a test for phenylketonuria;

2. Be tested for any condition included on the federal Recommended Uniform Screening Panel which the council advises the department should be included under the state's screening program. After the council recommends that a condition be included, the department shall submit a legislative budget request to seek an appropriation to add testing of the condition to the newborn screening program. The department shall expand statewide screening of newborns to include screening for such conditions within 18 months after the council renders such advice, if a test approved by the United States Food and Drug Administration or a test offered by an alternative vendor ~~which is compatible with the clinical standards established under part I of chapter 483~~ is available. If such a test is not available within 18 months after the council makes its recommendation, the department shall implement such screening as soon as a test offered by the United States Food and Drug Administration or by an alternative vendor is available; and

3. At the appropriate age, be tested for such other metabolic diseases and hereditary or congenital disorders as the department may deem necessary from time to time.

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Section 11. Section 383.30, Florida Statutes, is amended to read:

383.30 Birth Center Licensure Act; short title.—Sections 383.30-383.332 ~~383.30-383.335~~ shall be known and may be cited as the "Birth Center Licensure Act."

Section 12. Section 383.301, Florida Statutes, is amended to read:

383.301 Licensure and regulation of birth centers; legislative intent.—It is the intent of the Legislature to provide for the protection of public health and safety in the establishment, maintenance, and operation of birth centers by providing for licensure of birth centers and for the development, establishment, and enforcement of minimum standards with respect to birth centers. The requirements of part II of chapter 408 shall apply to the provision of services that require licensure pursuant to ss. 383.30-383.332 ~~383.30-383.335~~ and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 383.30-383.332 ~~383.30-383.335~~. A license issued by the agency is required in order to operate a birth center in this state.

Section 13. Section 383.302, Florida Statutes, is amended to read:

383.302 Definitions of terms used in ss. 383.30-383.332 ~~383.30-383.335~~.—As used in ss. 383.30-383.332 ~~383.30-383.335~~, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Birth center" means any facility, institution, or

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place, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur away from the mother's usual residence following a normal, uncomplicated, low-risk pregnancy.

(3) "Clinical staff" means individuals employed full time or part time by a birth center who are licensed or certified to provide care at childbirth.

(4) "Consultant" means a physician licensed pursuant to chapter 458 or chapter 459 who agrees to provide advice and services to a birth center and who either:

(a) Is certified or eligible for certification by the American Board of Obstetrics and Gynecology, or

(b) Has hospital obstetrical privileges.

(5) "Governing body" means any individual, group, corporation, or institution which is responsible for the overall operation and maintenance of a birth center.

(6) "Governmental unit" means the state or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of the foregoing.

(7) "Licensed facility" means a facility licensed in accordance with s. 383.305.

(8) "Low-risk pregnancy" means a pregnancy which is expected to result in an uncomplicated birth, as determined through risk criteria developed by rule of the department, and which is accompanied by adequate prenatal care.

(9) "Person" means any individual, firm, partnership, corporation, company, association, institution, or joint stock association and means any legal successor of any of the foregoing.

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(10) "Premises" means those buildings, beds, and facilities located at the main address of the licensee and all other buildings, beds, and facilities for the provision of maternity care located in such reasonable proximity to the main address of the licensee as to appear to the public to be under the dominion and control of the licensee.

Section 14. Subsection (1) of section 383.305, Florida Statutes, is amended to read:

383.305 Licensure; fees.—

(1) In accordance with s. 408.805, an applicant or a licensee shall pay a fee for each license application submitted under ss. 383.30-383.332 ~~383.30-383.335~~ and part II of chapter 408. The amount of the fee shall be established by rule.

Section 15. Subsection (1) of section 383.309, Florida Statutes, is amended to read:

383.309 Minimum standards for birth centers; rules and enforcement.—

(1) The agency shall adopt and enforce rules to administer ss. 383.30-383.332 ~~383.30-383.335~~ and part II of chapter 408, which rules shall include, but are not limited to, reasonable and fair minimum standards for ensuring that:

(a) Sufficient numbers and qualified types of personnel and occupational disciplines are available at all times to provide necessary and adequate patient care and safety.

(b) Infection control, housekeeping, sanitary conditions, disaster plan, and medical record procedures that will adequately protect patient care and provide safety are established and implemented.

(c) Licensed facilities are established, organized, and

operated consistent with established programmatic standards.

Section 16. Subsection (1) of section 383.313, Florida Statutes, is amended to read:

383.313 Performance of laboratory and surgical services; use of anesthetic and chemical agents.—

(1) LABORATORY SERVICES.—A birth center may collect specimens for those tests that are requested under protocol. A birth center must obtain and continuously maintain certification by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder in order to ~~may~~ perform ~~simple~~ laboratory tests specified~~, as defined~~ by rule of the agency, and which are appropriate to meet the needs of the patient ~~is exempt from the requirements of chapter 483, provided no more than five physicians are employed by the birth center and testing is conducted exclusively in connection with the diagnosis and treatment of clients of the birth center~~.

Section 17. Subsection (1) and paragraph (a) of subsection (2) of section 383.33, Florida Statutes, are amended to read:

383.33 Administrative penalties; moratorium on admissions.—

(1) In addition to the requirements of part II of chapter 408, the agency may impose an administrative fine not to exceed $500 per violation per day for the violation of any provision of ss. 383.30-383.332 ~~383.30-383.335~~, part II of chapter 408, or applicable rules.

(2) In determining the amount of the fine to be levied for a violation, as provided in this section, the following factors shall be considered:

(a) The severity of the violation, including the

probability that death or serious harm to the health or safety of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which ~~the provisions of~~ ss. 383.30-383.332 ~~383.30-383.335~~, part II of chapter 408, or applicable rules were violated.

Section 18. Section 383.335, Florida Statutes, is repealed.

Section 19. Section 384.31, Florida Statutes, is amended to read:

384.31 Testing of pregnant women; duty of the attendant.—Every person, including every physician licensed under chapter 458 or chapter 459 or midwife licensed under part I of chapter 464 or chapter 467, attending a pregnant woman for conditions relating to pregnancy during the period of gestation and delivery shall cause the woman to be tested for sexually transmissible diseases, including HIV, as specified by department rule. Testing shall be performed by a laboratory appropriately certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder ~~approved~~ for such purposes ~~under part I of chapter 483~~. The woman shall be informed of the tests that will be conducted and of her right to refuse testing. If a woman objects to testing, a written statement of objection, signed by the woman, shall be placed in the woman's medical record and no testing shall occur.

Section 20. Subsection (2) of section 385.211, Florida Statutes, is amended to read:

385.211 Refractory and intractable epilepsy treatment and research at recognized medical centers.—

(2) Notwithstanding chapter 893, medical centers recognized

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pursuant to s. 381.925, or an academic medical research institution legally affiliated with a licensed children's specialty hospital as defined in s. 395.002(27) ~~s. 395.002(28)~~ that contracts with the Department of Health, may conduct research on cannabidiol and low-THC cannabis. This research may include, but is not limited to, the agricultural development, production, clinical research, and use of liquid medical derivatives of cannabidiol and low-THC cannabis for the treatment for refractory or intractable epilepsy. The authority for recognized medical centers to conduct this research is derived from 21 C.F.R. parts 312 and 316. Current state or privately obtained research funds may be used to support the activities described in this section.

Section 21. Subsection (7) of section 394.4787, Florida Statutes, is amended to read:

394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788, and 394.4789.—As used in this section and ss. 394.4786, 394.4788, and 394.4789:

(7) "Specialty psychiatric hospital" means a hospital licensed by the agency pursuant to s. 395.002(27) ~~s. 395.002(28)~~ and part II of chapter 408 as a specialty psychiatric hospital.

Section 22. Section 395.001, Florida Statutes, is amended to read:

395.001 Legislative intent.—It is the intent of the Legislature to provide for the protection of public health and safety in the establishment, construction, maintenance, and operation of hospitals and~~,~~ ambulatory surgical centers~~, and mobile surgical facilities~~ by providing for licensure of same and for the development, establishment, and enforcement of

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minimum standards with respect thereto.

Section 23. Present subsections (22) through (33) of section 395.002, Florida Statutes, are redesignated as subsections (21) through (32), respectively, and subsections (3) and (16) of that section and present subsections (21) and (23) of that section are amended, to read:

395.002 Definitions.—As used in this chapter:

(3) "Ambulatory surgical center" ~~or "mobile surgical facility"~~ means a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within the same working day and is not permitted to stay overnight, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry may ~~shall~~ not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003. ~~Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical facility.~~

(16) "Licensed facility" means a hospital or~~,~~ ambulatory surgical center~~, or mobile surgical facility~~ licensed in accordance with this chapter.

~~(21) "Mobile surgical facility" is a mobile facility in~~

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~~which licensed health care professionals provide elective surgical care under contract with the Department of Corrections or a private correctional facility operating pursuant to chapter 957 and in which inmate patients are admitted to and discharged from said facility within the same working day and are not permitted to stay overnight. However, mobile surgical facilities may only provide health care services to the inmate patients of the Department of Corrections, or inmate patients of a private correctional facility operating pursuant to chapter 957, and not to the general public.~~

(22)~~(23)~~ "Premises" means those buildings, beds, and equipment located at the address of the licensed facility and all other buildings, beds, and equipment for the provision of hospital or~~,~~ ambulatory surgical~~, or mobile surgical~~ care located in such reasonable proximity to the address of the licensed facility as to appear to the public to be under the dominion and control of the licensee. For any licensee that is a teaching hospital as defined in s. 408.07 ~~s. 408.07(45)~~, reasonable proximity includes any buildings, beds, services, programs, and equipment under the dominion and control of the licensee that are located at a site with a main address that is within 1 mile of the main address of the licensed facility; and all such buildings, beds, and equipment may, at the request of a licensee or applicant, be included on the facility license as a single premises.

Section 24. Paragraphs (a) and (b) of subsection (1) and paragraph (b) of subsection (2) of section 395.003, Florida Statutes, are amended to read:

395.003 Licensure; denial, suspension, and revocation.—

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(1)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 395.001-395.1065 and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 395.001-395.1065. A license issued by the agency is required in order to operate a hospital or~~,~~ ambulatory surgical center~~, or mobile surgical facility~~ in this state.

(b)1. It is unlawful for a person to use or advertise to the public, in any way or by any medium whatsoever, any facility as a "hospital~~,~~" or "ambulatory surgical center~~,~~" ~~or "mobile surgical facility"~~ unless such facility has first secured a license under ~~the provisions of~~ this part.

2. This part does not apply to veterinary hospitals or to commercial business establishments using the word "hospital~~,~~" or "ambulatory surgical center~~,~~" ~~or "mobile surgical facility"~~ as a part of a trade name if no treatment of human beings is performed on the premises of such establishments.

(2)

(b) The agency shall, at the request of a licensee that is a teaching hospital as defined in s. 408.07 ~~s. 408.07(45)~~, issue a single license to a licensee for facilities that have been previously licensed as separate premises, provided such separately licensed facilities, taken together, constitute the same premises as defined in s. 395.002 ~~s. 395.002(23)~~. Such license for the single premises shall include all of the beds, services, and programs that were previously included on the licenses for the separate premises. The granting of a single license under this paragraph may ~~shall~~ not in any manner reduce

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the number of beds, services, or programs operated by the licensee.

Section 25. Subsection (1) of section 395.009, Florida Statutes, is amended to read:

395.009 Minimum standards for clinical laboratory test results and diagnostic X-ray results; prerequisite for issuance or renewal of license.—

(1) As a requirement for issuance or renewal of its license, each licensed facility shall require that all clinical laboratory tests performed by or for the licensed facility be performed by a clinical laboratory appropriately certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder ~~licensed under the provisions of chapter 483~~.

Section 26. Section 395.0091, Florida Statutes, is created to read:

395.0091 Alternate-site testing.—The agency, in consultation with the Board of Clinical Laboratory Personnel, shall adopt by rule the criteria for alternate-site testing to be performed under the supervision of a clinical laboratory director. At a minimum, the criteria must address hospital internal needs assessment; a protocol for implementation, including the identification of tests to be performed and who will perform them; selection of the method of testing to be used for alternate-site testing; minimum training and education requirements for those who will perform alternate-site testing, such as documented training, licensure, certification, or other medical professional background not limited to laboratory professionals; documented inservice training and initial and

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ongoing competency validation; an appropriate internal and external quality control protocol; an internal mechanism for the central laboratory to identify and track alternate-site testing; and recordkeeping requirements. Alternate-site testing locations must register when the hospital applies to renew its license. For purposes of this section, the term "alternate-site testing" includes any laboratory testing done under the administrative control of a hospital, but performed out of the physical or administrative confines of the central laboratory.

Section 27. Paragraph (f) of subsection (1) of section 395.0161, Florida Statutes, is amended to read:

395.0161 Licensure inspection.—

(1) In addition to the requirement of s. 408.811, the agency shall make or cause to be made such inspections and investigations as it deems necessary, including:

~~(f) Inspections of mobile surgical facilities at each time a facility establishes a new location, prior to the admission of patients. However, such inspections shall not be required when a mobile surgical facility is moved temporarily to a location where medical treatment will not be provided.~~

Section 28. Subsection (3) of section 395.0163, Florida Statutes, is amended to read:

395.0163 Construction inspections; plan submission and approval; fees.—

~~(3) In addition to the requirements of s. 408.811, the agency shall inspect a mobile surgical facility at initial licensure and at each time the facility establishes a new location, prior to admission of patients. However, such inspections shall not be required when a mobile surgical~~

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~~facility is moved temporarily to a location where medical treatment will not be provided.~~

Section 29. Subsection (2), paragraph (c) of subsection (6), and subsections (16) and (17) of section 395.0197, Florida Statutes, are amended to read:

395.0197 Internal risk management program.—

(2) The internal risk management program is the responsibility of the governing board of the health care facility. Each licensed facility shall hire a risk manager~~,~~ ~~licensed under s. 395.10974,~~ who is responsible for implementation and oversight of the ~~such~~ facility's internal risk management program and who demonstrates competence, through education or experience, in all of the following areas:

(a) Applicable standards of health care risk management.

(b) Applicable federal, state, and local health and safety laws and rules.

(c) General risk management administration.

(d) Patient care.

(e) Medical care.

(f) Personal and social care.

(g) Accident prevention.

(h) Departmental organization and management.

(i) Community interrelationships.

(j) Medical terminology ~~as required by this section. A risk manager must not be made responsible for more than four internal risk management programs in separate licensed facilities, unless the facilities are under one corporate ownership or the risk management programs are in rural hospitals~~.

(6)

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(c) The report submitted to the agency must ~~shall~~ also contain the name ~~and license number~~ of the risk manager of the licensed facility, a copy of its policy and procedures which govern the measures taken by the facility and its risk manager to reduce the risk of injuries and adverse incidents, and the results of such measures. The annual report is confidential and is not available to the public pursuant to s. 119.07(1) or any other law providing access to public records. The annual report is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board. The annual report is not available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the agency or the appropriate regulatory board. However, the agency or the appropriate regulatory board shall make available, upon written request by a health care professional against whom probable cause has been found, any such records which form the basis of the determination of probable cause.

(16) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any risk manager~~, licensed under s. 395.10974,~~ for the implementation and oversight of the internal risk management program in a facility licensed under this chapter or chapter 390 as required by this section, for any act or proceeding undertaken or performed within the scope of the functions of such internal risk management program if the risk manager acts without intentional fraud.

(17) A privilege against civil liability is hereby granted

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to any ~~licensed~~ risk manager or licensed facility with regard to information furnished pursuant to this chapter, unless the ~~licensed~~ risk manager or facility acted in bad faith or with malice in providing such information.

Section 30. Section 395.1046, Florida Statutes, is repealed.

Section 31. Present subsection (10) of section 395.1055, Florida Statutes, is redesignated as subsection (12), subsections (2), (3), and (9) of that section are amended, paragraph (i) is added to subsection (1) of that section, and a new subsection (10) and subsection (11) are added to that section, to read:

395.1055 Rules and enforcement.—

(1) The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part, which shall include reasonable and fair minimum standards for ensuring that:

(i) All hospitals providing organ transplantation, neonatal intensive care services, inpatient psychiatric services, inpatient substance abuse services, or comprehensive medical rehabilitation meet the minimum licensure requirements adopted by the agency. Such licensure requirements must include quality of care, nurse staffing, physician staffing, physical plant, equipment, emergency transportation, and data reporting standards.

(2) Separate standards may be provided for general and specialty hospitals, ambulatory surgical centers, ~~mobile surgical facilities,~~ and statutory rural hospitals as defined in s. 395.602.

(3) The agency shall adopt rules with respect to the care

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and treatment of patients residing in distinct part nursing units of hospitals which are certified for participation in Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act skilled nursing facility program. Such rules shall take into account the types of patients treated in hospital skilled nursing units, including typical patient acuity levels and the average length of stay in such units, and shall be limited to the appropriate portions of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV (Medicare, Medicaid, and Other Health-Related Programs), Subtitle C (Nursing Home Reform), as amended. The agency shall require level 2 background screening as specified in s. 408.809(1)(e) pursuant to s. 408.809 and chapter 435 for personnel of distinct part nursing units.

(9) The agency shall establish a technical advisory panel, pursuant to s. 20.052, to develop procedures and standards for measuring outcomes of pediatric cardiac catheterization programs and pediatric cardiovascular ~~open-heart~~ surgery programs.

(a) Members of the panel must have technical expertise in pediatric cardiac medicine, shall serve without compensation, and may not be reimbursed for per diem and travel expenses. ~~be composed~~

(b) Voting members of the panel shall include: 3 at-large members, including 1 cardiologist who is board certified in caring for adults with congenital heart disease and 2 board-certified pediatric cardiologists, neither of whom may be employed by any of the hospitals specified in subparagraphs 1.-10. or their affiliates, each of whom is appointed by the Secretary of Health Care Administration, and 10 members, and an

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alternate for each member, each of whom is a pediatric cardiologist or a pediatric cardiovascular surgeon, each appointed by the chief executive officer of ~~one of~~ the following hospitals:

1. Johns Hopkins All Children's Hospital in St. Petersburg.
2. Arnold Palmer Hospital for Children in Orlando.
3. Joe DiMaggio Children's Hospital in Hollywood.
4. Nicklaus Children's Hospital in Miami.
5. St. Joseph's Children's Hospital in Tampa.
6. University of Florida Health Shands Hospital in Gainesville.
7. University of Miami Holtz Children's Hospital in Miami.
8. Wolfson Children's Hospital in Jacksonville.
9. Florida Hospital for Children in Orlando.
10. Nemours Children's Hospital in Orlando.

Appointments made under subparagraphs 1.-10. are contingent upon the hospital's maintenance of pediatric certificates of need and the hospital's compliance with this section and rules adopted thereunder, as determined by the Secretary of Health Care Administration. A member appointed under subparagraphs 1.-10. whose hospital fails to maintain such certificates or comply with standards may serve only as a nonvoting member until the hospital restores such certificates or complies with such standards.

(c) The Secretary of Health Care Administration may appoint nonvoting members to the panel. Nonvoting members may include:

1. The Secretary of Health Care Administration.
2. The Surgeon General.

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3. The Deputy Secretary of Children's Medical Services.

4. Any current or past Division Director of Children's Medical Services.

5. A parent of a child with congenital heart disease.

6. An adult with congenital heart disease.

7. A representative from each of the following organizations: the Florida Chapter of the American Academy of Pediatrics, the Florida Chapter of the American College of Cardiology, the Greater Southeast Affiliate of the American Heart Association, the Adult Congenital Heart Association, the March of Dimes, the Florida Association of Children's Hospitals, and the Florida Society of Thoracic and Cardiovascular Surgeons.

(d) The panel shall meet biannually, or more frequently upon the call of the Secretary of Health Care Administration. Such meetings may be conducted telephonically, or by other electronic means.

(e) The duties of the panel include recommending to the agency standards for quality of care, personnel, physical plant, equipment, emergency transportation, and data reporting for hospitals that provide pediatric cardiac services.

(f) Beginning on January 1, 2020, and annually thereafter, the panel shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Health Care Administration, and the State Surgeon General. The report must summarize the panel's activities during the preceding fiscal year and include data and performance measures on surgical morbidity and mortality for all pediatric cardiac programs.

~~(b) Based on the recommendations of the panel, the agency~~

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~~shall develop and adopt rules for pediatric cardiac catheterization programs and pediatric open-heart surgery programs which include at least the following:~~

~~1. A risk adjustment procedure that accounts for the variations in severity and case mix found in hospitals in this state;~~

~~2. Outcome standards specifying expected levels of performance in pediatric cardiac programs. Such standards may include, but are not limited to, in-hospital mortality, infection rates, nonfatal myocardial infarctions, length of postoperative bleeds, and returns to surgery; and~~

~~3. Specific steps to be taken by the agency and licensed facilities that do not meet the outcome standards within a specified time, including time required for detailed case reviews and development and implementation of corrective action plans.~~

~~(c) This subsection is repealed on July 1, 2022.~~

(10) Based on the recommendations of the advisory panel in subsection (9), the agency shall adopt rules for pediatric cardiac programs which, at a minimum, include:

(a) Standards for pediatric cardiac catheterization services and pediatric cardiovascular surgery including quality of care, personnel, physical plant, equipment, emergency transportation, data reporting, and appropriate operating hours and timeframes for mobilization for emergency procedures.

(b) Outcome standards consistent with nationally established levels of performance in pediatric cardiac programs.

(c) Specific steps to be taken by the agency and licensed facilities when the facilities do not meet the outcome standards

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within a specified time, including time required for detailed case reviews and the development and implementation of corrective action plans.

(11) A pediatric cardiac program shall:

(a) Be located in a hospital licensed under this chapter and include the following colocated components: a pediatric cardiology clinic, a pediatric cardiac catheterization laboratory, and a pediatric cardiovascular surgery program.

(b) Have a risk adjustment surgical procedure protocol following the guidelines established by the Society of Thoracic Surgeons.

(c) Have quality assurance and quality improvement processes in place to enhance clinical operation and patient satisfaction with services.

(d) Participate in the clinical outcome reporting systems operated by the Society of Thoracic Surgeons and the American College of Cardiology.

(12) ~~(10)~~ The agency may adopt rules to administer the requirements of part II of chapter 408.

Section 32. Section 395.10971, Florida Statutes, is repealed.

Section 33. Section 395.10972, Florida Statutes, is repealed.

Section 34. Section 395.10973, Florida Statutes, is amended to read:

395.10973 Powers and duties of the agency.—It is the function of the agency to:

(1) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this part and part II of chapter 408

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conferring duties upon it.

~~(2) Develop, impose, and enforce specific standards within the scope of the general qualifications established by this part which must be met by individuals in order to receive licenses as health care risk managers. These standards shall be designed to ensure that health care risk managers are individuals of good character and otherwise suitable and, by training or experience in the field of health care risk management, qualified in accordance with the provisions of this part to serve as health care risk managers, within statutory requirements.~~

~~(3) Develop a method for determining whether an individual meets the standards set forth in s. 395.10974.~~

~~(4) Issue licenses to qualified individuals meeting the standards set forth in s. 395.10974.~~

~~(5) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the agency to the effect that a certified health care risk manager has failed to comply with the requirements or standards adopted by rule by the agency or to comply with the provisions of this part.~~

~~(6) Establish procedures for providing periodic reports on persons certified or disciplined by the agency under this part.~~

(2) ~~(7)~~ Develop a model risk management program for health care facilities which will satisfy the requirements of s. 395.0197.

(3) ~~(8)~~ Enforce the special-occupancy provisions of the Florida Building Code which apply to hospitals, intermediate residential treatment facilities, and ambulatory surgical centers in conducting any inspection authorized by this chapter and part II of chapter 408.

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Section 35. Section 395.10974, Florida Statutes, is repealed.

Section 36. Section 395.10975, Florida Statutes, is repealed.

Section 37. Subsection (2) of section 395.602, Florida Statutes, is amended to read:

395.602 Rural hospitals.—

(2) DEFINITIONS.—As used in this part, the term:

~~(a) "Emergency care hospital" means a medical facility which provides:~~

~~1. Emergency medical treatment; and~~

~~2. Inpatient care to ill or injured persons prior to their transportation to another hospital or provides inpatient medical care to persons needing care for a period of up to 96 hours. The 96-hour limitation on inpatient care does not apply to respite, skilled nursing, hospice, or other nonacute care patients.~~

~~(b) "Essential access community hospital" means any facility which:~~

~~1. Has at least 100 beds;~~

~~2. Is located more than 35 miles from any other essential access community hospital, rural referral center, or urban hospital meeting criteria for classification as a regional referral center;~~

~~3. Is part of a network that includes rural primary care hospitals;~~

~~4. Provides emergency and medical backup services to rural primary care hospitals in its rural health network;~~

~~5. Extends staff privileges to rural primary care hospital physicians in its network; and~~

~~6. Accepts patients transferred from rural primary care hospitals in its network.~~

~~(c) "Inactive rural hospital bed" means a licensed acute care hospital bed, as defined in s. 395.002(13), that is inactive in that it cannot be occupied by acute care inpatients.~~

(a) ~~(d)~~ "Rural area health education center" means an area health education center (AHEC), as authorized by Pub. L. No. 94-484, which provides services in a county with a population density of up to ~~no greater than~~ 100 persons per square mile.

(b) ~~(c)~~ "Rural hospital" means an acute care hospital licensed under this chapter, having 100 or fewer licensed beds and an emergency room, which is:

1. The sole provider within a county with a population density of up to 100 persons per square mile;

2. An acute care hospital, in a county with a population density of up to 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other acute care hospital within the same county;

3. A hospital supported by a tax district or subdistrict whose boundaries encompass a population of up to 100 persons per square mile;

4. A hospital classified as a sole community hospital under 42 C.F.R. s. 412.92, regardless of the number of licensed beds;

5. A hospital with a service area that has a population of up to 100 persons per square mile. As used in this subparagraph, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from

the hospital inpatient discharge database in the Florida Center for Health Information and Transparency at the agency; or

6. A hospital designated as a critical access hospital, as defined in s. 408.07.

Population densities used in this paragraph must be based upon the most recently completed United States census. A hospital that received funds under s. 409.9116 for a quarter beginning no later than July 1, 2002, is deemed to have been and shall continue to be a rural hospital from that date through June 30, 2021, if the hospital continues to have up to 100 licensed beds and an emergency room. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this paragraph shall be granted such designation upon application, including supporting documentation, to the agency. A hospital that was licensed as a rural hospital during the 2010-2011 or 2011-2012 fiscal year shall continue to be a rural hospital from the date of designation through June 30, 2021, if the hospital continues to have up to 100 licensed beds and an emergency room.

~~(f) "Rural primary care hospital" means any facility meeting the criteria in paragraph (c) or s. 395.605 which provides:~~

~~1. Twenty-four-hour emergency medical care;~~

~~2. Temporary inpatient care for periods of 72 hours or less to patients requiring stabilization before discharge or transfer to another hospital. The 72-hour limitation does not apply to respite, skilled nursing, hospice, or other nonacute care patients; and~~

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~~3. Has no more than six licensed acute care inpatient beds.~~

(c)~~(g)~~ "Swing-bed" means a bed which can be used interchangeably as either a hospital, skilled nursing facility (SNF), or intermediate care facility (ICF) bed pursuant to 42 C.F.R. parts 405, 435, 440, 442, and 447.

Section 38. Section 395.603, Florida Statutes, is amended to read:

395.603 ~~Deactivation of general hospital beds;~~ Rural hospital impact statement.—

~~(1) The agency shall establish, by rule, a process by which a rural hospital, as defined in s. 395.602, that seeks licensure as a rural primary care hospital or as an emergency care hospital, or becomes a certified rural health clinic as defined in Pub. L. No. 95-210, or becomes a primary care program such as a county health department, community health center, or other similar outpatient program that provides preventive and curative services, may deactivate general hospital beds. Rural primary care hospitals and emergency care hospitals shall maintain the number of actively licensed general hospital beds necessary for the facility to be certified for Medicare reimbursement. Hospitals that discontinue inpatient care to become rural health care clinics or primary care programs shall deactivate all licensed general hospital beds. All hospitals, clinics, and programs with inactive beds shall provide 24-hour emergency medical care by staffing an emergency room. Providers with inactive beds shall be subject to the criteria in s. 395.1041. The agency shall specify in rule requirements for making 24-hour emergency care available. Inactive general hospital beds shall be included in the acute care bed inventory, maintained by the~~

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~~agency for certificate-of-need purposes, for 10 years from the date of deactivation of the beds. After 10 years have elapsed, inactive beds shall be excluded from the inventory. The agency shall, at the request of the licensee, reactivate the inactive general beds upon a showing by the licensee that licensure requirements for the inactive general beds are met.~~

~~(2)~~ In formulating and implementing policies and rules that may have significant impact on the ability of rural hospitals to continue to provide health care services in rural communities, the agency, the department, or the respective regulatory board adopting policies or rules regarding the licensure or certification of health care professionals shall provide a rural hospital impact statement. The rural hospital impact statement shall assess the proposed action in light of the following questions:

(1) ~~(a)~~ Do the health personnel affected by the proposed action currently practice in rural hospitals or are they likely to in the near future?

(2) ~~(b)~~ What are the current numbers of the affected health personnel in this state, their geographic distribution, and the number practicing in rural hospitals?

(3) ~~(c)~~ What are the functions presently performed by the affected health personnel, and are such functions presently performed in rural hospitals?

(4) ~~(d)~~ What impact will the proposed action have on the ability of rural hospitals to recruit the affected personnel to practice in their facilities?

(5) ~~(e)~~ What impact will the proposed action have on the limited financial resources of rural hospitals through increased

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salaries and benefits necessary to recruit or retain such health personnel?

(6) ~~(f)~~ Is there a less stringent requirement which could apply to practice in rural hospitals?

(7) ~~(g)~~ Will this action create staffing shortages, which could result in a loss to the public of health care services in rural hospitals or result in closure of any rural hospitals?

Section 39. Section 395.604, Florida Statutes, is repealed.

Section 40. Section 395.605, Florida Statutes, is repealed.

Section 41. Paragraph (c) of subsection (1) of section 395.701, Florida Statutes, is amended to read:

395.701 Annual assessments on net operating revenues for inpatient and outpatient services to fund public medical assistance; administrative fines for failure to pay assessments when due; exemption.—

(1) For the purposes of this section, the term:

(c) "Hospital" means a health care institution as defined in s. 395.002(12), but does not include any hospital operated by a state ~~the~~ agency ~~or the Department of Corrections~~.

Section 42. Paragraph (b) of subsection (2) of section 395.7015, Florida Statutes, is amended to read:

395.7015 Annual assessment on health care entities.—

(2) There is imposed an annual assessment against certain health care entities as described in this section:

(b) For the purpose of this section, "health care entities" include the following:

1. Ambulatory surgical centers ~~and mobile surgical facilities licensed under s. 395.003. This subsection shall only apply to mobile surgical facilities operating under contracts~~

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~~entered into on or after July 1, 1998~~.

~~2. Clinical laboratories licensed under s. 483.091, excluding any hospital laboratory defined under s. 483.041(6), any clinical laboratory operated by the state or a political subdivision of the state, any clinical laboratory which qualifies as an exempt organization under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which receives 70 percent or more of its gross revenues from services to charity patients or Medicaid patients, and any blood, plasma, or tissue bank procuring, storing, or distributing blood, plasma, or tissue either for future manufacture or research or distributed on a nonprofit basis, and further excluding any clinical laboratory which is wholly owned and operated by 6 or fewer physicians who are licensed pursuant to chapter 458 or chapter 459 and who practice in the same group practice, and at which no clinical laboratory work is performed for patients referred by any health care provider who is not a member of the same group.~~

2.~~3.~~ Diagnostic-imaging centers that are freestanding outpatient facilities that provide specialized services for the identification or determination of a disease through examination and also provide sophisticated radiological services, and in which services are rendered by a physician licensed by the Board of Medicine under s. 458.311, s. 458.313, or s. 458.317, or by an osteopathic physician licensed by the Board of Osteopathic Medicine under s. 459.0055 or s. 459.0075. For purposes of this paragraph, "sophisticated radiological services" means the following: magnetic resonance imaging; nuclear medicine; angiography; arteriography; computed tomography; positron emission tomography; digital vascular imaging; bronchography;

lymphangiography; splenography; ultrasound, excluding ultrasound providers that are part of a private physician's office practice or when ultrasound is provided by two or more physicians licensed under chapter 458 or chapter 459 who are members of the same professional association and who practice in the same medical specialties; and such other sophisticated radiological services, excluding mammography, as adopted in rule by the board.

Section 43. Subsection (1) of section 400.0625, Florida Statutes, is amended to read:

400.0625 Minimum standards for clinical laboratory test results and diagnostic X-ray results.—

(1) Each nursing home, as a requirement for issuance or renewal of its license, shall require that all clinical laboratory tests performed for the nursing home be performed by a ~~clinical~~ laboratory appropriately certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder ~~licensed under the provisions of chapter 483~~, except for such self-testing procedures as are approved by the agency by rule. ~~Results of clinical laboratory tests performed prior to admission which meet the minimum standards provided in s. 483.181(3) shall be accepted in lieu of routine examinations required upon admission and clinical laboratory tests which may be ordered by a physician for residents of the nursing home.~~

Section 44. Paragraph (a) of subsection (2) of section 400.191, Florida Statutes, is amended to read:

400.191 Availability, distribution, and posting of reports and records.—

(2) The agency shall publish the Nursing Home Guide quarterly in electronic form to assist consumers and their families in comparing and evaluating nursing home facilities.

(a) The agency shall provide an Internet site which shall include at least the following information either directly or indirectly through a link to another established site or sites of the agency's choosing:

1. A section entitled "Have you considered programs that provide alternatives to nursing home care?" which shall be the first section of the Nursing Home Guide and which shall prominently display information about available alternatives to nursing homes and how to obtain additional information regarding these alternatives. The Nursing Home Guide shall explain that this state offers alternative programs that permit qualified elderly persons to stay in their homes instead of being placed in nursing homes and shall encourage interested persons to call the Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program to inquire if they qualify. The Nursing Home Guide shall list available home and community-based programs which shall clearly state the services that are provided and indicate whether nursing home services are included if needed.

2. A list by name and address of all nursing home facilities in this state, including any prior name by which a facility was known during the previous 24-month period.

3. Whether such nursing home facilities are proprietary or nonproprietary.

4. The current owner of the facility's license and the year that that entity became the owner of the license.

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5. The name of the owner or owners of each facility and whether the facility is affiliated with a company or other organization owning or managing more than one nursing facility in this state.

6. The total number of beds in each facility and the most recently available occupancy levels.

7. The number of private and semiprivate rooms in each facility.

8. The religious affiliation, if any, of each facility.

9. The languages spoken by the administrator and staff of each facility.

10. Whether or not each facility accepts Medicare or Medicaid recipients or insurance, health maintenance organization, Veterans Administration, CHAMPUS program, or workers' compensation coverage.

11. Recreational and other programs available at each facility.

12. Special care units or programs offered at each facility.

13. Whether the facility is a part of a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429.

14. Survey and deficiency information, including all federal and state recertification, licensure, revisit, and complaint survey information, for each facility ~~for the past 30 months~~. For noncertified nursing homes, state survey and deficiency information, including licensure, revisit, and complaint survey information ~~for the past 30 months~~ shall be provided.

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Section 45. Subsection (1) and paragraphs (b), (e), and (f) of subsection (4) of section 400.464, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

400.464 Home health agencies to be licensed; expiration of license; exemptions; unlawful acts; penalties.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and entities licensed or registered by or applying for such licensure or registration from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate a home health agency in this state. A license issued on or after July 1, 2018, must specify the home health services the organization is authorized to perform and indicate whether such specified services are considered skilled care. The provision or advertising of services that require licensure pursuant to this part without such services being specified on the face of the license issued on or after July 1, 2018, constitutes unlicensed activity as prohibited under s. 408.812.

(4)

(b) The operation or maintenance of an unlicensed home health agency or the performance of any home health services in violation of this part is declared a nuisance, inimical to the public health, welfare, and safety. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the home health agency or the provision of home health services in violation of this part or part II of chapter 408, until

compliance with this part or the rules adopted under this part has been demonstrated to the satisfaction of the agency.

(e) Any person who owns, operates, or maintains an unlicensed home health agency and who, ~~within 10 working days~~ after receiving notification from the agency, fails to cease operation and apply for a license under this part commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continued operation is a separate offense.

(f) Any home health agency that fails to cease operation after agency notification may be fined in accordance with s. 408.812 ~~$500 for each day of noncompliance~~.

(6) Any person, entity, or organization providing home health services which is exempt from licensure under subsection (5) may voluntarily apply for a certificate of exemption from licensure under its exempt status with the agency on a form that specifies its name or names and addresses, a statement of the reasons why it is exempt from licensure as a home health agency, and other information deemed necessary by the agency. A certificate of exemption is valid for a period of not more than 2 years and is not transferable. The agency may charge an applicant $100 for a certificate of exemption or charge the actual cost of processing the certificate.

Section 46. Subsections (6) through (9) of section 400.471, Florida Statutes, are redesignated as subsections (5) through (8), respectively, and present subsections (2),(6), and (9) of that section are amended, to read:

400.471 Application for license; fee.—

(2) In addition to the requirements of part II of chapter

408, the initial applicant, the applicant for a change of ownership, and the applicant for the addition of skilled care services must file with the application satisfactory proof that the home health agency is in compliance with this part and applicable rules, including:

(a) A listing of services to be provided, either directly by the applicant or through contractual arrangements with existing providers.

(b) The number and discipline of professional staff to be employed.

~~(c) Completion of questions concerning volume data on the renewal application as determined by rule.~~

(c) ~~(d)~~ A business plan, signed by the applicant, which details the home health agency's methods to obtain patients and its plan to recruit and maintain staff.

(d) ~~(e)~~ Evidence of contingency funding as required under s. 408.8065 ~~equal to 1 month's average operating expenses during the first year of operation~~.

(e) ~~(f)~~ A balance sheet, income and expense statement, and statement of cash flows for the first 2 years of operation which provide evidence of having sufficient assets, credit, and projected revenues to cover liabilities and expenses. The applicant has demonstrated financial ability to operate if the applicant's assets, credit, and projected revenues meet or exceed projected liabilities and expenses. An applicant may not project an operating margin of 15 percent or greater for any month in the first year of operation. All documents required under this paragraph must be prepared in accordance with generally accepted accounting principles and compiled and signed

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by a certified public accountant.

(f) ~~(g)~~ All other ownership interests in health care entities for each controlling interest, as defined in part II of chapter 408.

(g) ~~(h)~~ In the case of an application for initial licensure, an application for a change of ownership, or an application for the addition of skilled care services, documentation of accreditation, or an application for accreditation, from an accrediting organization that is recognized by the agency as having standards comparable to those required by this part and part II of chapter 408. A home health agency that ~~is not Medicare or Medicaid certified and~~ does not provide skilled care is exempt from this paragraph. Notwithstanding s. 408.806, an initial applicant ~~that has applied for accreditation~~ must provide proof of accreditation that is not conditional or provisional and a survey demonstrating compliance with the requirements of this part, part II of chapter 408, and applicable rules from an accrediting organization that is recognized by the agency as having standards comparable to those required by this part and part II of chapter 408 within 120 days after the date of the agency's receipt of the application for licensure ~~or the application shall be withdrawn from further consideration~~. Such accreditation must be continuously maintained by the home health agency to maintain licensure. The agency shall accept, in lieu of its own periodic licensure survey, the submission of the survey of an accrediting organization that is recognized by the agency if the accreditation of the licensed home health agency is not provisional and if the licensed home health agency authorizes

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releases of, and the agency receives the report of, the accrediting organization.

~~(6) The agency may not issue a license designated as certified to a home health agency that fails to satisfy the requirements of a Medicare certification survey from the agency.~~

(8)~~(9)~~ The agency may not issue a renewal license for a home health agency in any county having at least one licensed home health agency and that has more than one home health agency per 5,000 persons, as indicated by the most recent population estimates published by the Legislature's Office of Economic and Demographic Research, if the applicant or any controlling interest has been administratively sanctioned by the agency during the 2 years prior to the submission of the licensure renewal application for one or more of the following acts:

(a) An intentional or negligent act that materially affects the health or safety of a client of the provider;

(b) Knowingly providing home health services in an unlicensed assisted living facility or unlicensed adult family-care home, unless the home health agency or employee reports the unlicensed facility or home to the agency within 72 hours after providing the services;

(c) Preparing or maintaining fraudulent patient records, such as, but not limited to, charting ahead, recording vital signs or symptoms which were not personally obtained or observed by the home health agency's staff at the time indicated, borrowing patients or patient records from other home health agencies to pass a survey or inspection, or falsifying signatures;

(d) Failing to provide at least one service directly to a

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patient for a period of 60 days;

(e) Demonstrating a pattern of falsifying documents relating to the training of home health aides or certified nursing assistants or demonstrating a pattern of falsifying health statements for staff who provide direct care to patients. A pattern may be demonstrated by a showing of at least three fraudulent entries or documents;

(f) Demonstrating a pattern of billing any payor for services not provided. A pattern may be demonstrated by a showing of at least three billings for services not provided within a 12-month period;

(g) Demonstrating a pattern of failing to provide a service specified in the home health agency's written agreement with a patient or the patient's legal representative, or the plan of care for that patient, except ~~unless a reduction in service is mandated by Medicare, Medicaid, or a state program or~~ as provided in s. 400.492(3). A pattern may be demonstrated by a showing of at least three incidents, regardless of the patient or service, in which the home health agency did not provide a service specified in a written agreement or plan of care during a 3-month period;

(h) Giving remuneration to a case manager, discharge planner, facility-based staff member, or third-party vendor who is involved in the discharge planning process of a facility licensed under chapter 395, chapter 429, or this chapter from whom the home health agency receives referrals or gives remuneration as prohibited in s. 400.474(6)(a);

(i) Giving cash, or its equivalent, to a Medicare or Medicaid beneficiary;

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(j) Demonstrating a pattern of billing the Medicaid program for services to Medicaid recipients which are medically unnecessary as determined by a final order. A pattern may be demonstrated by a showing of at least two such medically unnecessary services within one Medicaid program integrity audit period;

(k) Providing services to residents in an assisted living facility for which the home health agency does not receive fair market value remuneration; or

(l) Providing staffing to an assisted living facility for which the home health agency does not receive fair market value remuneration.

Section 47. Subsection (5) of section 400.474, Florida Statutes, is amended to read:

400.474 Administrative penalties.—

(5) The agency shall impose a fine of $5,000 against a home health agency that demonstrates a pattern of failing to provide a service specified in the home health agency's written agreement with a patient or the patient's legal representative, or the plan of care for that patient, except ~~unless a reduction in service is mandated by Medicare, Medicaid, or a state program or~~ as provided in s. 400.492(3). A pattern may be demonstrated by a showing of at least three incidences, regardless of the patient or service, where the home health agency did not provide a service specified in a written agreement or plan of care during a 3-month period. The agency shall impose the fine for each occurrence. The agency may also impose additional administrative fines under s. 400.484 for the direct or indirect harm to a patient, or deny, revoke, or suspend the license of

the home health agency for a pattern of failing to provide a service specified in the home health agency's written agreement with a patient or the plan of care for that patient.

Section 48. Paragraph (c) of subsection (2) of section 400.476, Florida Statutes, is amended to read:

400.476 Staffing requirements; notifications; limitations on staffing services.—

(2) DIRECTOR OF NURSING.—

(c) A home health agency that provides skilled nursing care must ~~is not Medicare or Medicaid certified and does not provide skilled care or provides only physical, occupational, or speech therapy is not required to~~ have a director of nursing ~~and is exempt from paragraph (b)~~.

Section 49. Section 400.484, Florida Statutes, is amended to read:

400.484 Right of inspection; violations ~~deficiencies~~; fines.—

(1) In addition to the requirements of s. 408.811, the agency may make such inspections and investigations as are necessary in order to determine the state of compliance with this part, part II of chapter 408, and applicable rules.

(2) The agency shall impose fines for various classes of violations ~~deficiencies~~ in accordance with the following schedule:

(a) Class I violations are as provided in s. 408.813 ~~A class I deficiency is any act, omission, or practice that results in a patient's death, disablement, or permanent injury, or places a patient at imminent risk of death, disablement, or permanent injury~~. Upon finding a class I violation ~~deficiency~~,

the agency shall impose an administrative fine in the amount of $15,000 for each occurrence and each day that the violation ~~deficiency~~ exists.

(b) Class II violations are as provided in s. 408.813 ~~A class II deficiency is any act, omission, or practice that has a direct adverse effect on the health, safety, or security of a patient~~. Upon finding a class II violation ~~deficiency~~, the agency shall impose an administrative fine in the amount of $5,000 for each occurrence and each day that the violation ~~deficiency~~ exists.

(c) Class III violations are as provided in s. 408.813 ~~A class III deficiency is any act, omission, or practice that has an indirect, adverse effect on the health, safety, or security of a patient~~. Upon finding an uncorrected or repeated class III violation ~~deficiency~~, the agency shall impose an administrative fine not to exceed $1,000 for each occurrence and each day that the uncorrected or repeated violation ~~deficiency~~ exists.

(d) Class IV violations are as provided in s. 408.813 ~~A class IV deficiency is any act, omission, or practice related to required reports, forms, or documents which does not have the potential of negatively affecting patients~~. These violations are of a type that the agency determines do not threaten the health, safety, or security of patients. Upon finding an uncorrected or repeated class IV violation ~~deficiency~~, the agency shall impose an administrative fine not to exceed $500 for each occurrence and each day that the uncorrected or repeated violation ~~deficiency~~ exists.

(3) In addition to any other penalties imposed pursuant to this section or part, the agency may assess costs related to an

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investigation that results in a successful prosecution, excluding costs associated with an attorney's time.

Section 50. Subsection (4) of section 400.497, Florida Statutes, is amended to read:

400.497 Rules establishing minimum standards.—The agency shall adopt, publish, and enforce rules to implement part II of chapter 408 and this part, including, as applicable, ss. 400.506 and 400.509, which must provide reasonable and fair minimum standards relating to:

(4) Licensure application and renewal and certificates of exemption.

Section 51. Subsection (5), paragraphs (d) and (e) of subsection (6), paragraph (a) of subsection (15), and subsection (19) of section 400.506, Florida Statutes, are amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(5)(a) In addition to the requirements of s. 408.812, any person who owns, operates, or maintains an unlicensed nurse registry and who, ~~within 10 working days~~ after receiving notification from the agency, fails to cease operation and apply for a license under this part commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continued operation is a separate offense.

(b) If a nurse registry fails to cease operation after agency notification, the agency may impose a fine pursuant to s. 408.812 ~~of $500 for each day of noncompliance~~.

(6)

(d) A registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide

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referred for contract under this chapter by a nurse registry is deemed an independent contractor and not an employee of the nurse registry under any chapter regardless of the obligations imposed on a nurse registry under this chapter or chapter 408.

(e) Upon referral of a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide for contract in a private residence or facility, the nurse registry shall advise the patient, the patient's family, or any other person acting on behalf of the patient, at the time of the contract for services, that the caregiver referred by the nurse registry is an independent contractor and that the ~~it is not the obligation of a~~ nurse registry may not ~~to~~ monitor, supervise, manage, or train a caregiver referred for contract under this chapter.

(15)(a) The agency may deny, suspend, or revoke the license of a nurse registry and shall impose a fine of $5,000 against a nurse registry that:

1. Provides services to residents in an assisted living facility for which the nurse registry does not receive fair market value remuneration.

2. Provides staffing to an assisted living facility for which the nurse registry does not receive fair market value remuneration.

3. Fails to provide the agency, upon request, with copies of all contracts with assisted living facilities which were executed within the last 5 years.

~~4. Gives remuneration to a case manager, discharge planner, facility-based staff member, or third-party vendor who is involved in the discharge planning process of a facility~~

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~~licensed under chapter 395 or this chapter and from whom the nurse registry receives referrals. A nurse registry is exempt from this subparagraph if it does not bill the Florida Medicaid program or the Medicare program or share a controlling interest with any entity licensed, registered, or certified under part II of chapter 408 that bills the Florida Medicaid program or the Medicare program.~~

~~5. Gives remuneration to a physician, a member of the physician's office staff, or an immediate family member of the physician, and the nurse registry received a patient referral in the last 12 months from that physician or the physician's office staff. A nurse registry is exempt from this subparagraph if it does not bill the Florida Medicaid program or the Medicare program or share a controlling interest with any entity licensed, registered, or certified under part II of chapter 408 that bills the Florida Medicaid program or the Medicare program.~~

(19) ~~It is not the obligation of~~ A nurse registry may not ~~to~~ monitor, supervise, manage, or train a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract under this chapter. In the event of a violation of this chapter or a violation of any other law of this state by a referred registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide, or a deficiency in credentials which comes to the attention of the nurse registry, the nurse registry shall advise the patient to terminate the referred person's contract, providing the reason for the suggested termination; cease referring the person to other patients or facilities; and, if practice violations are

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involved, notify the licensing board. This section does not affect or negate any other obligations imposed on a nurse registry under chapter 408.

Section 52. Subsection (1) of section 400.606, Florida Statutes, is amended to read:

400.606 License; application; renewal; conditional license or permit; certificate of need.—

(1) In addition to the requirements of part II of chapter 408, the initial application and change of ownership application must be accompanied by a plan for the delivery of home, residential, and homelike inpatient hospice services to terminally ill persons and their families. Such plan must contain, but need not be limited to:

(a) The estimated average number of terminally ill persons to be served monthly.

(b) The geographic area in which hospice services will be available.

(c) A listing of services which are or will be provided, either directly by the applicant or through contractual arrangements with existing providers.

(d) Provisions for the implementation of hospice home care within 3 months after licensure.

(e) Provisions for the implementation of hospice homelike inpatient care within 12 months after licensure.

(f) The number and disciplines of professional staff to be employed.

(g) The name and qualifications of any existing or potential contractee.

(h) A plan for attracting and training volunteers.

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~~If the applicant is an existing licensed health care provider, the application must be accompanied by a copy of the most recent profit-loss statement and, if applicable, the most recent licensure inspection report.~~

Section 53. Subsection (6) of section 400.925, Florida Statutes, is amended to read:

400.925 Definitions.—As used in this part, the term:

(6) "Home medical equipment" includes any product as defined by the Food and Drug Administration's Federal Food, Drug, and Cosmetic Act, any products reimbursed under the Medicare Part B Durable Medical Equipment benefits, or any products reimbursed under the Florida Medicaid durable medical equipment program. Home medical equipment includes:

(a) Oxygen and related respiratory equipment; ~~manual, motorized, or customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner;~~

(b) Motorized scooters;

(c) Personal transfer systems; ~~and~~

(d) Specialty beds, for use by a person with a medical need; and

(e) Manual, motorized, or customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner.

Section 54. Subsection (4) of section 400.931, Florida Statutes, is amended to read:

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400.931 Application for license; fee.—

(4) When a change of the general manager of a home medical equipment provider occurs, the licensee must notify the agency of the change within the timeframes established in part II of chapter 408 and applicable rules ~~45 days~~.

Section 55. Subsection (2) of section 400.933, Florida Statutes, is amended to read:

400.933 Licensure inspections and investigations.—

(2) The agency shall accept, in lieu of its own periodic inspections for licensure, submission of the following:

(a) The survey or inspection of an accrediting organization, provided the accreditation of the licensed home medical equipment provider is not provisional and provided the licensed home medical equipment provider authorizes release of, and the agency receives the report of, the accrediting organization; or

(b) A copy of a valid medical oxygen retail establishment permit issued by the Department of Business and Professional Regulation ~~Health~~, pursuant to chapter 499.

Section 56. Subsection (2) of section 400.980, Florida Statutes, is amended to read:

400.980 Health care services pools.—

(2) The requirements of part II of chapter 408 apply to the provision of services that require licensure or registration pursuant to this part and part II of chapter 408 and to entities registered by or applying for such registration from the agency pursuant to this part. Registration or a license issued by the agency is required for the operation of a health care services pool in this state. In accordance with s. 408.805, an applicant

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or licensee shall pay a fee for each license application submitted using this part, part II of chapter 408, and applicable rules. The agency shall adopt rules and provide forms required for such registration and shall impose a registration fee in an amount sufficient to cover the cost of administering this part and part II of chapter 408. In addition to the requirements in part II of chapter 408, the registrant must provide the agency with any change of information contained on the original registration application within the timeframes established in this part, part II of chapter 408, and applicable rules ~~14 days prior to the change~~.

Section 57. Paragraphs (a) through (d) of subsection (4) of section 400.9905, Florida Statutes, are amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.332 ~~383.30-383.335~~, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, ~~part I of chapter 483,~~ chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers

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certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services or other health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332 ~~383.30-383.335~~, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, ~~part I of chapter 483,~~ chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(c) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332 ~~383.30-383.335~~, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, ~~part I of chapter 483,~~ chapter 484, or

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chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital under chapter 395.

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332 ~~383.30-383.335~~, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, ~~part I of chapter 483,~~ chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).

Section 58. Subsection (6) of section 400.9935, Florida Statutes, is amended to read:

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400.9935 Clinic responsibilities.—

(6) Any person or entity providing health care services which is not a clinic, as defined under s. 400.9905, may voluntarily apply for a certificate of exemption from licensure under its exempt status with the agency on a form that sets forth its name or names and addresses, a statement of the reasons why it cannot be defined as a clinic, and other information deemed necessary by the agency. An exemption may be valid for up to 2 years and is not transferable. The agency may charge an applicant for a certificate of exemption in an amount equal to $100 or the actual cost of processing the certificate, whichever is less. An entity seeking a certificate of exemption must publish and maintain a schedule of charges for the medical services offered to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the entity and must include, but is not limited to, the 50 services most frequently provided by the entity. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. As a condition precedent to receiving a certificate of exemption, an applicant must provide to the agency documentation of compliance with these requirements.

Section 59. Paragraph (a) of subsection (2) of section 408.033, Florida Statutes, is amended to read:

408.033 Local and state health planning.—

(2) FUNDING.—

(a) The Legislature intends that the cost of local health

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councils be borne by assessments on selected health care facilities subject to facility licensure by the Agency for Health Care Administration, including abortion clinics, assisted living facilities, ambulatory surgical centers, birth ~~birthing~~ centers, ~~clinical laboratories except community nonprofit blood banks and clinical laboratories operated by practitioners for exclusive use regulated under s. 483.035,~~ home health agencies, hospices, hospitals, intermediate care facilities for the developmentally disabled, nursing homes, health care clinics, and multiphasic testing centers and by assessments on organizations subject to certification by the agency pursuant to chapter 641, part III, including health maintenance organizations and prepaid health clinics. Fees assessed may be collected prospectively at the time of licensure renewal and prorated for the licensure period.

Section 60. Present paragraphs (f) through (l) of subsection (3) of section 408.036, Florida Statutes, are redesignated as paragraphs (e) through (k), respectively, present paragraphs (o) through (t) of that subsection are redesignated as paragraphs (l) through (q), respectively, and present paragraphs (e), (m), (n), and (p) of that subsection are amended, to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

~~(e) For mobile surgical facilities and related health care services provided under contract with the Department of Corrections or a private correctional facility operating pursuant to chapter 957.~~

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~~(m)1. For the provision of adult open-heart services in a hospital located within the boundaries of a health service planning district, as defined in s. 408.032(5), which has experienced an annual net out-migration of at least 600 open-heart surgery cases for 3 consecutive years according to the most recent data reported to the agency, and the district's population per licensed and operational open-heart programs exceeds the state average of population per licensed and operational open-heart programs by at least 25 percent. All hospitals within a health service planning district which meet the criteria reference in sub-subparagraphs 2.a.-h. shall be eligible for this exemption on July 1, 2004, and shall receive the exemption upon filing for it and subject to the following:~~

~~a. A hospital that has received a notice of intent to grant a certificate of need or a final order of the agency granting a certificate of need for the establishment of an open-heart-surgery program is entitled to receive a letter of exemption for the establishment of an adult open-heart-surgery program upon filing a request for exemption and complying with the criteria enumerated in sub-subparagraphs 2.a.-h., and is entitled to immediately commence operation of the program.~~

~~b. An otherwise eligible hospital that has not received a notice of intent to grant a certificate of need or a final order of the agency granting a certificate of need for the establishment of an open-heart-surgery program is entitled to immediately receive a letter of exemption for the establishment of an adult open heart surgery program upon filing a request for exemption and complying with the criteria enumerated in sub-subparagraphs 2.a.-h., but is not entitled to commence operation~~

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~~of its program until December 31, 2006.~~

~~2. A hospital shall be exempt from the certificate-of-need review for the establishment of an open-heart-surgery program when the application for exemption submitted under this paragraph complies with the following criteria:~~

~~a. The applicant must certify that it will meet and continuously maintain the minimum licensure requirements adopted by the agency governing adult open-heart programs, including the most current guidelines of the American College of Cardiology and American Heart Association Guidelines for Adult Open Heart Programs.~~

~~b. The applicant must certify that it will maintain sufficient appropriate equipment and health personnel to ensure quality and safety.~~

~~c. The applicant must certify that it will maintain appropriate times of operation and protocols to ensure availability and appropriate referrals in the event of emergencies.~~

~~d. The applicant can demonstrate that it has discharged at least 300 inpatients with a principal diagnosis of ischemic heart disease for the most recent 12-month period as reported to the agency.~~

~~e. The applicant is a general acute care hospital that is in operation for 3 years or more.~~

~~f. The applicant is performing more than 300 diagnostic cardiac catheterization procedures per year, combined inpatient and outpatient.~~

~~g. The applicant's payor mix at a minimum reflects the community average for Medicaid, charity care, and self-pay~~

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~~patients or the applicant must certify that it will provide a minimum of 5 percent of Medicaid, charity care, and self-pay to open-heart-surgery patients.~~

~~h. If the applicant fails to meet the established criteria for open-heart programs or fails to reach 300 surgeries per year by the end of its third year of operation, it must show cause why its exemption should not be revoked.~~

~~3. By December 31, 2004, and annually thereafter, the agency shall submit a report to the Legislature providing information concerning the number of requests for exemption it has received under this paragraph during the calendar year and the number of exemptions it has granted or denied during the calendar year.~~

~~(n) For the provision of percutaneous coronary intervention for patients presenting with emergency myocardial infarctions in a hospital without an approved adult open-heart-surgery program. In addition to any other documentation required by the agency, a request for an exemption submitted under this paragraph must comply with the following:~~

~~1. The applicant must certify that it will meet and continuously maintain the requirements adopted by the agency for the provision of these services. These licensure requirements shall be adopted by rule and must be consistent with the guidelines published by the American College of Cardiology and the American Heart Association for the provision of percutaneous coronary interventions in hospitals without adult open-heart services. At a minimum, the rules must require the following:~~

~~a. Cardiologists must be experienced interventionalists who have performed a minimum of 75 interventions within the previous 12 months.~~

~~b. The hospital must provide a minimum of 36 emergency interventions annually in order to continue to provide the service.~~

~~c. The hospital must offer sufficient physician, nursing, and laboratory staff to provide the services 24 hours a day, 7 days a week.~~

~~d. Nursing and technical staff must have demonstrated experience in handling acutely ill patients requiring intervention based on previous experience in dedicated interventional laboratories or surgical centers.~~

~~e. Cardiac care nursing staff must be adept in hemodynamic monitoring and Intra-aortic Balloon Pump (IABP) management.~~

~~f. Formalized written transfer agreements must be developed with a hospital with an adult open-heart-surgery program, and written transport protocols must be in place to ensure safe and efficient transfer of a patient within 60 minutes. Transfer and transport agreements must be reviewed and tested, with appropriate documentation maintained at least every 3 months. However, a hospital located more than 100 road miles from the closest Level II adult cardiovascular services program does not need to meet the 60-minute transfer time protocol if the hospital demonstrates that it has a formalized, written transfer agreement with a hospital that has a Level II program. The agreement must include written transport protocols that ensure the safe and efficient transfer of a patient, taking into consideration the patient's clinical and physical characteristics, road and weather conditions, and viability of ground and air ambulance service to transfer the patient.~~

~~g. Hospitals implementing the service must first undertake a training program of 3 to 6 months' duration, which includes establishing standards and testing logistics, creating quality assessment and error management practices, and formalizing patient selection criteria.~~

~~2. The applicant must certify that it will use at all times the patient-selection criteria for the performance of primary angioplasty at hospitals without adult open-heart-surgery programs issued by the American College of Cardiology and the American Heart Association. At a minimum, these criteria would provide for the following:~~

~~a. Avoidance of interventions in hemodynamically stable patients who have identified symptoms or medical histories.~~

~~b. Transfer of patients who have a history of coronary disease and clinical presentation of hemodynamic instability.~~

~~3. The applicant must agree to submit a quarterly report to the agency detailing patient characteristics, treatment, and outcomes for all patients receiving emergency percutaneous coronary interventions pursuant to this paragraph. This report must be submitted within 15 days after the close of each calendar quarter.~~

~~4. The exemption provided by this paragraph does not apply unless the agency determines that the hospital has taken all necessary steps to be in compliance with all requirements of this paragraph, including the training program required under sub-subparagraph 1.g.~~

~~5. Failure of the hospital to continuously comply with the requirements of sub-subparagraphs 1.c. f. and subparagraphs 2. and 3. will result in the immediate expiration of this exemption.~~

~~6. Failure of the hospital to meet the volume requirements of sub-subparagraphs 1.a. and b. within 18 months after the program begins offering the service will result in the immediate expiration of the exemption.~~

~~If the exemption for this service expires under subparagraph 5. or subparagraph 6., the agency may not grant another exemption for this service to the same hospital for 2 years and then only upon a showing that the hospital will remain in compliance with the requirements of this paragraph through a demonstration of corrections to the deficiencies that caused expiration of the exemption. Compliance with the requirements of this paragraph includes compliance with the rules adopted pursuant to this paragraph.~~

(m) ~~(p)~~ For replacement of a licensed nursing home on the same site, or within 5 miles of the same site if within the same subdistrict, if the number of licensed beds does not increase except as permitted under paragraph (e) ~~(f)~~.

Section 61. Paragraph (b) of subsection (3) of section 408.0361, Florida Statutes, is amended to read:

408.0361 Cardiovascular services and burn unit licensure.—

(3) In establishing rules for adult cardiovascular services, the agency shall include provisions that allow for:

(b) 1. For a hospital seeking a Level I program, demonstration that, for the most recent 12-month period as reported to the agency, it has provided a minimum of 300 adult inpatient and outpatient diagnostic cardiac catheterizations or, for the most recent 12-month period, has discharged or

transferred at least 300 patients ~~inpatients~~ with the principal diagnosis of ischemic heart disease and that it has a formalized, written transfer agreement with a hospital that has a Level II program, including written transport protocols to ensure safe and efficient transfer of a patient within 60 minutes.

2.a. A hospital located more than 100 road miles from the closest Level II adult cardiovascular services program does not need to meet the diagnostic cardiac catheterization volume and ischemic heart disease diagnosis volume requirements in subparagraph 1., if the hospital demonstrates that it has, for the most recent 12-month period as reported to the agency, provided a minimum of 100 adult inpatient and outpatient diagnostic cardiac catheterizations or that, for the most recent 12-month period, it has discharged or transferred at least 300 patients with the principal diagnosis of ischemic heart disease.

b. ~~However,~~ A hospital located more than 100 road miles from the closest Level II adult cardiovascular services program does not need to meet the 60-minute transfer time protocol requirement in subparagraph 1., if the hospital demonstrates that it has a formalized, written transfer agreement with a hospital that has a Level II program. The agreement must include written transport protocols to ensure the safe and efficient transfer of a patient, taking into consideration the patient's clinical and physical characteristics, road and weather conditions, and viability of ground and air ambulance service to transfer the patient.

3. At a minimum, the rules for adult cardiovascular services must require nursing and technical staff to have

demonstrated experience in handling acutely ill patients requiring intervention, based on the staff member's previous experience in dedicated cardiac interventional laboratories or surgical centers. If a staff member's previous experience is in a dedicated cardiac interventional laboratory at a hospital that does not have an approved adult open-heart-surgery program, the staff member's previous experience qualifies only if, at the time the staff member acquired his or her experience, the dedicated cardiac interventional laboratory:

a. Had an annual volume of 500 or more percutaneous cardiac intervention procedures;

b. Achieved a demonstrated success rate of 95 percent or greater for percutaneous cardiac intervention procedures;

c. Experienced a complication rate of less than 5 percent for percutaneous cardiac intervention procedures; and

d. Performed diverse cardiac procedures, including, but not limited to, balloon angioplasty and stenting, rotational atherectomy, cutting balloon atheroma remodeling, and procedures relating to left ventricular support capability.

Section 62. Paragraph (k) is added to subsection (3) of section 408.05, Florida Statutes, to read:

408.05 Florida Center for Health Information and Transparency.—

(3) HEALTH INFORMATION TRANSPARENCY.—In order to disseminate and facilitate the availability of comparable and uniform health information, the agency shall perform the following functions:

(k) Contract with the Society of Thoracic Surgeons and the American College of Cardiology to obtain data reported pursuant

to s. 395.1055 for publication on the agency's website in a manner that will allow consumers to be informed of aggregate data and to compare pediatric cardiac programs.

Section 63. Subsection (4) of section 408.061, Florida Statutes, is amended to read:

408.061 Data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; immunity.—

(4) Within 120 days after the end of its fiscal year, each health care facility, excluding continuing care facilities, hospitals operated by state agencies, and nursing homes as those terms are defined in s. 408.07 ~~s. 408.07(14) and (37)~~, shall file with the agency, on forms adopted by the agency and based on the uniform system of financial reporting, its actual financial experience for that fiscal year, including expenditures, revenues, and statistical measures. Such data may be based on internal financial reports which are certified to be complete and accurate by the provider. However, hospitals' actual financial experience shall be their audited actual experience. Every nursing home shall submit to the agency, in a format designated by the agency, a statistical profile of the nursing home residents. The agency, in conjunction with the Department of Elderly Affairs and the Department of Health, shall review these statistical profiles and develop recommendations for the types of residents who might more appropriately be placed in their homes or other noninstitutional settings.

Section 64. Subsection (11) of section 408.07, Florida Statutes, is amended to read:

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408.07 Definitions.—As used in this chapter, with the exception of ss. 408.031-408.045, the term:

~~(11) "Clinical laboratory" means a facility licensed under s. 483.091, excluding: any hospital laboratory defined under s. 483.041(6); any clinical laboratory operated by the state or a political subdivision of the state; any blood or tissue bank where the majority of revenues are received from the sale of blood or tissue and where blood, plasma, or tissue is procured from volunteer donors and donated, processed, stored, or distributed on a nonprofit basis; and any clinical laboratory which is wholly owned and operated by physicians who are licensed pursuant to chapter 458 or chapter 459 and who practice in the same group practice, and at which no clinical laboratory work is performed for patients referred by any health care provider who is not a member of that same group practice.~~

Section 65. Subsection (4) of section 408.20, Florida Statutes, is amended to read:

408.20 Assessments; Health Care Trust Fund.—

(4) Hospitals operated by a state agency ~~the Department of Children and Families, the Department of Health, or the Department of Corrections~~ are exempt from the assessments required under this section.

Section 66. Section 408.7056, Florida Statutes, is repealed.

Section 67. Subsections (10), (11), and (27) of section 408.802, Florida Statutes, are amended to read:

408.802 Applicability.—The provisions of this part apply to the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or

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certified by the agency, as described in chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765:

~~(10) Mobile surgical facilities, as provided under part I of chapter 395.~~

~~(11) Health care risk managers, as provided under part I of chapter 395.~~

~~(27) Clinical laboratories, as provided under part I of chapter 483.~~

Section 68. Subsections (12) and (13) of section 408.803, Florida Statutes, are redesignated as subsections (13) and (14), respectively, and a new subsection (12) is added to that section, to read:

408.803 Definitions.—As used in this part, the term:

(12) "Relative" means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister of a patient or client.

Section 69. Paragraph (c) of subsection (7) of section 408.806, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

408.806 License application process.—

(7)

(c) If an inspection is required by the authorizing statute for a license application other than an initial application, the inspection must be unannounced. This paragraph does not apply to

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inspections required pursuant to ss. 383.324, 395.0161(4) and~~,~~ 429.67(6)~~, and 483.061(2)~~.

(9) A licensee that holds a license for multiple providers licensed by the agency may request that all related license expiration dates be aligned. Upon such request, the agency may issue a license for an abbreviated licensure period with a prorated licensure fee.

Section 70. Paragraphs (d) and (e) of subsection (1) of section 408.809, Florida Statutes, are amended to read:

408.809 Background screening; prohibited offenses.—

(1) Level 2 background screening pursuant to chapter 435 must be conducted through the agency on each of the following persons, who are considered employees for the purposes of conducting screening under chapter 435:

(d) Any person who is a controlling interest ~~if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the agency a description and explanation of the conviction at the time of license application~~.

(e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients, or contracting with a licensee or provider to work 20

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hours a week or more who will have access to client funds, personal property, or living areas. Evidence of contractor screening may be retained by the contractor's employer or the licensee.

Section 71. Subsection (8) of section 408.810, Florida Statutes, is amended, and subsections (11), (12), and (13) are added to that section, to read:

408.810 Minimum licensure requirements.—In addition to the licensure requirements specified in this part, authorizing statutes, and applicable rules, each applicant and licensee must comply with the requirements of this section in order to obtain and maintain a license.

(8) Upon application for initial licensure or change of ownership licensure, the applicant shall furnish satisfactory proof of the applicant's financial ability to operate in accordance with the requirements of this part, authorizing statutes, and applicable rules. The agency shall establish standards for this purpose, including information concerning the applicant's controlling interests. The agency shall also establish documentation requirements, to be completed by each applicant, that show anticipated provider revenues and expenditures, the basis for financing the anticipated cash-flow requirements of the provider, and an applicant's access to contingency financing. A current certificate of authority, pursuant to chapter 651, may be provided as proof of financial ability to operate. The agency may require a licensee to provide proof of financial ability to operate at any time if there is evidence of financial instability, including, but not limited to, unpaid expenses necessary for the basic operations of the

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provider. An applicant applying for change of ownership licensure is exempt from furnishing proof of financial ability to operate if the provider has been licensed for at least 5 years, and:

(a) The ownership change is a result of a corporate reorganization under which the controlling interest is unchanged and the applicant submits organizational charts that represent the current and proposed structure of the reorganized corporation; or

(b) The ownership change is due solely to the death of a person holding a controlling interest, and the surviving controlling interests continue to hold at least 51 percent of ownership after the change of ownership.

(11) The agency may adopt rules that govern the circumstances under which a controlling interest, an administrator, an employee, or a contractor, or a representative thereof, who is not a relative of the client may act as an agent of the client in authorizing consent for medical treatment, assignment of benefits, and release of information. Such rules may include requirements related to disclosure, bonding, restrictions, and client protections.

(12) The licensee shall ensure that no person holds any ownership interest, either directly or indirectly, regardless of ownership structure, who:

(a) Has a disqualifying offense pursuant to s. 408.809; or

(b) Holds or has held any ownership interest, either directly or indirectly, regardless of ownership structure, in a provider that had a license revoked or an application denied pursuant to s. 408.815.

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(13) If the licensee is a publicly traded corporation or is wholly owned, directly or indirectly, by a publicly traded corporation, subsection (12) does not apply to those persons whose sole relationship with the corporation is as a shareholder of publicly traded shares. As used in this subsection, a "publicly traded corporation" is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

Section 72. Section 408.812, Florida Statutes, is amended to read:

408.812 Unlicensed activity.—

(1) A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A licenseholder may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.

(2) The operation or maintenance of an unlicensed provider or the performance of any services that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients, and constitutes abuse and neglect, as defined in s. 415.102. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes,

until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.

(3) It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation ~~and apply for a license under this part and authorizing statutes~~, the person or entity is ~~shall be~~ subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of ~~continued~~ operation is a separate offense.

(4) Any person or entity that fails to cease operation after agency notification may be fined $1,000 for each day of noncompliance.

(5) When a controlling interest or licensee has an interest in more than one provider and fails to license a provider rendering services that require licensure, the agency may revoke all licenses, ~~and~~ impose actions under s. 408.814, and regardless of correction, impose a fine of $1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained or the unlicensed activity ceases ~~for the unlicensed operation~~.

(6) In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part,

authorizing statutes, and agency rules.

(7) Any person aware of the operation of an unlicensed provider must report that provider to the agency.

Section 73. Subsections (10), (11) and (26) of section 408.820, Florida Statutes, are amended, and subsections (12) through (25) and (27) and (28) are redesignated as subsections (10) through (23) and (24) and (25), respectively, to read:

408.820 Exemptions.—Except as prescribed in authorizing statutes, the following exemptions shall apply to specified requirements of this part:

~~(10) Mobile surgical facilities, as provided under part I of chapter 395, are exempt from s. 408.810(7)-(10).~~

~~(11) Health care risk managers, as provided under part I of chapter 395, are exempt from ss. 408.806(7), 408.810(4)-(10), and 408.811.~~

~~(26) Clinical laboratories, as provided under part I of chapter 483, are exempt from s. 408.810(5)-(10).~~

Section 74. Subsection (7) of section 409.905, Florida Statutes, is amended to read:

409.905 Mandatory Medicaid services.—The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency

from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(7) INDEPENDENT LABORATORY SERVICES.—The agency shall pay for medically necessary diagnostic laboratory procedures ordered by a licensed physician or other licensed practitioner of the healing arts which are provided for a recipient in a laboratory that meets the requirements for Medicare participation and is appropriately certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder ~~licensed under chapter 483, if required~~.

Section 75. Subsection (10) of section 409.907, Florida Statutes, is amended to read:

409.907 Medicaid provider agreements.—The agency may make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency, who is performing services or supplying goods in accordance with federal, state, and local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any other reason, be subjected to discrimination under any program or activity for which the provider receives payment from the agency.

(10) The agency may consider whether the provider, or any officer, director, agent, managing employee, or affiliated person, or any partner or shareholder having an ownership

interest equal to 5 percent or greater in the provider if the provider is a corporation, partnership, or other business entity, has:

(a) Made a false representation or omission of any material fact in making the application, including the submission of an application that conceals the controlling or ownership interest of any officer, director, agent, managing employee, affiliated person, or partner or shareholder who may not be eligible to participate;

(b) Been or is currently excluded, suspended, terminated from, or has involuntarily withdrawn from participation in, Florida's Medicaid program or any other state's Medicaid program, or from participation in any other governmental or private health care or health insurance program;

~~(c) Been convicted of a criminal offense relating to the delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program including the performance of management or administrative services relating to the delivery of goods or services under any such program;~~

~~(d) Been convicted under federal or state law of a criminal offense related to the neglect or abuse of a patient in connection with the delivery of any health care goods or services;~~

~~(e) Been convicted under federal or state law of a criminal offense relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;~~

~~(f) Been convicted of any criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility,~~

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~~or other financial misconduct;~~

~~(g) Been convicted under federal or state law of a crime punishable by imprisonment of a year or more which involves moral turpitude;~~

~~(h) Been convicted in connection with the interference or obstruction of any investigation into any criminal offense listed in this subsection;~~

~~(i) Been found to have violated federal or state laws, rules, or regulations governing Florida's Medicaid program or any other state's Medicaid program, the Medicare program, or any other publicly funded federal or state health care or health insurance program, and been sanctioned accordingly;~~

(c) ~~(j)~~ Been previously found by a licensing, certifying, or professional standards board or agency to have violated the standards or conditions relating to licensure or certification or the quality of services provided; or

(d) ~~(k)~~ Failed to pay any fine or overpayment properly assessed under the Medicaid program in which no appeal is pending or after resolution of the proceeding by stipulation or agreement, unless the agency has issued a specific letter of forgiveness or has approved a repayment schedule to which the provider agrees to adhere.

Section 76. Subsection (6) of section 409.9116, Florida Statutes, is amended to read:

409.9116 Disproportionate share/financial assistance program for rural hospitals.—In addition to the payments made under s. 409.911, the Agency for Health Care Administration shall administer a federally matched disproportionate share program and a state-funded financial assistance program for

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statutory rural hospitals. The agency shall make disproportionate share payments to statutory rural hospitals that qualify for such payments and financial assistance payments to statutory rural hospitals that do not qualify for disproportionate share payments. The disproportionate share program payments shall be limited by and conform with federal requirements. Funds shall be distributed quarterly in each fiscal year for which an appropriation is made. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(6) This section applies only to hospitals that were defined as statutory rural hospitals, or their successor-in-interest hospital, prior to January 1, 2001. Any additional hospital that is defined as a statutory rural hospital, or its successor-in-interest hospital, on or after January 1, 2001, is not eligible for programs under this section unless additional funds are appropriated each fiscal year specifically to the rural hospital disproportionate share and financial assistance programs in an amount necessary to prevent any hospital, or its successor-in-interest hospital, eligible for the programs prior to January 1, 2001, from incurring a reduction in payments because of the eligibility of an additional hospital to participate in the programs. A hospital, or its successor-in-interest hospital, which received funds pursuant to this section before January 1, 2001, and which qualifies under s. 395.602(2)(b) ~~s. 395.602(2)(c)~~, shall be included in the programs under this section and is not required to seek

additional appropriations under this subsection.

Section 77. Paragraphs (a) and (b) of subsection (1) of section 409.975, Florida Statutes, are amended to read:

409.975 Managed care plan accountability.—In addition to the requirements of s. 409.967, plans and providers participating in the managed medical assistance program shall comply with the requirements of this section.

(1) PROVIDER NETWORKS.—Managed care plans must develop and maintain provider networks that meet the medical needs of their enrollees in accordance with standards established pursuant to s. 409.967(2)(c). Except as provided in this section, managed care plans may limit the providers in their networks based on credentials, quality indicators, and price.

(a) Plans must include all providers in the region that are classified by the agency as essential Medicaid providers, unless the agency approves, in writing, an alternative arrangement for securing the types of services offered by the essential providers. Providers are essential for serving Medicaid enrollees if they offer services that are not available from any other provider within a reasonable access standard, or if they provided a substantial share of the total units of a particular service used by Medicaid patients within the region during the last 3 years and the combined capacity of other service providers in the region is insufficient to meet the total needs of the Medicaid patients. The agency may not classify physicians and other practitioners as essential providers. The agency, at a minimum, shall determine which providers in the following categories are essential Medicaid providers:

1. Federally qualified health centers.

2. Statutory teaching hospitals as defined in s. 408.07(44) ~~s. 408.07(45)~~.

3. Hospitals that are trauma centers as defined in s. 395.4001(14).

4. Hospitals located at least 25 miles from any other hospital with similar services.

Managed care plans that have not contracted with all essential providers in the region as of the first date of recipient enrollment, or with whom an essential provider has terminated its contract, must negotiate in good faith with such essential providers for 1 year or until an agreement is reached, whichever is first. Payments for services rendered by a nonparticipating essential provider shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. A rate schedule for all essential providers shall be attached to the contract between the agency and the plan. After 1 year, managed care plans that are unable to contract with essential providers shall notify the agency and propose an alternative arrangement for securing the essential services for Medicaid enrollees. The arrangement must rely on contracts with other participating providers, regardless of whether those providers are located within the same region as the nonparticipating essential service provider. If the alternative arrangement is approved by the agency, payments to nonparticipating essential providers after the date of the agency's approval shall equal 90 percent of the applicable Medicaid rate. Except for payment for emergency services, if the alternative arrangement is not approved by the agency, payment

to nonparticipating essential providers shall equal 110 percent of the applicable Medicaid rate.

(b) Certain providers are statewide resources and essential providers for all managed care plans in all regions. All managed care plans must include these essential providers in their networks. Statewide essential providers include:

1. Faculty plans of Florida medical schools.

2. Regional perinatal intensive care centers as defined in s. 383.16(2).

3. Hospitals licensed as specialty children's hospitals as defined in s. 395.002(27) ~~s. 395.002(28)~~.

4. Accredited and integrated systems serving medically complex children which comprise separately licensed, but commonly owned, health care providers delivering at least the following services: medical group home, in-home and outpatient nursing care and therapies, pharmacy services, durable medical equipment, and Prescribed Pediatric Extended Care.

Managed care plans that have not contracted with all statewide essential providers in all regions as of the first date of recipient enrollment must continue to negotiate in good faith. Payments to physicians on the faculty of nonparticipating Florida medical schools shall be made at the applicable Medicaid rate. Payments for services rendered by regional perinatal intensive care centers shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. Except for payments for emergency services, payments to nonparticipating specialty children's hospitals shall equal the highest rate established by contract between that provider

and any other Medicaid managed care plan.

Section 78. Subsections (5) and (17) of section 429.02, Florida Statutes, are amended to read:

429.02 Definitions.—When used in this part, the term:

(5) "Assisted living facility" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, regardless of whether operated for profit ~~or not~~, which ~~undertakes~~ through its ownership or management provides ~~to provide~~ housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

(17) "Personal services" means direct physical assistance with or supervision of the activities of daily living, ~~and~~ the self-administration of medication, or ~~and~~ other similar services which the department may define by rule. The term may ~~"Personal services" shall~~ not be construed to mean the provision of medical, nursing, dental, or mental health services.

Section 79. Paragraphs (b) and (d) of subsection (2) of section 429.04, Florida Statutes, are amended, and subsection (3) is added that section, to read:

429.04 Facilities to be licensed; exemptions.—

(2) The following are exempt from licensure under this part:

(b) Any facility or part of a facility licensed by the Agency for Persons with Disabilities under chapter 393, a mental health facility licensed under ~~or~~ chapter 394, a hospital licensed under chapter 395, a nursing home licensed under part II of chapter 400, an inpatient hospice licensed under part IV

of chapter 400, a home for special services licensed under part V of chapter 400, an intermediate care facility licensed under part VIII of chapter 400, or a transitional living facility licensed under part XI of chapter 400.

(d) Any person who provides housing, meals, and one or more personal services on a 24-hour basis in the person's own home to not more than two adults who do not receive optional state supplementation. The person who provides the housing, meals, and personal services must own or rent the home and must have established the home as his or her permanent residence. For purposes of this paragraph, any person holding a homestead exemption at an address other than that at which the person asserts this exemption is presumed to not have established permanent residence ~~reside therein~~. This exemption does not apply to a person or entity that previously held a license issued by the agency which was revoked or for which renewal was denied by final order of the agency, or when the person or entity voluntarily relinquished the license during agency enforcement proceedings.

(3) Upon agency investigation of unlicensed activity, any person or entity that claims that it is exempt under this section must provide documentation substantiating entitlement to the exemption.

Section 80. Paragraphs (b) and (d) of subsection (1) of section 429.08, Florida Statutes, are amended to read:

429.08 Unlicensed facilities; referral of person for residency to unlicensed facility; penalties.—

(1)

(b) ~~Except as provided under paragraph (d),~~ Any person who

owns, rents, or otherwise maintains a building or property used as ~~operates, or maintains~~ an unlicensed assisted living facility commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(d) In addition to the requirements of s. 408.812, any person who owns, operates, or maintains an unlicensed assisted living facility after receiving notice from the agency ~~due to a change in this part or a modification in rule within 6 months after the effective date of such change and who, within 10 working days after receiving notification from the agency, fails to cease operation or apply for a license under this part~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

Section 81. Section 429.176, Florida Statutes, is amended to read:

429.176 Notice of change of administrator.—If, during the period for which a license is issued, the owner changes administrators, the owner must notify the agency of the change within 10 days and provide documentation within 90 days that the new administrator has completed the applicable core educational requirements under s. 429.52. A facility may not be operated for more than 120 consecutive days without an administrator who has completed the core educational requirements.

Section 82. Subsection(7) of section 429.19, Florida Statutes, is amended to read:

429.19 Violations; imposition of administrative fines; grounds.—

(7) In addition to any administrative fines imposed, the agency may assess a survey fee, equal to the lesser of one half of the facility's biennial license and bed fee or $500, to cover the cost of conducting initial complaint investigations that result in the finding of a violation that was the subject of the complaint or monitoring visits conducted ~~under s. 429.28(3)(c)~~ to verify the correction of the violations.

Section 83. Subsection (2) of section 429.24, Florida Statutes, is amended to read:

429.24 Contracts.—

(2) Each contract must contain express provisions specifically setting forth the services and accommodations to be provided by the facility; the rates or charges; provision for at least 30 days' written notice of a rate increase; the rights, duties, and obligations of the residents, other than those specified in s. 429.28; and other matters that the parties deem appropriate. A new service or accommodation added to, or implemented in, a resident's contract for which the resident was not previously charged does not require a 30-day written notice of a rate increase. Whenever money is deposited or advanced by a resident in a contract as security for performance of the contract agreement or as advance rent for other than the next immediate rental period:

(a) Such funds shall be deposited in a banking institution in this state that is located, if possible, in the same community in which the facility is located; shall be kept separate from the funds and property of the facility; may not be represented as part of the assets of the facility on financial statements; and shall be used, or otherwise expended, only for

the account of the resident.

(b) The licensee shall, within 30 days of receipt of advance rent or a security deposit, notify the resident or residents in writing of the manner in which the licensee is holding the advance rent or security deposit and state the name and address of the depository where the moneys are being held. The licensee shall notify residents of the facility's policy on advance deposits.

Section 84. Paragraphs (e) and (j) of subsection (1) and paragraphs (c), (d), and (e) of subsection (3) of section 429.28, Florida Statutes, are amended to read:

429.28 Resident bill of rights.—

(1) No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

(e) Freedom to participate in and benefit from community services and activities and to pursue ~~achieve~~ the highest possible level of independence, autonomy, and interaction within the community.

(j) Assistance with obtaining access to adequate and appropriate health care. For purposes of this paragraph, the term "adequate and appropriate health care" means the management of medications, assistance in making appointments for health care services, the provision of or arrangement of transportation to health care appointments, and the performance of health care services in accordance with s. 429.255 which are consistent with established and recognized standards within the community.

(3)

~~(c) During any calendar year in which no survey is conducted, the agency shall conduct at least one monitoring visit of each facility cited in the previous year for a class I or class II violation, or more than three uncorrected class III violations.~~

~~(d) The agency may conduct periodic followup inspections as necessary to monitor the compliance of facilities with a history of any class I, class II, or class III violations that threaten the health, safety, or security of residents.~~

~~(e) The agency may conduct complaint investigations as warranted to investigate any allegations of noncompliance with requirements required under this part or rules adopted under this part.~~

Section 85. Subsection (1) of section 429.294, Florida Statutes, is amended to read:

429.294 Availability of facility records for investigation of resident's rights violations and defenses; penalty.—

(1) Failure to provide complete copies of a resident's records, including, but not limited to, all medical records and the resident's chart, within the control or possession of the facility ~~within 10 days,~~ in accordance with ~~the provisions of~~ s. 400.145, shall constitute evidence of failure of that party to comply with good faith discovery requirements and shall waive the good faith certificate and presuit notice requirements under this part by the requesting party.

Section 86. Subsection (2) of section 429.34, Florida Statutes, is amended to read:

429.34 Right of entry and inspection.—

(2)(a) In addition to the requirements of s. 408.811, the agency may inspect and investigate facilities as necessary to determine compliance with this part, part II of chapter 408, and rules adopted thereunder. ~~The agency shall inspect each licensed assisted living facility at least once every 24 months to determine compliance with this chapter and related rules.~~ If an assisted living facility is cited for a class I violation or three or more class II violations arising from separate surveys within a 60-day period or due to unrelated circumstances during the same survey, the agency must conduct an additional licensure inspection within 6 months.

(b) During any calendar year in which a survey is not conducted, the agency may conduct monitoring visits of each facility cited in the previous year for a class I or class II violation or for more than three uncorrected class III violations.

Section 87. Subsection (4) of section 429.52, Florida Statutes, is amended to read:

429.52 Staff training and educational programs; core educational requirement.—

(4) Effective January 1, 2004, a new facility administrator must complete the required training and education, including the competency test, within 90 days after date of employment ~~a reasonable time after being employed~~ as an administrator~~, as determined by the department~~. Failure to do so is a violation of this part and subjects the violator to an administrative fine as prescribed in s. 429.19. Administrators licensed in accordance with part II of chapter 468 are exempt from this requirement. Other licensed professionals may be exempted, as determined by

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the department by rule.

Section 88. Subsection (3) of section 435.04, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

435.04 Level 2 screening standards.—

(3) The security background investigations under this section must ensure that no person subject to this section has been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction.

(4) For the purpose of screening applicability to participate in the Medicaid program, the security background investigations under this section must ensure that a person subject to screening under this section has not been arrested for and is not awaiting final disposition of; has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to; and has not been adjudicated delinquent and the record sealed or expunged for, any of the following offenses:

(a) Violation of a federal law or a law in any state which creates a criminal offense relating to:

1. The delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program, including the performance of management or administrative services relating to the delivery of goods or services under any such program;

2. Neglect or abuse of a patient in connection with the

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delivery of any health care good or service;

3. Unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;

4. Fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct; or

5. Moral turpitude, if punishable by imprisonment of a year or more.

6. Interference with or obstruction of an investigation into any criminal offense identified in this subsection.

(b) Violation of the following state laws or laws of another jurisdiction:

1. Section 817.569, criminal use of a public record or information contained in a public record;

2. Section 838.016, unlawful compensation or reward for official behavior;

3. Section 838.021, corruption by threat against a public servant;

4. Section 838.022, official misconduct;

5. Section 838.22, bid tampering;

6. Section 839.13, falsifying records;

7. Section 839.26, misuse of confidential information; or

(c) Violation of a federal or state law, rule, or regulation governing the Florida Medicaid program or any other state Medicaid program, the Medicare program, or any other publicly funded federal or state health care or health insurance program.

Section 89. Subsection (4) of section 456.001, Florida Statutes, is amended to read:

456.001 Definitions.—As used in this chapter, the term:

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(4) "Health care practitioner" means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part II or part III ~~or part IV~~ of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

Section 90. Subsection (3) of section 456.054, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

456.054 Kickbacks prohibited.—

(3)(a) It is unlawful for any person or any entity to pay or receive, directly or indirectly, a commission, bonus, kickback, or rebate from, or to engage in any form of a split-fee arrangement with, a dialysis facility, health care practitioner, surgeon, person, or entity for referring patients to a clinical laboratory as defined in s. 483.803.

(b) It is unlawful for any clinical laboratory to:

1. Provide personnel to perform any functions or duties in a health care practitioner's office or dialysis facility for any purpose, including for the collection or handling of specimens, directly or indirectly through an employee, contractor, independent staffing company, lease agreement, or otherwise, unless the laboratory and the practitioner's office, or dialysis facility, are wholly owned and operated by the same entity.

2. Lease space within any part of a health care practitioner's office or dialysis facility for any purpose, including for the purpose of establishing a collection station where materials or specimens are collected or drawn from

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patients.

Section 91. Paragraphs (h) and (i) of subsection (2) of section 456.057, Florida Statutes, are amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(2) As used in this section, the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

(h) Clinical laboratory personnel licensed under part II ~~III~~ of chapter 483.

(i) Medical physicists licensed under part III ~~IV~~ of chapter 483.

Section 92. Paragraph (j) of subsection (1) of section 456.076, Florida Statutes, is amended to read:

456.076 Impaired practitioner programs.—

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

(j) "Practitioner" means a person licensed, registered, certified, or regulated by the department under part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part II or part III ~~or part IV~~ of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; or an

applicant for a license, registration, or certification under the same laws.

Section 93. Subsection (2) of section 458.307, Florida Statutes, is amended to read:

458.307 Board of Medicine.—

(2) Twelve members of the board must be licensed physicians in good standing in this state who are residents of the state and who have been engaged in the active practice or teaching of medicine for at least 4 years immediately preceding their appointment. One of the physicians must be on the full-time faculty of a medical school in this state, and one of the physicians must be in private practice and on the full-time staff of a statutory teaching hospital in this state as defined in s. 408.07. At least one of the physicians must be a graduate of a foreign medical school. The remaining three members must be residents of the state who are not, and never have been, licensed health care practitioners. One member must be a health care risk manager ~~licensed under s. 395.10974~~. At least one member of the board must be 60 years of age or older.

Section 94. Subsection (1) of section 458.345, Florida Statutes, is amended to read:

458.345 Registration of resident physicians, interns, and fellows; list of hospital employees; prescribing of medicinal drugs; penalty.—

(1) Any person desiring to practice as a resident physician, assistant resident physician, house physician, intern, or fellow in fellowship training which leads to subspecialty board certification in this state, or any person desiring to practice as a resident physician, assistant resident

physician, house physician, intern, or fellow in fellowship training in a teaching hospital in this state as defined in s. 408.07 ~~s. 408.07(45)~~ or s. 395.805(2), who does not hold a valid, active license issued under this chapter shall apply to the department to be registered and shall remit a fee not to exceed $300 as set by the board. The department shall register any applicant the board certifies has met the following requirements:

(a) Is at least 21 years of age.

(b) Has not committed any act or offense within or without the state which would constitute the basis for refusal to certify an application for licensure pursuant to s. 458.331.

(c) Is a graduate of a medical school or college as specified in s. 458.311(1)(f).

Section 95. Subsection (1) of s. 459.021, Florida Statutes, is amended to read:

459.021 Registration of resident physicians, interns, and fellows; list of hospital employees; penalty.—

(1) Any person who holds a degree of Doctor of Osteopathic Medicine from a college of osteopathic medicine recognized and approved by the American Osteopathic Association who desires to practice as a resident physician, intern, or fellow in fellowship training which leads to subspecialty board certification in this state, or any person desiring to practice as a resident physician, intern, or fellow in fellowship training in a teaching hospital in this state as defined in s. 408.07 ~~s. 408.07(45)~~ or s. 395.805(2), who does not hold an active license issued under this chapter shall apply to the department to be registered, on an application provided by the

department, before commencing such a training program and shall remit a fee not to exceed $300 as set by the board.

Section 96. Part I of chapter 483, Florida Statutes, consisting of sections 483.011, 483.021, 483.031, 483.035, 483.041, 483.051, 483.061, 483.091, 483.101, 483.111, 483.172, 483.181, 483.191, 483.201, 483.221, 483.23, 483.245, and 483.26, is repealed.

Section 97. Section 483.294, Florida Statutes, is amended to read:

483.294 Inspection of centers.—In accordance with s. 408.811, the agency shall ~~, at least once annually,~~ inspect the premises and operations of all centers subject to licensure under this part.

Section 98. Subsections (3) and (5) of section 483.801, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

483.801 Exemptions.—This part applies to all clinical laboratories and clinical laboratory personnel within this state, except:

(3) Persons engaged in testing performed by laboratories that are wholly owned and operated by one or more practitioners licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, or chapter 466 who practice in the same group practice, and in which no clinical laboratory work is performed for patients referred by any health care provider who is not a member of that group practice ~~regulated under s. 483.035(1) or exempt from regulation under s. 483.031(2)~~.

(5) Advanced registered nurse practitioners licensed under

part I of chapter 464 who perform provider-performed microscopy procedures (PPMP) in a ~~an exclusive-use~~ laboratory setting pursuant to subsection (3).

(6) Persons performing laboratory testing within a physician office practice for patients referred by a health care provider who is a member of the same physician office practice, if the laboratory or entity operating the laboratory within a physician office practice is under common ownership, directly or indirectly, with an entity licensed pursuant to chapter 395.

Section 99. Subsections (2), (3), and (4) of section 483.803, Florida Statutes, are amended to read:

483.803 Definitions.—As used in this part, the term:

(2) "Clinical laboratory" means the physical location in which one or more of the following services are performed to provide information or materials for use in the diagnosis, prevention, or treatment of a disease or the identification or assessment of a medical or physical condition:

(a) Clinical laboratory services, which entail the examination of fluids or other materials taken from the human body.

(b) Anatomic laboratory services, which entail the examination of tissue taken from the human body.

(c) Cytology laboratory services, which entail the examination of cells from individual tissues or fluid taken from the human body ~~a clinical laboratory as defined in s. 483.041~~.

(3) "Clinical laboratory examination" means a procedure performed to deliver the services identified in subsection (2), including the oversight or interpretation of such services ~~clinical laboratory examination as defined in s. 483.041~~.

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(4) "Clinical laboratory personnel" includes a clinical laboratory director, supervisor, technologist, blood gas analyst, or technician who performs or is responsible for laboratory test procedures, but the term does not include trainees, persons who perform screening for blood banks or plasmapheresis centers, phlebotomists, or persons employed by a clinical laboratory to perform manual pretesting duties or clerical, personnel, or other administrative responsibilities~~, or persons engaged in testing performed by laboratories regulated under s. 483.035(1) or exempt from regulation under s. 483.031(2)~~.

Section 100. Section 483.813, Florida Statutes, is amended to read:

483.813 Clinical laboratory personnel license.—A person may not conduct a clinical laboratory examination or report the results of such examination unless such person is licensed under this part to perform such procedures. However, this provision does not apply to any practitioner of the healing arts authorized to practice in this state ~~or to persons engaged in testing performed by laboratories regulated under s. 483.035(1) or exempt from regulation under s. 483.031(2)~~. The department may grant a temporary license to any candidate it deems properly qualified, for a period not to exceed 1 year.

Section 101. Subsection (2) of section 483.823, Florida Statutes, is amended to read:

483.823 Qualifications of clinical laboratory personnel.—

(2) Personnel qualifications may require appropriate education, training, or experience or the passing of an examination in appropriate subjects or any combination of these,

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but a ~~no~~ practitioner of the healing arts licensed to practice in this state is not required to obtain any license ~~under this part~~ or to pay any fee under this part ~~hereunder except the fee required for clinical laboratory licensure~~.

Section 102. Paragraph (c) of subsection (7), and subsections (8) and (9) of section 491.003, Florida Statutes, are amended to read:

491.003 Definitions.—As used in this chapter:

(7) The "practice of clinical social work" is defined as the use of scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering. The purpose of such services is the prevention and treatment of undesired behavior and enhancement of mental health. The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of clinical social work includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy. The practice of clinical social work also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients,

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when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, or substance abuse. The practice of clinical social work may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.

(c) The terms "diagnose" and "treat," as used in this chapter, when considered in isolation or in conjunction with ~~any provision of~~ the rules of the board, may ~~shall~~ not be construed to permit the performance of any act which clinical social workers are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in chapter 465, authorizing clinical laboratory procedures ~~pursuant to chapter 483~~, or radiological procedures, or use of electroconvulsive therapy. In addition, this definition ~~shall~~ may not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or procedure as "psychological," except to relate specifically to the definition of practice authorized in this subsection.

(8) The term "practice of marriage and family therapy" means ~~is defined as~~ the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family

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systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. The practice of marriage and family therapy includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of marriage and family therapy includes, but is not limited to, marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy. The practice of marriage and family therapy also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, or substance abuse. The practice of marriage and family therapy may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.

(a) Marriage and family therapy may be rendered to individuals, including individuals affected by termination of marriage, to couples, whether married or unmarried, to families, or to groups.

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(b) The use of specific methods, techniques, or modalities within the practice of marriage and family therapy is restricted to marriage and family therapists appropriately trained in the use of such methods, techniques, or modalities.

(c) The terms "diagnose" and "treat," as used in this chapter, when considered in isolation or in conjunction with ~~any provision of~~ the rules of the board, may ~~shall~~ not be construed to permit the performance of any act that ~~which~~ marriage and family therapists are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in chapter 465, authorizing clinical laboratory procedures ~~pursuant to chapter 483,~~ or radiological procedures~~,~~ or the use of electroconvulsive therapy. In addition, this definition may ~~shall~~ not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or procedure as "psychological," except to relate specifically to the definition of practice authorized in this subsection.

(d) The definition of "marriage and family therapy" contained in this subsection includes all services offered directly to the general public or through organizations, whether public or private, and applies whether payment is requested or received for services rendered.

(9) The term "practice of mental health counseling" means ~~is defined as~~ the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and

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enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders, ~~(~~whether cognitive, affective, or behavioral~~)~~, ~~behavioral disorders,~~ interpersonal relationships, sexual dysfunction, alcoholism, and substance abuse. The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy. The practice of mental health counseling also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse. The practice of mental health counseling may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.

(a) Mental health counseling may be rendered to individuals, including individuals affected by the termination of marriage, and to couples, families, groups, organizations, and communities.

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(b) The use of specific methods, techniques, or modalities within the practice of mental health counseling is restricted to mental health counselors appropriately trained in the use of such methods, techniques, or modalities.

(c) The terms "diagnose" and "treat," as used in this chapter, when considered in isolation or in conjunction with any provision of the rules of the board, may ~~shall~~ not be construed to permit the performance of any act that ~~which~~ mental health counselors are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in chapter 465, authorizing clinical laboratory procedures ~~pursuant to chapter 483,~~ or radiological procedures, or the use of electroconvulsive therapy. In addition, this definition may ~~shall~~ not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or procedure as "psychological," except to relate specifically to the definition of practice authorized in this subsection.

(d) The definition of "mental health counseling" contained in this subsection includes all services offered directly to the general public or through organizations, whether public or private, and applies whether payment is requested or received for services rendered.

Section 103. Paragraph (h) of subsection (4) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

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(h) As used in this subsection:

1. "Health care provider" means hospitals licensed under chapter 395; physicians licensed under chapter 458; osteopathic physicians licensed under chapter 459; podiatric physicians licensed under chapter 461; dentists licensed under chapter 466; chiropractic physicians licensed under chapter 460; naturopaths licensed under chapter 462; nurses licensed under part I of chapter 464; midwives licensed under chapter 467; ~~clinical laboratories registered under chapter 483;~~ physician assistants licensed under chapter 458 or chapter 459; physical therapists and physical therapist assistants licensed under chapter 486; health maintenance organizations certificated under part I of chapter 641; ambulatory surgical centers licensed under chapter 395; other medical facilities as defined in subparagraph 2.; blood banks, plasma centers, industrial clinics, and renal dialysis facilities; or professional associations, partnerships, corporations, joint ventures, or other associations for professional activity by health care providers.

2. "Other medical facility" means a facility the primary purpose of which is to provide human medical diagnostic services or a facility providing nonsurgical human medical treatment, to which facility the patient is admitted and from which facility the patient is discharged within the same working day, and which facility is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy or an office maintained by a physician or dentist for the practice of medicine may ~~shall~~ not be construed to be an "other medical facility."

3. "Health care facility" means any hospital licensed under

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chapter 395, health maintenance organization certificated under part I of chapter 641, ambulatory surgical center licensed under chapter 395, or other medical facility as defined in subparagraph 2.

Section 104. Paragraph (h) of subsection (1) of section 627.602, Florida Statutes, is amended to read:

627.602 Scope, format of policy.—

(1) Each health insurance policy delivered or issued for delivery to any person in this state must comply with all applicable provisions of this code and all of the following requirements:

(h) Section 641.312 and the provisions of the Employee Retirement Income Security Act of 1974, as implemented by 29 C.F.R. s. 2560.503-1, relating to internal grievances. This paragraph does not apply ~~to a health insurance policy that is subject to the Subscriber Assistance Program under s. 408.7056 or~~ to the types of benefits or coverages provided under s. 627.6513(1)-(14) issued in any market.

Section 105. Subsection (1) of section 627.6406, Florida Statutes, is amended to read:

627.6406 Maternity care.—

(1) Any policy of health insurance which ~~that~~ provides coverage for maternity care must also cover the services of certified nurse-midwives and midwives licensed pursuant to chapter 467, and the services of birth centers licensed under ss. 383.30-383.332 ~~383.30-383.335~~.

Section 106. Paragraphs (b) and (e) of subsection (1) of section 627.64194, Florida Statutes, are amended to read:

627.64194 Coverage requirements for services provided by

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nonparticipating providers; payment collection limitations.—

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

(b) "Facility" means a licensed facility as defined in s. 395.002(16) and an urgent care center as defined in s. 395.002 ~~s. 395.002(30)~~.

(e) "Nonparticipating provider" means a provider who is not a preferred provider as defined in s. 627.6471 or a provider who is not an exclusive provider as defined in s. 627.6472. For purposes of covered emergency services under this section, a facility licensed under chapter 395 or an urgent care center defined in s. 395.002 ~~s. 395.002(30)~~ is a nonparticipating provider if the facility has not contracted with an insurer to provide emergency services to its insureds at a specified rate.

Section 107. Section 627.6513, Florida Statutes, is amended to read:

627.6513 Scope.—Section 641.312 and the provisions of the Employee Retirement Income Security Act of 1974, as implemented by 29 C.F.R. s. 2560.503-1, relating to internal grievances, apply to all group health insurance policies issued under this part. This section does not apply to ~~a group health insurance policy that is subject to the Subscriber Assistance Program in s. 408.7056 or to~~:

(1) Coverage only for accident insurance, or disability income insurance, or any combination thereof.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical payment insurance.

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(6) Credit-only insurance.

(7) Coverage for onsite medical clinics, including prepaid health clinics under part II of chapter 641.

(8) Other similar insurance coverage, specified in rules adopted by the commission, under which benefits for medical care are secondary or incidental to other insurance benefits. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(9) Limited scope dental or vision benefits, if offered separately.

(10) Benefits for long-term care, nursing home care, home health care, or community-based care, or any combination thereof, if offered separately.

(11) Other similar, limited benefits, if offered separately, as specified in rules adopted by the commission.

(12) Coverage only for a specified disease or illness, if offered as independent, noncoordinated benefits.

(13) Hospital indemnity or other fixed indemnity insurance, if offered as independent, noncoordinated benefits.

(14) Benefits provided through a Medicare supplemental health insurance policy, as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. chapter 55, and similar supplemental coverage provided to coverage under a group health plan, which are offered as a separate insurance policy and as independent, noncoordinated benefits.

Section 108. Subsection (1) of section 627.6574, Florida Statutes, is amended to read:

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627.6574 Maternity care.—

(1) Any group, blanket, or franchise policy of health insurance which ~~that~~ provides coverage for maternity care must also cover the services of certified nurse-midwives and midwives licensed pursuant to chapter 467, and the services of birth centers licensed under ss. 383.30-383.332 ~~383.30-383.335~~.

Section 109. Paragraph (j) of subsection (1) of section 641.185, Florida Statutes, is amended to read:

641.185 Health maintenance organization subscriber protections.—

(1) With respect to the provisions of this part and part III, the principles expressed in the following statements ~~shall~~ serve as standards to be followed by the commission, the office, the department, and the Agency for Health Care Administration in exercising their powers and duties, in exercising administrative discretion, in administrative interpretations of the law, in enforcing its provisions, and in adopting rules:

~~(j) A health maintenance organization should receive timely and, if necessary, urgent review by an independent state external review organization for unresolved grievances and appeals pursuant to s. 408.7056.~~

Section 110. Paragraph (a) of subsection (18) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(18)(a) Health maintenance contracts that provide coverage, benefits, or services for maternity care must provide, as an option to the subscriber, the services of nurse-midwives and midwives licensed pursuant to chapter 467, and the services of birth centers licensed pursuant to ss. 383.30-383.332 ~~383.30-~~

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~~383.335~~, if such services are available within the service area.

Section 111. Section 641.312, Florida Statutes, is amended to read:

641.312 Scope.—The Office of Insurance Regulation may adopt rules to administer ~~the provisions of~~ the National Association of Insurance Commissioners' Uniform Health Carrier External Review Model Act, issued by the National Association of Insurance Commissioners and dated April 2010. This section does not apply to ~~a health maintenance contract that is subject to the Subscriber Assistance Program under s. 408.7056 or to~~ the types of benefits or coverages provided under s. 627.6513(1)-(14) issued in any market.

Section 112. Subsection (4) of section 641.3154, Florida Statutes, is amended to read:

641.3154 Organization liability; provider billing prohibited.—

(4) A provider or any representative of a provider, regardless of whether the provider is under contract with the health maintenance organization, may not collect or attempt to collect money from, maintain any action at law against, or report to a credit agency a subscriber of an organization for payment of services for which the organization is liable, if the provider in good faith knows or should know that the organization is liable. This prohibition applies during the pendency of any claim for payment made by the provider to the organization for payment of the services and any legal proceedings or dispute resolution process to determine whether the organization is liable for the services if the provider is informed that such proceedings are taking place. It is presumed

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that a provider does not know and should not know that an organization is liable unless:

(a) The provider is informed by the organization that it accepts liability;

(b) A court of competent jurisdiction determines that the organization is liable; or

~~(c) The office or agency makes a final determination that the organization is required to pay for such services subsequent to a recommendation made by the Subscriber Assistance Panel pursuant to s. 408.7056; or~~

(c)~~(d)~~ The agency issues a final order that the organization is required to pay for such services subsequent to a recommendation made by a resolution organization pursuant to s. 408.7057.

Section 113. Paragraph (c) of subsection (5) of section 641.51, Florida Statutes, is amended to read:

641.51 Quality assurance program; second medical opinion requirement.—

(5)(c) For second opinions provided by contract physicians the organization is prohibited from charging a fee to the subscriber in an amount in excess of the subscriber fees established by contract for referral contract physicians. The organization shall pay the amount of all charges, which are usual, reasonable, and customary in the community, for second opinion services performed by a physician not under contract with the organization, but may require the subscriber to be responsible for up to 40 percent of such amount. The organization may require that any tests deemed necessary by a noncontract physician shall be conducted by the organization.

The organization may deny reimbursement rights granted under this section in the event the subscriber seeks in excess of three such referrals per year if such subsequent referral costs are deemed by the organization to be evidence that the subscriber has unreasonably overutilized the second opinion privilege. A subscriber ~~thus~~ denied reimbursement under this section has ~~shall have~~ recourse to grievance procedures as specified in ss. ~~408.7056,~~ 641.495~~,~~ and 641.511. The organization's physician's professional judgment concerning the treatment of a subscriber derived after review of a second opinion is ~~shall be~~ controlling as to the treatment obligations of the health maintenance organization. Treatment not authorized by the health maintenance organization is ~~shall be~~ at the subscriber's expense.

Section 114. Subsection (1), paragraph (e) of subsection (3), paragraph (d) of subsection (4), paragraphs (g) and (h) of subsection (6), and subsections (7) through (12) of section 641.511, Florida Statutes, are amended to read:

641.511 Subscriber grievance reporting and resolution requirements.—

(1) Every organization must have a grievance procedure available to its subscribers for the purpose of addressing complaints and grievances. Every organization must notify its subscribers that a subscriber must submit a grievance within 1 year after the date of occurrence of the action that initiated the grievance~~, and may submit the grievance for review to the Subscriber Assistance Program panel as provided in s. 408.7056 after receiving a final disposition of the grievance through the organization's grievance process~~. An organization shall maintain

records of all grievances and shall report annually to the agency the total number of grievances handled, a categorization of the cases underlying the grievances, and the final disposition of the grievances.

(3) Each organization's grievance procedure, as required under subsection (1), must include, at a minimum:

(e) A notice that a subscriber may voluntarily pursue binding arbitration in accordance with the terms of the contract if offered by the organization, after completing the organization's grievance procedure ~~and as an alternative to the Subscriber Assistance Program~~. Such notice shall include an explanation that the subscriber may incur some costs if the subscriber pursues binding arbitration, depending upon the terms of the subscriber's contract.

(4)

~~(d) In any case when the review process does not resolve a difference of opinion between the organization and the subscriber or the provider acting on behalf of the subscriber, the subscriber or the provider acting on behalf of the subscriber may submit a written grievance to the Subscriber Assistance Program.~~

(6)

~~(g) In any case when the expedited review process does not resolve a difference of opinion between the organization and the subscriber or the provider acting on behalf of the subscriber, the subscriber or the provider acting on behalf of the subscriber may submit a written grievance to the Subscriber Assistance Program.~~

(g) ~~(h)~~ An organization shall not provide an expedited

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retrospective review of an adverse determination.

~~(7) Each organization shall send to the agency a copy of its quarterly grievance reports submitted to the office pursuant to s. 408.7056(12).~~

(7) ~~(8)~~ The agency shall investigate all reports of unresolved quality of care grievances received from~~:~~

~~(a)~~ annual and quarterly grievance reports submitted by the organization to the office.

~~(b) Review requests of subscribers whose grievances remain unresolved after the subscriber has followed the full grievance procedure of the organization.~~

~~(9)(a) The agency shall advise subscribers with grievances to follow their organization's formal grievance process for resolution prior to review by the Subscriber Assistance Program. The subscriber may, however, submit a copy of the grievance to the agency at any time during the process.~~

~~(b) Requiring completion of the organization's grievance process before the Subscriber Assistance Program panel's review does not preclude the agency from investigating any complaint or grievance before the organization makes its final determination.~~

~~(10) Each organization must notify the subscriber in a final decision letter that the subscriber may request review of the organization's decision concerning the grievance by the Subscriber Assistance Program, as provided in s. 408.7056, if the grievance is not resolved to the satisfaction of the subscriber. The final decision letter must inform the subscriber that the request for review must be made within 365 days after receipt of the final decision letter, must explain how to initiate such a review, and must include the addresses and toll-~~

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~~free telephone numbers of the agency and the Subscriber Assistance Program.~~

(8)~~(11)~~ Each organization, as part of its contract with any provider, must require the provider to post a consumer assistance notice prominently displayed in the reception area of the provider and clearly noticeable by all patients. The consumer assistance notice must state the addresses and toll-free telephone numbers of the Agency for Health Care Administration~~, the Subscriber Assistance Program,~~ and the Department of Financial Services. The consumer assistance notice must also clearly state that the address and toll-free telephone number of the organization's grievance department shall be provided upon request. The agency may adopt rules to implement this section.

(9)~~(12)~~ The agency may impose administrative sanction, in accordance with s. 641.52, against an organization for noncompliance with this section.

Section 115. Subsection (1) of section 641.515, Florida Statutes, is amended to read:

641.515 Investigation by the agency.—

(1) The agency shall investigate further any quality of care issue contained in recommendations and reports submitted pursuant to s. ~~ss. 408.7056 and~~ 641.511. The agency shall also investigate further any information that indicates that the organization does not meet accreditation standards or the standards of the review organization performing the external quality assurance assessment pursuant to reports submitted under s. 641.512. Every organization shall submit its books and records and take other appropriate action as may be necessary to

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facilitate an examination. The agency shall have access to the organization's medical records of individuals and records of employed and contracted physicians, with the consent of the subscriber or by court order, as necessary to administer ~~carry out the provisions of~~ this part.

Section 116. Subsection (2) of section 641.55, Florida Statutes, is amended to read:

641.55 Internal risk management program.—

(2) The risk management program shall be the responsibility of the governing authority or board of the organization. Every organization which has an annual premium volume of $10 million or more and which directly provides health care in a building owned or leased by the organization shall hire a risk manager~~,~~ ~~certified under ss. 395.10971-395.10975~~, who is ~~shall be~~ responsible for implementation of the organization's risk management program required by this section. A part-time risk manager may ~~shall~~ not be responsible for risk management programs in more than four organizations or facilities. Every organization that ~~which~~ does not directly provide health care in a building owned or leased by the organization and every organization with an annual premium volume of less than $10 million shall designate an officer or employee of the organization to serve as the risk manager.

The gross data compiled under this section or s. 395.0197 shall be furnished by the agency upon request to organizations to be utilized for risk management purposes. The agency shall adopt rules necessary to administer ~~carry out the provisions of~~ this section.

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Section 117. Section 641.60, Florida Statutes, is repealed.

Section 118. Section 641.65, Florida Statutes, is repealed.

Section 119. Section 641.67, Florida Statutes, is repealed.

Section 120. Section 641.68, Florida Statutes, is repealed.

Section 121. Section 641.70, Florida Statutes, is repealed.

Section 122. Section 641.75, Florida Statutes, is repealed.

Section 123. Paragraph (b) of subsection (6) of section 766.118, Florida Statutes, is amended to read:

766.118 Determination of noneconomic damages.—

(6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A PRACTITIONER PROVIDING SERVICES AND CARE TO A MEDICAID RECIPIENT.—Notwithstanding subsections (2), (3), and (5), with respect to a cause of action for personal injury or wrongful death arising from medical negligence of a practitioner committed in the course of providing medical services and medical care to a Medicaid recipient, regardless of the number of such practitioner defendants providing the services and care, noneconomic damages may not exceed $300,000 per claimant, unless the claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner. A practitioner providing medical services and medical care to a Medicaid recipient is not liable for more than $200,000 in noneconomic damages, regardless of the number of claimants, unless the claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner. The fact that a claimant proves that a practitioner acted in a wrongful manner does not preclude the application of the limitation on noneconomic damages prescribed elsewhere in this section. For purposes of this subsection:

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(b) The term "practitioner," in addition to the meaning prescribed in subsection (1), includes any hospital or~~,~~ ambulatory surgical center~~, or mobile surgical facility~~ as defined and licensed under chapter 395.

Section 124. Subsection (4) of section 766.202, Florida Statutes, is amended to read:

766.202 Definitions; ss. 766.201-766.212.—As used in ss. 766.201-766.212, the term:

(4) "Health care provider" means any hospital or~~,~~ ambulatory surgical center~~, or mobile surgical facility~~ as defined and licensed under chapter 395; a birth center licensed under chapter 383; any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, part I of chapter 464, chapter 466, chapter 467, part XIV of chapter 468, or chapter 486; ~~a clinical lab licensed under chapter 483;~~ a health maintenance organization certificated under part I of chapter 641; a blood bank; a plasma center; an industrial clinic; a renal dialysis facility; or a professional association partnership, corporation, joint venture, or other association for professional activity by health care providers.

Section 125. Section 945.36, Florida Statutes, is amended to read:

945.36 ~~Exemption from health testing regulations for~~ Law enforcement personnel authorized to conduct ~~conducting~~ drug tests on inmates and releasees.—

(1) Any law enforcement officer, state or county probation officer, employee of the Department of Corrections, or employee of a contracted community correctional center who is certified by the Department of Corrections pursuant to subsection (2) may

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administer~~, is exempt from part I of chapter 483, for the limited purpose of administering~~ a urine screen drug test to:

(a) Persons during incarceration;

(b) Persons released as a condition of probation for either a felony or misdemeanor;

(c) Persons released as a condition of community control;

(d) Persons released as a condition of conditional release;

(e) Persons released as a condition of parole;

(f) Persons released as a condition of provisional release;

(g) Persons released as a condition of pretrial release; or

(h) Persons released as a condition of control release.

(2) The Department of Corrections shall develop a procedure for certification of any law enforcement officer, state or county probation officer, employee of the Department of Corrections, or employee of a contracted community correctional center to perform a urine screen drug test on the persons specified in subsection (1).

Section 126. Paragraph (b) of subsection (2) of section 1009.65, Florida Statutes, is amended to read:

1009.65 Medical Education Reimbursement and Loan Repayment Program.—

(2) From the funds available, the Department of Health shall make payments to selected medical professionals as follows:

(b) All payments are ~~shall be~~ contingent on continued proof of primary care practice in an area defined in s. 395.602(2)(b) ~~s. 395.602(2)(e)~~, or an underserved area designated by the Department of Health, provided the practitioner accepts Medicaid reimbursement if eligible for such reimbursement. Correctional

facilities, state hospitals, and other state institutions that employ medical personnel shall be designated by the Department of Health as underserved locations. Locations with high incidences of infant mortality, high morbidity, or low Medicaid participation by health care professionals may be designated as underserved.

Section 127. Subsection (2) of section 1011.52, Florida Statutes, is amended to read:

1011.52 Appropriation to first accredited medical school.—

(2) In order for a medical school to qualify under ~~the provisions of~~ this section and to be entitled to the benefits herein, such medical school:

(a) Must be primarily operated and established to offer, afford, and render a medical education to residents of the state qualifying for admission to such institution;

(b) Must be operated by a municipality or county of this state, or by a nonprofit organization heretofore or hereafter established exclusively for educational purposes;

(c) Must, upon the formation and establishment of an accredited medical school, transmit and file with the Department of Education documentary proof evidencing the facts that such institution has been certified and approved by the council on medical education and hospitals of the American Medical Association and has adequately met the requirements of that council in regard to its administrative facilities, administrative plant, clinical facilities, curriculum, and all other such requirements as may be necessary to qualify with the council as a recognized, approved, and accredited medical school;

(d) Must certify to the Department of Education the name, address, and educational history of each student approved and accepted for enrollment in such institution for the ensuing school year; and

(e) Must have in place an operating agreement with a government-owned hospital that is located in the same county as the medical school and that is a statutory teaching hospital as defined in s. 408.07(44) ~~s. 408.07(45)~~. The operating agreement must ~~shall~~ provide for the medical school to maintain the same level of affiliation with the hospital, including the level of services to indigent and charity care patients served by the hospital, which was in place in the prior fiscal year. Each year, documentation demonstrating that an operating agreement is in effect shall be submitted jointly to the Department of Education by the hospital and the medical school prior to the payment of moneys from the annual appropriation.

Section 128. This act shall take effect July 1, 2018.

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 6, 2018

I respectfully request that **Senate Bill #622**, relating to Health Care Facility Regulation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Denise Grimsley

Senator Denise Grimsley
Florida Senate, District 26

cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

CS/SB 620
Bill Number (if applicable)

Topic AHCA HC Facility Regulation

Amendment Barcode (if applicable)

Name Gail Mafillo (May fill ō)

Job Title President / CEO

Address 2292 Wednesday St. S.1
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-496-2562

Email gmafillo@floridaseniorliving.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Senior Living Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 640
INTRODUCER:	Senator Rouson
SUBJECT:	Consumer Finance Loans
DATE:	February 28, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Favorable**
2.	Harmsen	McKay	CM	**Favorable**
3.	Matiyow	Phelps	RC	**Favorable**

I. Summary:

SB 640 establishes the Access to Responsible Credit Pilot Program. The intent of the program is to provide greater access to small dollar consumer loans and assist consumers in building their credit. The Office of Financial Regulation (OFR) is responsible for regulating this program. The pilot program would operate under the following terms and conditions:

- A program licensee may make loans of at least $300 and no more than $10,000, at a maximum fixed interest rate of 36 percent per annum.
- A program licensee may also charge the borrower an origination fee of 6 percent of the principal amount of the program loan exclusive of the origination fee, or $75, whichever is less.
- The borrower has a right to rescind the program loan and return the principal amount by the end of the next business day.
- A program loan must have a minimum term of 120 days and a maximum term of 60 months and may not impose a prepayment penalty.
- A program licensee must underwrite each program loan to determine the borrower's ability and willingness to repay. A program licensee must not make a program loan if the borrower's monthly debt service, including the program loan, exceeds 35 percent of the borrower's gross monthly income.
- The OFR is required to examine licensees at least once every 24 months.
- A program licensee may use a referral partner to perform marketing, servicing, and other services on behalf of the program licensee. The compensation for a referral partner is capped at $60 per program loan, on average, assessed annually, and $2 for each payment received by the referral partner on behalf of the program licensee.
- In order to participate in the pilot program, a person must be licensed as a consumer finance lender with the OFR under ch. 516, F.S., and must submit a pilot program application and $1,000 fee plus $30 per branch office.

Currently, the Florida Consumer Finance Act (act) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is allowed in Florida. The act sets forth maximum interest rates for consumer finance loans, which are loans of money, credit, goods, or a provision of a line of credit of $25,000 or less. The allowable interest rates on such loans are tiered, based on the principal amount, as follows:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal from $3,001 to $4,000; and
- 18 percent per year on that part of principal from $4,001 to $25,000.

II. Present Situation:

Federal Truth in Lending Act (TILA)

The purpose of TILA[1] is to promote the informed use of credit through "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available."[2] Regulation Z, which implements TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.[3] Finance charges include interest, any charges, or fees payable by the consumer and imposed by the financial institution as an incident to or as a condition of an extension of consumer credit. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the calculation and disclosure of the finance charge.[4]

State Regulation of Consumer Lending

The Office of Financial Regulation (OFR) regulates state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities.[5] The Division of Financial Institutions of the OFR charters and regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes).[6] The OFR may examine, investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.[7]

Consumer Finance Loans

The Florida Consumer Finance Act (ch. 516, F.S.) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in

[1] 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.
[2] 15 U.S.C. s. 1601(a).
[3] 15 U.S.C. s. 1604-1606.
[4] 12 C.F.R. s. 1026.4.
[5] *See generally*, Florida Office of Financial Regulation, *About OFR*, https://www.flofr.com/StaticPages/AboutOFR.htm (last visited Jan. 26, 2018).
[6] Florida Office of Financial Regulation, *Welcome to the Division of Financial Institutions*, https://www.flofr.com/StaticPages/DivisionOfFinancialInstitutions.htm (last visited Jan. 26, 2018). The "codes" consist of chs. 655, 657, 658, 660, 663, 665, and 667, F.S.
[7] These entities are also subject to laws and regulation of various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.

Florida. The act sets forth maximum interest rates for consumer finance loans, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum."[8] The maximum allowable interest rates on consumer finance loans are tiered, based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal between $3,001 to $4,000; and
- 18 percent per year on that part of principal between $4,001 to $25,000.[9]

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.[10] The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by the TILA and Regulation Z.[11] Lenders are required to provide written disclosures to consumers that include the APR under Regulation Z. Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:[12]

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A dishonored check charge of up to $20.

Lastly, the act requires all consumer finance loans to be repaid in equal monthly installments, except for repayment on lines of credit.[13]

California Small Dollar Loan Pilot Programs

Based on a business model developed by California-based Progreso Financiero (Progress Financial, which also operates under the name Opportun), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.[14] The pilot program covers consumer loans of $250-$2,500. The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. In 2015, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.[15] The new pilot program covers consumer loans of $300-$2,500 and allows the use of

[8] Section 516.01(2), F.S.
[9] Section 516.031(1), F.S.
[10] Section 516.031(2), F.S.
[11] *Id.*
[12] Section 516.031(3), F.S.
[13] Section 516.36, F.S.
[14] See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited January 26, 2018).
[15] See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited January 26, 2018).

"finders" to connect borrowers with lenders. Finders cannot provide advice or counseling to borrowers. They can distribute lenders' marketing materials, provide information about loan terms and conditions, help borrowers with loan applications and obtain borrowers' signatures on documents, and other functions. Their fees are capped at $65 per loan plus $2 for each payment received by a finder. The fees are paid by lenders, cannot be based on the principal amount of loans, and cannot be passed on to borrowers. According to the California Senate staff analysis, the proponents view the use of finders as a means to lower costs of customer acquisition, which is the largest cost of maintaining a small dollar loan program.[16]

The California pilot program legislation also required the state's Department of Business Oversight (DBO) to post a report summarizing findings of the pilot program. In June 2015, the California DBO's report noted the following findings from 2011-2014:

- *Lender participation*: At the end of 2014, six lenders and six finders participated in the program.
- *Loan applications*: Borrower applications increased by 58.5 percent after the state revised the pilot program.
- *Dollar amounts*: Smaller loans ($300-$499) decreased by 42.3 percent, while larger loans ($500-$999) increased by 106 percent.
- *Interest rates:* Smaller loans generally carried an APR of 40-50 percent. Mid-range loans generally carried an APR of 35-50 percent. Larger loans ($1,500-$2,499) saw a more even APR distribution.
- *Delinquency rates*: In 2014, 22.5 percent were delinquent for 7 days to 29 days, 7.3 percent were delinquent for 30 days to 59 days, and 3.9 percent were delinquent for 60 days or more.
- *Credit scores*: The share of multiple-loan borrowers who obtained higher credit scores on subsequent loans averaged 61 percent annually over the 4-year period.
- *Loan term:* In 2014, of the 164,300 loans made, 50.9 percent were for 360 days or more. The ratios for other terms: 120 days to 179 days, essentially 0 percent (only two loans); 180 days to 269 days, 20.2 percent; and 270 days to 359 days, 28.8 percent.
- *Loan purpose:* Of the 164,300 loans made in 2014, borrowers took out 45 percent (74,026) to build or repair credit.

The California DBO noted that while the revised pilot program did increase lender participation from its inception in 2010, the total number of participating lenders remains less than 10. Additionally, the revisions did not significantly affect the amount of lending activity conducted by the individual companies.[17]

III. Effect of Proposed Changes:

Access to Responsible Credit Pilot Program

Section 1 of the bill establishes the Access to Responsible Credit Pilot Program (program). The program would allow consumers to enter into a program loan with a principal amount of at least

[16] *Id*.
[17] California Department of Business Oversight, Report of Activity under Small Dollar Loan Pilot Programs (Jun. 2015), at http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf. (last visited January 26, 2018).

$300 and up to a maximum of $10,000 at an interest rate not to exceed 36 percent per annum. Under current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent, with no minimum or maximum loan term.

Definitions

Section 2 creates s. 516.41, F.S., which provides definitions for the following terms: consumer reporting agency, credit score, data furnisher, pilot program or program, pilot program license, program branch office, program licensee, program loan, referral partner, and refinance program loan.

Regulation of Program Licensees (Lenders) and Referral Partners

Program Licensees

Section 3 requires persons seeking to participate as a lender under the program to file a digital application with the OFR. Applicants must be licensed to make consumer finance loans under ch. 516, F.S., not be the subject of any insolvency proceedings or an enforcement action by the OFR or any financial regulatory agency in Florida, or have a deficiency at the time of the person's application. Applicants are required to pay a $1,000 nonrefundable application fee to and file an application with the OFR. The biennial renewal fee is $1,000. The OFR may adopt application forms for the program by rule.

Each branch office of a program licensee must be licensed. The program licensee must submit an application and an initial nonrefundable fee of $30 per program branch office. The biennial renewal fee for each branch office is $30.

The bill requires applicants to be accepted as a "data furnisher" with a consumer-reporting agency[18] before the OFR may approve an applicant as a program licensee.

Referral Partners

Section 5 of the bill allows a program licensee to engage in arrangements with referral partners. All such arrangements must be in writing; provide that the referral partner agrees to comply with s. 516.44, F.S., and allow the OFR access to the referral partner's books and records related to the referral partner's operations under the agreement with the program licensee.

A referral partner may engage in the following activities:
- Advertise on behalf of the program licensee;
- Provide written factual information about the pilot program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;

[18] The bill defines "consumer reporting agency" as the same definition in federal Fair Credit Reporting Act: "Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database;
- Assemble credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee;
- Contact the program licensee to determine the status of a program loan application;
- Communicate to a borrower a response that is returned by the program licensee's automated underwriting system;
- Obtain a borrower's signature on documents prepared by the program licensee and deliver final copies of the documents to the borrower;
- Disburse program loan proceeds to a borrower if this method of disbursement is acceptable to the borrower;
- Receive a program loan payment from the borrower if this method of payment is acceptable to the borrower; and
- Operate an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

Any program payments received by a referral partner must be applied to the program loan and be deemed received by the program licensee at the time the referral partner receives the payment. When payment is made, a referral partner must give a receipt to the borrower that includes specific information. Additionally, the bill holds a borrower harmless if a referral partner fails to transmit, or delays transmission of, a payment to the program licensee. A referral partner must maintain records related to disbursements and payments for 2 years.

Referral partners are required to provide certain communications and disclosures to program loan applicants related to identifying information of the program licensee and referral partner. The bill requires a referral partner to make a good faith effort to assist the applicant in making direct contact with the program licensee in cases where a referral partner is not permitted to answer questions about the loan program.

The bill allows a program licensee to compensate a referral partner pursuant to a written agreement and mutually agreed upon compensation schedule. Compensation paid to a referral partner may not be passed on to a borrower. Additionally, the compensation must meet the following requirements:

- Compensation may not be paid to a referral partner until the program loan is consummated.
- Compensation may not be paid to a referral partner based upon the principal amount of the program loan.
- The total compensation paid to a referral partner over the life of a program loan may not exceed the sum of the origination fee and interest charges paid by the borrower in connection with that program loan.
- Subject to certain limitations, the total compensation paid by a program licensee to a referral partner may not exceed $60 per program loan, on average, and $2 per payment that is received by the referral partner on behalf of the program licensee.

The bill prohibits a referral partner from engaging in the following activities:

- Providing counseling or advice to a borrower or prospective borrower;

- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee;
- Negotiating a loan term between a program licensee and a prospective borrower;
- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to the borrower; and
- Requiring a borrower to pay any fees other than those permitted under the bill.

The program licensee is responsible for violations of ch. 516, F.S., that are committed by a referral partner.

Terms and Conditions of the Small Dollar Loans

Section 4 requires a program licensee to comply with certain conditions in making program loans, including the following:

- A program loan must be unsecured.
- A program loan must have a minimum term of 120 days and a maximum term of 60 months and may not impose a prepayment penalty.
- A program loan must be repayable by the borrower in substantially equal periodic installments made every 2 weeks, semimonthly or monthly.
- A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the program loan was consummated.
- A program loan must apply an interest rate which must be fixed for the term of the loan and be calculated on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day. The maximum per annum interest rate depends on the size of the loan, as follows:
  - For loans up to and including $3,000, the maximum annual interest rate is 36 percent.
  - For loans over $3,000, and up to and including $4,000, the maximum annual interest rate is 30 percent.
  - For loans over $4,000 and up to and including $10,000, the maximum interest rate is 24 percent.
- A program licensee must provide a receipt for payments made.

Loans made under the pilot program are permitted to charge a higher annual interest rate than loans made by a traditional consumer finance lender who is licensed under ch. 516, F.S.

When refinancing a program loan, the principal amount may not include more than 60 days' unpaid interest accrued on the previous program loan. Additionally, a program licensee is prohibited from refinancing a program loan unless the borrower is current on the outstanding program loan at the time the borrower submits an application to refinance.

The bill prohibits a program licensee from refinancing a program loan unless all of the following conditions are met:

- The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan;

- For program loans with an original term of less than 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on the existing program loan;
- For program loans with an original term of greater than 25 months but no more than 60 months, the borrower has made current payments for at least 9 months on the program loan; and
- The borrower is current on his or her outstanding program loan.

Program Loan Underwriting

A program licensee must underwrite each program loan to determine the borrower's willingness and ability to repay the program loan. A program licensee may not make a loan if it determines that a borrower's total monthly debt service payments, including the program loan and all outstanding forms of credit that can be independently verified by the program licensee, exceed 35 percent of the borrower's gross monthly income.

The program licensee is required to seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee shall verify such information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

The program licensee is required to verify the borrower's income in determining the debt-to-income ratio using information from:

- Electronic means or services that provide reliable evidence of the borrower's actual income; or
- Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

Interest Rate Reduction

The program licensee must reduce the rate on each subsequent loan to the same borrower by at least one-twelfth of 1 percent per month if all of these conditions are met:

- The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid;
- The borrower was never more than 15 days delinquent on the prior program loan; and
- The prior program loan was outstanding for at least one-half of its original term before its repayment.

The bill prohibits a program licensee from inducing or permitting any person from becoming obligated to the program licensee under more than one program loan at the same time with the program licensee.

Fees

The bill allows a program licensee to contract for and receive an origination fee, which may not exceed 6 percent of the principal amount, exclusive of the origination fee, or $75, whichever is less. A program licensee may not charge a borrower an origination fee more than twice in any 12-month period.

The bill caps the fee for insufficient funds at $20, and any delinquency charge is capped at $15 for each calendar month for payments in default for at least 10 days. In attempting to collect a delinquent payment, a program licensee or its wholly owned subsidiary must attempt to collect the payment for 30 days before selling or assigning the unpaid debt to an independent party for collection.

Consumer Disclosures

The bill requires a program licensee to provide the following written disclosures to a borrower:

- The amount, date, and maturity date of the program loan.
- The name and address of the borrower and of the program licensee.
- The interest rate charged.
- The monthly installment payment amount.
- The delinquency charge amount.
- A specified statement relating to a borrower's ability to reduce the interest amount by repaying the loan early.
- A statement describing the borrower's right of rescission.

The bill allows a program licensee to provide the disclosures in a mobile or other electronic application if the program licensee complies with certain parameters. Additionally the bill allows the disclosures to be completed in any language the loan is negotiated in.

Before disbursing program proceeds to a borrower, a program licensee must direct a borrower to consumer credit counseling services promoted by the OFR or provide a credit education program or materials to the borrower at no cost to the borrower. The borrower is not required to participate in the program.

The bill prohibits a program licensee from requiring a borrower to waive any right, penalty, remedy, forum, or procedure. Further, the lender may not require a borrower to agree to the application of laws other than those of Florida or require a borrower to agree to resolve disputes in a jurisdiction outside of Florida. Any waiver, other than a prohibited waiver, must be knowing, voluntary, in writing, and not expressly made as a condition of doing business with the program licensee. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable. The program licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not expressly made a condition of the contract with the borrower.

Examination of Program Licensees

Section 6 requires the OFR to examine program licensees at least once every 24 months. Costs of examination are borne by the program licensee. A program licensee who violates any applicable provision of ch. 516, F.S., is subject to disciplinary action. A program licensee is also liable for violations of the program's regulations committed by one of its referral partners.

Reporting Requirements

Program Licensee

Section 4 of the bill requires a program licensee to report a borrower's payment performance to at least one consumer-reporting agency that compiles and maintains files on consumers on a nationwide basis. In addition, as part of the credit reporting requirements, a licensee must provide the borrower with the name(s) of the credit reporting agency or agencies to which it will report the borrower's payment history.

Section 5 requires the program licensee to provide certain information to the OFR within 15 days after entering into a contract with a referral partner. Such information includes the referral partner's identifying information, and a provision that allows the OFR to request any other information. The program licensee must conduct due diligence with respect to the referral partner and confirm to the OFR that the referral partner has not filed a bankruptcy or reorganization petition and is not currently subject to an administrative or judicial license suspension or revocation proceeding. The program licensee must confirm to the OFR that the referral partner or an affiliated party has not been convicted of a felony and is not subject to a felony indictment. Finally, the program licensee must confirm to OFR that it does not suspect that the referral partner has committed a criminal act and that there has not been notification that the referral partner is under criminal investigation. The referral partner must report changes in this information to the program licensee.

OFR Program Report

Section 7 requires a program licensee to file, on or before March 15 of each year, a report with the OFR in a manner prescribed by rule.

The bill directs the OFR to post a report on its website by January 1, 2021, summarizing the results of the program. The report must include the following information:

- The period covered.
- The number of entities that applied and were accepted for program participation.
- The reasons for program rejection.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.

- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.
- The number of borrowers who obtained program loans for the following purposes, based on borrower responses:
  - Pay medical expenses.
  - Pay for vehicle repair or a vehicle purchase.
  - Pay bills.
  - Consolidate debt.
  - Build or repair credit history.
  - Pay other expenses.
- The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

The report must include the following information specific to refinanced program loans:
- The number and percentage of borrowers who applied for a refinance program loan.
- Of the borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.
- The number and type of referral partners used by program licensees.
- The number and percentage of borrowers who obtained one or more program loans where delinquency charges were assessed.
- The total amount of delinquency charges assessed.
- The average delinquency charge assessed by dollar amount and as a percentage of the principal amount loaned.

In addition, the report must address the performance of program loans as reflected by the following information:
- The number and percentage of borrowers who experienced at least one delinquency lasting between 7 to 29 days, 30 to 59 days, and 60 days or more.
- The distribution of principal loan amounts corresponding to those delinquencies.
- The number and types of documented violations of ss. 516.40-516.47, F.S., by referral partners and program licensees.
- The number of times the OFR disqualified a referral partner from performing services, barred a referral partner from performing services at a specific location, terminated a written agreement between a referral partner and a program licensee, or imposed an administrative penalty.
- The number and nature of complaints received about a program licensee or referral partner.
- Recommendations for improving the program, and whether the program should be reenacted after January 1, 2022.

Section 8 provides that ss. 516.40-516.47, F.S., are subject to repeal on December 31, 2023, unless reenacted or superseded by another enacted law before that date.

Section 9 provides the act shall take effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Persons that want to participate in the Access to Responsible Credit Pilot Loan Program (program) are required to obtain a consumer finance license as well as a program license. The bill provides for a $1,000 application fee and $1,000 biennial renewal fee for program licensees in addition to a $30 branch application and $30 renewal fee. Furthermore, the bill provides for a $30 referral partner fee for each referral partner filed with the OFR. The bill also provides rulemaking authority to establish costs for examinations of program licensees..

B. Private Sector Impact:

Indeterminate at this time. The number of lenders, referral partners, and borrowers who would participate in this pilot program is unknown at this time. The intent of the program is to provide greater access to small dollar consumer loans. The maximum annual interest rates for such loans under the bill is increased by 6 percent over the maximum interest rates currently authorized for consumer finance loans under ch. 516, F.S. The bill requires a reduction of the interest rate on subsequent loans under the pilot program of at least one-twelfth of 1 percent on subsequent loans if certain conditions are met.

C. Government Sector Impact:

The OFR will be required to take on additional duties to implement and maintain the pilot, including processing of licenses and related documents; investigations of complaints; and, if necessary, prosecution for non-compliance or fraud.

As of December 31, 2016, the state of California had a total of 14 program licensees. Assuming a comparable number of businesses apply to become a program licensee, the OFR estimates that it would need less than one full-time equivalent resource to handle the additional duties and responsibilities proposed in this bill. The OFR proposes to closely monitor and track the added duties and responsibilities and use current OPS funding if it determines an additional resource is required. Subsequent to that determination, the OFR may request additional funding in future fiscal years for an added full-time equivalent

position(s). The OFR would also incur insignificant costs associated with rulemaking which can be absorbed within its current budget.

The bill will require configuration and other updates to the OFR's Regulatory Enforcement and Licensing (REAL) internal system and website. The bill will also require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes would cost the agency an estimated $150,000.[19]

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether the receipt of loan payments by a referral partner might subject a referral partner to provisions related to debt collectors under part VI of ch. 559, F.S., "Consumer Collection Practices."

The OFR registers and regulates consumer collection agencies and their employee debt collectors.[20] These entities must operate pursuant to both the federal Fair Debt Collection Practices Act and state law.[21] A debt collector is any person who uses an instrumentality of commerce in the business of debt collection, or who regularly attempts, directly or indirectly, to collect or collects a debt owed or due to another. A debt collector may attempt to collect a debt, or obligation of a consumer to pay money, before it has been reduced to judgment by a court.[22]

An officer or employee of the creditor on behalf of whom the debt is being collected is not considered a debt collector.[23] Additionally, a licensed consumer finance company and any of its wholly owned subsidiaries and affiliates are exempt from registration as a consumer collection agency.[24]

Additionally, s. 559.72, F.S., governs the practices of *any person* during the collection of debts, prohibiting, among other behaviors, the simulation of an attorney, law enforcement agent, or government representative; disclosure of specific information to third parties; use of threats, violence, or obscene or abusive language; and communication with a debtor outside of particular hours.

[19] Office of Financial Regulation, *Bill Analysis of SB 640*, December 7, 2017 (on file with the Committee).
[20] Section 559.554, F.S.; Office of Financial Regulation, *Consumer Collection Agencies*, https://www.flofr.com/StaticPages/ConsumerCollectionAgencies.htm (last visited Jan. 26, 2018).
[21] See, s. 559.552, F.S.
[22] Section 559.55(6), F.S.
[23] Section 559.55(7), F.S.
[24] Section 559.553(3), F.S.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.40, 516.41, 516.42, 516.43, 516.44, 516.45 and 516.46.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Rouson

19-00837-18 2018640__

A bill to be entitled

An act relating to consumer finance loans; creating s. 516.40, F.S.; establishing the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing legislative findings and intent; creating s. 516.41, F.S.; defining terms; creating s. 516.42, F.S.; prohibiting a person from certain actions relating to program loans unless the person obtains a pilot program license from the office; providing criteria for participation in the pilot program; specifying application requirements and fees; providing for construction; specifying a renewal fee; providing that only one pilot program license is required for a person to make program loans; requiring licensure of branch offices of a program licensee; specifying application requirements and fees for a program branch office license; requiring program branch office licenses to be renewed biennially and specifying a branch office renewal fee; creating s. 516.43, F.S.; providing requirements, limitations, and prohibitions relating to program loans and the refinancing of program loans; authorizing licensees to provide certain documents in the language in which the loan was negotiated; requiring a program licensee to pay for certain translation costs incurred by the office; requiring a program licensee to provide specified disclosures; authorizing a program licensee to contract for and receive a specified origination fee from a borrower on a program loan; specifying

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methods for collecting the origination fee; specifying limitations on the amount and frequency of the origination fee; authorizing a program licensee to collect specified insufficient funds fees and delinquency charges; providing that program licensees or their wholly owned subsidiaries may not sell or assign unpaid debts to independent third parties for collection purposes unless the debt has been delinquent for a specified timeframe; requiring program licensees to direct borrowers to certain credit counseling services or provide certain credit education to borrowers before disbursing program loan proceeds; requiring program licensees to report borrowers' payment performance to at least one specified consumer reporting agency; defining the term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis"; prohibiting the office from approving a person for the program before the person is accepted as a data furnisher by a consumer reporting agency; requiring program licensees to provide borrowers with the names of consumer reporting agencies that payment histories are reported to; requiring a program licensee to underwrite each program loan; prohibiting a program licensee from making a program loan under certain circumstances; providing underwriting procedures and requirements; prohibiting a program licensee from requiring certain waivers from a borrower or from certain acts against a borrower who refuses certain waivers; providing

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

applicability and construction; creating s. 516.44, F.S.; requiring arrangements between a program licensee and a referral partner to be specified in a written agreement; providing requirements for such agreement; specifying authorized services of referral partners; providing requirements for a referral partner who accepts program loan payments from a borrower; providing construction; prohibiting referral partners from performing specified activities; requiring a referral partner to provide a specified notice to an applicant for a program loan and certain assistance to the applicant under certain circumstances; specifying requirements, limitations, and prohibitions for the compensation of a referral partner by a program licensee; requiring a program licensee to provide, within a certain timeframe, a specified notice to the office after entering into a contract with a referral partner; requiring a referral partner to provide, within a specified timeframe, written notice to the program licensee of changes to certain information; providing that program licensees are responsible for the acts of referral partners which are in violation of ch. 516, F.S.; requiring a program licensee to pay a specified fee to the office to file a referral partner notice; requiring the Financial Services Commission to adopt rules; creating s. 516.45, F.S.; requiring the office, beginning on a specified date, to examine program licensees at specified intervals; providing an exception; requiring

program licensees to pay the cost of examinations; authorizing the office to maintain an action for recovery of such cost; authorizing a method to determine the cost of examinations; providing a limitation to the scope of investigations or examinations; providing that a program licensee is subject to certain disciplinary actions for certain violations; authorizing the office to take certain disciplinary actions; creating s. 516.46, F.S.; requiring a program licensee, beginning on a certain date, to file a specified annual report with the office; requiring the office to post, by a certain date, a report to its website summarizing the use of the program; specifying information to be contained in the office's report; providing for conditional future repeal of the program; providing an effective date.

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

Section 1. Section 516.40, Florida Statutes, is created to read:

516.40 Access to Responsible Credit Pilot Program.—

(1) There is established within the Office of Financial Regulation the Access to Responsible Credit Pilot Program.

(2) The Legislature finds that demand for responsible consumer finance loans in principal amounts of at least $300 and no more than $10,000 exceeds the supply of these loans. As a first step toward addressing this gap, the Access to Responsible Credit Pilot Program would allow more Floridians to obtain

responsible consumer finance loans of at least $300 and no more than $10,000. The pilot program is also intended to assist consumers in building their credit and has additional consumer protections for these loans which exceed current protections under general law.

Section 2. Section 516.41, Florida Statutes, is created to read:

516.41 Definitions for ss. 516.40-516.46.—As used in ss. 516.40-516.46, the term:

(1) "Consumer reporting agency" has the same meaning as in s. 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

(2) "Credit score" has the same meaning as in s. 609(f)(2)(A) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681g(f)(2)(A).

(3) "Data furnisher" has the same meaning as the term "furnisher" in 12 C.F.R. s. 1022.41(c).

(4) "Pilot program" or "program" means the Access to Responsible Credit Pilot Program.

(5) "Pilot program license" means a license issued under ss. 516.40-516.46 authorizing a program licensee to make and collect program loans.

(6) "Program branch office" means a location, other than a program licensee's or referral partner's principal place of business:

(a) The address of which appears on business cards, stationery, or advertising used by the program licensee in connection with business conducted under this chapter;

(b) At which the program licensee's name, advertising or

promotional materials, or signage suggests that program loans are originated, negotiated, funded, or serviced; or

(c) At which program loans are originated, negotiated, funded, or serviced by a program licensee.

(7) "Program licensee" means a person who is licensed to make and collect program loans under this chapter and who is approved by the office to participate in the program.

(8) "Program loan" means a consumer finance loan with a principal amount of at least $300 and no more than $10,000 originated pursuant to ss. 516.40-516.44, excluding the amount of the origination fee authorized under s. 516.43(3).

(9) "Referral partner" means an entity that, at the referral partner's physical location for business or through other means, performs one or more of the services authorized in s. 516.44(2) on behalf of a program licensee. A referral partner is not a credit service organization as defined in s. 817.7001 or a loan broker as defined in s. 687.14.

(10) "Refinance program loan" means a program loan that extends additional principal to a borrower and replaces and revises an existing program loan contract with the borrower. A refinance program loan does not include an extension, a deferral, or a rewrite of the program loan.

Section 3. Section 516.42, Florida Statutes, is created to read:

516.42 Requirements for program participation; program application requirements; fees.—

(1) A person may not advertise, offer, or make a program loan or impose any charges or fees pursuant to s. 516.43 unless the person first obtains a pilot program license from the

office.

(2)(a) In order to participate in the program, a person must meet the following criteria:

1. Be licensed to make consumer finance loans under s. 516.05.

2. Not be the subject of any insolvency proceeding.

3. Not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office or other financial regulatory agency in this state.

4. Not have a deficiency at the time of the person's application.

5. Pay a nonrefundable application fee of $1,000 to the office at the time of making the application, pursuant to rule of the commission.

(b) A program applicant shall file with the office a digital application, in a form and manner prescribed by commission rule, which contains all of the following information with respect to the applicant:

1. The legal business name and any other name the applicant operates under.

2. The applicant's main address.

3. The telephone number and e-mail address of the applicant.

4. The address of any program branch office.

5. The name, title, address, telephone number, and e-mail address of the contact person for the applicant.

6. The applicant's license number, if the applicant is

licensed under this chapter.

7. A statement as to whether the applicant intends to use the services of one or more referral partners under s. 516.44.

8. A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all loans made under the program.

9. The signature and certification of an authorized person of the applicant.

(3) A person who desires to participate in the program but who is not licensed to make consumer finance loans pursuant to s. 516.05 must concurrently submit the following digital applications to the office, in the form and manner specified in this chapter:

(a) An application and fee pursuant to s. 516.03 for licensure to make consumer finance loans; and

(b) An application and fee for admission to the program in accordance with subsection (2).

(4) Except as otherwise provided in ss. 516.40-516.46, a program licensee is subject to all of the laws and rules governing consumer finance loans under this chapter.

(5) A program licensee shall pay a nonrefundable biennial renewal fee of $1,000 pursuant to commission rule.

(6) Notwithstanding s. 516.05(3), only one pilot program license is required for a person to make program loans under ss. 516.40-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through referral partners, or through an electronic access point through which a prospective borrower may

directly access the website of the program licensee.

(7) Each branch office of a program licensee must be licensed under this section.

(8) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee submitted a completed electronic application for a program branch office license in a form prescribed by commission rule and paid an initial nonrefundable program branch office license fee of $30 per branch office as prescribed by rule of the commission. Application fees may not be prorated for partial years of licensure. The program branch office license must be issued in the name of the program licensee that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form and the required fees. The application for a program branch office license must contain the following information:

(a) The legal business name and any other name the applicant operates under.

(b) The applicant's main address.

(c) The applicant's telephone number and e-mail address.

(d) The address of each program branch office.

(e) The name, title, address, telephone number, and e-mail address of the contact person for the applicant.

(f) The applicant's license number, if the applicant is licensed under this chapter.

(g) The signature and certification of an authorized person of the applicant.

(9) A program branch office license must be renewed

biennially at the time of program license renewal under subsection (5). A nonrefundable branch renewal fee of $30 per program branch office, by commission rule, must be submitted at the time of renewal.

Section 4. Section 516.43, Florida Statutes, is created to read:

516.43 Requirements for program loans.—

(1) GENERAL REQUIREMENTS.—A program licensee shall comply with each of the following requirements in making program loans:

(a) A program loan must be unsecured.

(b) A program loan must have a minimum term of 120 days and a maximum term of 60 months, but it may not impose a prepayment penalty.

(c) A program loan must be repayable by the borrower in substantially equal periodic installments, except that the final payment may be less than the amount of the prior installments. Installments may be due every 2 weeks, semimonthly, or monthly.

(d) A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the day the program loan is consummated.

(e) Notwithstanding s. 516.031, the maximum annual interest rate that may be charged on a program loan to the borrower on that portion of the unpaid principal balance of the program loan:

1. Up to and including $3,000 is 36 percent.

2. Over $3,000, and up to and including $4,000, is 30 percent.

3. Over $4,000, and up to and including $10,000, is 24 percent.

The original principal amount of the program loan is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the federal Consumer Financial Protection Bureau. In determining compliance with the statutory maximum interest rates in this paragraph, the computations used must be simple interest, through the application of a daily periodic rate to the actual unpaid principal balance each day, and may not be add-on interest or any other computations.

(f) If two or more interest rates are applied to the principal amount of a program loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(g) The program licensee must reduce the rate on each subsequent program loan to the same borrower by a minimum of one-twelfth of 1 percent per month, if all of the following conditions are met:

1. The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid.

2. The borrower was never more than 15 days delinquent on the prior program loan.

3. The prior program loan was outstanding for at least one-

half of its original term before its repayment.

(h) A program licensee may not induce or permit any person to become obligated to the program licensee, directly or contingently, or both, under more than one program loan at the same time with the program licensee.

(i) A program licensee may not refinance a program loan unless all of the following conditions are met at the time the borrower submits an application to refinance:

1. The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan in accordance with s. 516.031(5);

2. For program loans with an original term of less than 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan;

3. For program loans with an original term of greater than 25 months but no more than 60 months, the borrower has made current payments for at least 9 months on his or her program loan;

4. The borrower is current on his or her outstanding program loan; and

5. The program licensee has underwritten the new program loan in accordance with subsection (7).

(j) In lieu of the provisions of s. 687.08, a program licensee or, if applicable, its approved referral partner shall make available to the borrower by either electronic or physical means a plain and complete receipt of payment at the time that a payment is made by the borrower. For audit purposes, a program licensee shall maintain an electronic record for each receipt

made available to a borrower, which must include a copy of the receipt and the date and time that the receipt was generated. Each receipt of payment must show all of the following:

1. The name of the borrower.

2. The name of the referral partner, if applicable.

3. The total payment amount received.

4. The date of payment.

5. The program loan balance before and after application of the payment.

6. The amount of the payment that was applied to the principal, interest, and fees.

7. The type of payment made by the borrower.

8. The following statement, prominently displayed in a type size equal to or greater than the type size used to display the other items on the receipt: "If you have any questions about your loan now or in the future, you should direct those questions to ...(name of program licensee)... by ...(at least two different ways in which a borrower may contact the program licensee)...."

(2) WRITTEN DISCLOSURES.—

(a) Notwithstanding s. 516.15(1), the loan contract and all written disclosures and statements may be provided in English or in the language in which the loan is negotiated. A program licensee shall pay for any translation costs incurred by the office.

(b) A program licensee shall provide those disclosures required of all licensees in s. 516.15.

(3) ORIGINATION FEES.—

(a) Notwithstanding s. 516.031, a program licensee may

contract for and receive an origination fee from a borrower on a program loan. The program licensee may either deduct the origination fee from the principal amount of the loan disbursed to the borrower or capitalize the origination fee into the principal balance of the loan. The origination fee is fully earned and nonrefundable immediately upon the making of the program loan and may not exceed the lesser of 6 percent of the principal amount of the program loan made to the borrower, exclusive of the origination fee, or $75.

(b) A program licensee may not charge a borrower an origination fee more than twice in any 12-month period.

(4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—Notwithstanding s. 516.031, a program licensee approved by the office to participate in the program may:

(a) Require payment from a borrower of no more than $20 for fees incurred by the program licensee from a dishonored payment due to insufficient funds of the borrower.

(b) Notwithstanding s. 516.031(3)(a)9., contract for and receive a delinquency charge of up to $15 for each calendar month for each payment in default for at least 10 days, if the charge is agreed upon in writing between the parties before it is imposed.

The program licensee, or any wholly owned subsidiary of the program licensee, may not sell or assign an unpaid debt to an independent third party for collection purposes unless the debt has been delinquent for at least 30 days.

(5) CREDIT EDUCATION.—Before disbursement of program loan proceeds to the borrower, the program licensee must:

(a) Direct the borrower to the consumer credit counseling services offered by an independent third party; or

(b) Provide a credit education program or materials to the borrower. A borrower is not required to participate in any of these education programs or seminars. A credit education program or seminar offered pursuant to this subsection must be provided at no cost to the borrower.

(6) CREDIT REPORTING.—

(a) The program licensee shall report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. As used in this section, the term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the same meaning as in s. 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

(b) The office may not approve a person for the program before the person has been accepted as a data furnisher by a consumer reporting agency.

(c) The program licensee shall provide each borrower with the name or names of the consumer reporting agency or agencies to which it will report the borrower's payment history.

(7) PROGRAM LOAN UNDERWRITING.—

(a) The program licensee shall underwrite each program loan to determine a borrower's ability and willingness to repay the program loan pursuant to the program loan terms. The program licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered and all outstanding forms of credit that can

be independently verified by the program licensee, exceed 35 percent of the borrower's gross monthly income.

(b)1. The program licensee shall seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee shall verify such information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

2. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

(c) The program licensee shall also verify the borrower's income in determining the debt-to-income ratio using information from:

1. Electronic means or services that provide reliable evidence of the borrower's actual income; or

2. Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(8) PROVISIONS ON WAIVERS.—

(a) A program licensee may not require, as a condition of providing the program loan, that the borrower:

1. Waive any right, penalty, remedy, forum, or procedure

provided for in any law applicable to the program loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the office, any court, or other governmental entity.

2. Agree to the application of laws other than those of this state.

3. Agree to resolve disputes in a jurisdiction outside of this state.

(b) A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable.

(c) A program licensee may not refuse to do business with or discriminate against a borrower or an applicant on the basis of the borrower's or applicant's refusal to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise notify, the office, a court, or any other governmental entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, does not affect any otherwise legal terms of a contract or an agreement.

(d) This subsection does not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute, after a claim or dispute has arisen. This subsection does not affect the enforceability or validity of any other provision of the contract.

Section 5. Section 516.44, Florida Statutes, is created to read:

516.44 Referral partners.—

(1) REFERRAL PARTNER AGREEMENT.—All arrangements between a program licensee and a referral partner must be specified in a written referral partner agreement between the parties. The agreement must contain a provision that the referral partner agrees to comply with this section and all rules adopted under this section regarding the activities of referral partners, and that the office has access to the referral partner's books and records pertaining to the referral partner's operations under the agreement with the program licensee in accordance with s. 516.45(4) and the office may examine the referral partner pursuant to s. 516.45.

(2) AUTHORIZED SERVICES.—A program licensee may use the services of one or more referral partners as provided in this section. A referral partner may perform one or more of the following services for a program licensee:

(a) Distributing, circulating, using, or publishing printed brochures, flyers, fact sheets, or other written materials relating to program loans that the program licensee may make or negotiate. The written materials must be reviewed and approved in writing by the program licensee before being distributed, circulated, used, or published.

(b) Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program licensee or reviewed and approved in writing by the program licensee. A referral partner may discuss the information with a prospective borrower in general terms.

(c) Notifying a prospective borrower of the information

needed in order to complete a program loan application.

(d) Entering information provided by the prospective borrower on a preprinted or an electronic application form or in a preformatted computer database.

(e) Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee.

(f) Contacting the program licensee to determine the status of a program loan application.

(g) Communicating a response that is returned by the program licensee's automated underwriting system to a borrower or a prospective borrower.

(h) Obtaining a borrower's signature on documents prepared by the program licensee and delivering final copies of the documents to the borrower.

(i) Disbursing program loan proceeds to a borrower if this method of disbursement is acceptable to the borrower, subject to the requirements of subsection (3). A loan disbursement made by a referral partner under this paragraph is deemed to be made by the program licensee on the date that the funds are disbursed or otherwise made available by the referral partner to the borrower.

(j) Receiving a program loan payment from the borrower if this method of payment is acceptable to the borrower, subject to the requirements of subsection (3).

(k) Operating an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

(3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

(a) A loan payment made by a borrower to a referral partner under paragraph (2)(j) must be applied to the borrower's program loan and is deemed received by the program licensee as of the date the payment is received by the referral partner.

(b) A referral partner that receives loan payments must deliver or cause to be delivered to the borrower a plain and complete receipt showing all of the information specified in s. 516.43(1)(j) at the time that the payment is made by the borrower.

(c) A borrower who submits a loan payment to a referral partner under this subsection is not liable for a failure or delay by the referral partner in transmitting the payment to the program licensee.

(d) A referral partner that disburses or receives loan payments pursuant to paragraph (2)(i) or paragraph (2)(j) must maintain records of all disbursements made and loan payments received for a period of at least 2 years.

(4) PROHIBITED ACTIVITIES.—A referral partner may not engage in any of the following activities:

(a) Providing counseling or advice to a borrower or prospective borrower with respect to any loan term.

(b) Providing loan-related marketing material that has not previously been approved by the program licensee to a borrower or a prospective borrower.

(c) Negotiating a loan term between a program licensee and a prospective borrower.

(d) Offering information pertaining to a single prospective borrower to more than one program licensee. However, if a program licensee has declined to offer a program loan to a

prospective borrower and has so notified the prospective borrower in writing, the referral partner may then offer information pertaining to that borrower to another program licensee with whom it has a referral partner agreement.

(e) Requiring a borrower to pay any fees or charges other than those permitted under ss. 516.40-516.46 to the referral partner or to any other person in connection with a program loan.

(5) DISCLOSURE NOTICE AND COMMUNICATION.—

(a) At the time the referral partner receives or processes an application for a program loan, the referral partner shall provide the following statement to the applicant on behalf of the program licensee, in no smaller than 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing:

Your loan application has been referred to us by ...(name of referral partner).... We may pay a fee to ...(name of referral partner)... for the successful referral of your loan application. If you are approved for the loan, ...(name of program licensee)... will become your lender. If you have any questions about your loan, now or in the future, you should direct those questions to ...(name of program licensee)... by ...(insert at least two different ways in which a borrower may contact the program licensee).... If you wish to report a complaint about ...(name of referral partner)... or ...(name of program licensee)... regarding this loan transaction, you may contact the

Division of Consumer Finance of the Office of Financial Regulation at 850-487-9687 or http://www.flofr.com.

(b) If the loan applicant has questions about the program loan which the referral partner is not permitted to answer, the referral partner must make a good faith effort to assist the applicant in making direct contact with the program licensee before the program loan is consummated.

(6) COMPENSATION.—

(a) The program licensee may compensate a referral partner in accordance with a written agreement and a compensation schedule that is mutually agreed to by the program licensee and the referral partner, subject to the requirements in paragraph (b).

(b) The compensation of a referral partner by a program licensee is subject to all of the following requirements:

1. Compensation may not be paid to a referral partner in connection with a loan application unless the program loan is consummated.

2. Compensation may not be paid to a referral partner based upon the principal amount of the program loan.

3. Compensation may not be directly or indirectly passed on to a borrower through a fee or other compensation, or a portion of a fee or other compensation, charged to a borrower.

4. Subject to the limitations specified in subparagraphs 1., 2., and 3., the total compensation paid by a program licensee to a referral partner for the services specified in subsection (2) may not exceed the sum of:

a. Sixty dollars per program loan, on average, assessed annually, whether paid at the time of consummation, through installments, or in a manner otherwise agreed upon by the program licensee and the referral partner; and

b. Two dollars per payment received by the referral partner on behalf of the program licensee for the duration of a program loan, if the referral partner receives borrower loan payments on the program licensee's behalf in accordance with subsection (3).

5. The referral partner's location for services and other information required by subsection (7) must be reported to the office.

(c) A program licensee or a referral partner may not pass on to a borrower, whether directly or indirectly, any additional cost or other charge for compensation paid to a referral partner under this program.

(7) NOTICE TO OFFICE.—A program licensee that uses the service of a referral partner must notify the office, in a form and manner prescribed by the commission, within 15 days after entering into a contract with a referral partner regarding all of the following:

(a) The name, business address, and licensing details of the referral partner and all locations at which the referral partner will perform services under this section.

(b) The name and contact information for an employee of the referral partner who is knowledgeable about, and has the authority to execute, the referral partner agreement.

(c) The name and contact information of one or more employees of the referral partner who are responsible for that referral partner's referring activities on behalf of the program

licensee.

(d) A statement by the program licensee that it has conducted due diligence with respect to the referral partner and has confirmed that none of the following applies:

1. The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the referral partner.

2. The commencement of an administrative or judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United States territory, or any foreign country in which the referral partner operates, plans to operate, or is licensed to operate.

3. A felony indictment involving the referral partner or an affiliated party.

4. A felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of the referral partner or an affiliated party.

5. Any suspected criminal act perpetrated in this state relating to activities regulated under this chapter by the referral partner.

6. Notification by a law enforcement or prosecutorial agency that the referral partner is under criminal investigation which includes, but is not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent jurisdiction which authorize the search and seizure of any records relating to a business activity regulated under this chapter.

As used in this paragraph, the term "affiliated party" means a director, an officer, a responsible person, an employee, or a foreign affiliate of a referral partner; or a person who has a controlling interest in a referral partner.

(e) Any other information requested by the office subject to the limitations specified in s. 516.45(4).

(8) NOTICE OF CHANGES.—A referral partner must provide the program licensee with written notice, sent by registered mail, within 30 days after any changes are made to the information specified in paragraphs (7)(a)-(c) or within 30 days after the occurrence or knowledge of any of the events specified in paragraph (7)(d), whichever is later.

(9) RESPONSIBILITY FOR ACTS OF A REFERRAL PARTNER.—A program licensee is responsible for any act of its referral partner if the act is a violation of this chapter.

(10) REFERRAL PARTNER FEE.—The program licensee shall pay to the office at the time it files a referral partner notice with the office a one-time, nonrefundable fee of $30 for each referral partner, as prescribed by commission rule.

Section 6. Section 516.45, Florida Statutes, is created to read:

516.45 Examinations; disciplinary actions.—

(1) Notwithstanding any other law, commencing on January 1, 2019, the office shall examine each program licensee that is accepted into the program in accordance with this chapter at least once every 24 months.

(2) Notwithstanding subsection (1), the office may waive one or more branch office examinations if the office finds that such examinations are not necessary for the protection of the

public due to the centralized operations of the program licensee or other factors acceptable to the office.

(3) The examined program licensee shall pay for the cost of an examination to the office, pursuant to commission rule, and the office may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost of the examination, the office may use the estimated average hourly cost for all persons performing examinations of program licensees or other persons subject to ss. 516.40-516.46 for the fiscal year.

(4) The scope of any investigation or examination of a program licensee or referral partner must be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with this chapter.

(5) A program licensee who violates any applicable provision of this chapter is subject to disciplinary action pursuant to s. 516.07(2). Any such disciplinary action is subject to s. 120.60. A program licensee is also subject to disciplinary action for a violation of s. 516.44 committed by any of its referral partners.

(6) The office may take any of the following actions against a referral partner who violates s. 516.44:

(a) Disqualify the referral partner from performing services under this chapter;

(b) Bar the referral partner from performing services at one or more specific locations of the referral partner;

(c) Terminate a written agreement between a referral partner and a program licensee;

(d) Impose an administrative fine not to exceed $1,000 for

each such act of the referral partner; and

(e) Prohibit program licensees from using the referral partner, if the office deems it to be in the public interest.

Section 7. Section 516.46, Florida Statutes, is created to read:

516.46 Annual reports; reports by the office.—

(1) Beginning in 2020, on or before March 15 of each year, a program licensee shall file a report with the office on each of the items specified in subsection (2), on a form and in a manner as prescribed by commission rule, which contains aggregated or anonymized data without reference to any borrower's nonpublic personal information or any proprietary or trade secret information of the program licensee.

(2) On or before January 1, 2021, the office shall post a report on its website summarizing the use of the program based on the information contained in reports filed by each program licensee under subsection (1). The report must state the information in the aggregate so as not to identify data by specific program licensee and must specify the period to which the report corresponds. The report must include, but not be limited to, the following for that period:

(a) The number of entities that applied to participate in the program.

(b) The number of entities accepted to participate in the program.

(c) The office's reasons for rejecting applications for participation, if applicable. This information must be provided in a manner that does not identify the entity or entities rejected.

(d) The number of program loan applications received by program licensees participating in the program, the number of program loans made under the program, the total amount loaned, the distribution of loan lengths upon origination, and the distribution of interest rates and principal amounts upon origination among those program loans.

(e) The number of borrowers who obtained more than one program loan and the distribution of the number of program loans per borrower.

(f) Of the borrowers who obtained more than one program loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase.

(g) The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-income or moderate-income census tract at the time of their loan applications.

(h) The number of borrowers who obtained program loans for the following purposes, based on borrower responses at the time of their loan applications indicating the primary purpose for which the program loan was obtained:

1. Pay medical expenses.

2. Pay for vehicle repair or a vehicle purchase.

3. Pay bills.

4. Consolidate debt.

5. Build or repair credit history.

6. Pay other expenses.

(i) The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

(j) With respect to refinance program loans, the report must specifically include the following information:

1. The number and percentage of borrowers who applied for a refinance program loan.

2. Of those borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.

(k) The number and type of referral partners used by program licensees.

(l) The number and percentage of borrowers who obtained one or more program loans on which delinquency charges were assessed, the total amount of delinquency charges assessed, and the average delinquency charge assessed by dollar amount and as a percentage of the principal amount loaned.

(m) The performance of program loans under the program as reflected by all of the following:

1. The number and percentage of borrowers who experienced at least one delinquency lasting between 7 and 29 days, and the distribution of principal loan amounts corresponding to those delinquencies.

2. The number and percentage of borrowers who experienced at least one delinquency lasting between 30 and 59 days, and the distribution of principal loan amounts corresponding to those delinquencies.

3. The number and percentage of borrowers who experienced

at least one delinquency lasting 60 days or more, and the distribution of principal loan amounts corresponding to those delinquencies.

(n) The number and types of violations of ss. 516.40-516.46 by referral partners which were documented by the office.

(o) The number and types of violations of ss. 516.40-516.46 by program licensees which were documented by the office.

(p) The number of times that the office disqualified a referral partner from performing services, barred a referral partner from performing services at one or more specific locations of the referral partner, terminated a written agreement between a referral partner and a program licensee, or imposed an administrative penalty.

(q) The number of complaints received by the office about a program licensee or a referral partner and the nature of those complaints.

Section 8. Sections 516.40-516.46, Florida Statutes, are repealed on December 31, 2023, unless reenacted or superseded by another law enacted by the Legislature before that date.

Section 9. This act shall take effect October 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair

Committee on Rules

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #640**, relating to Consumer Finance Loans, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 640
Bill Number (if applicable)

Topic Consumer Finance Loans

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title ASD

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Street

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Tall FL 32301
City *State* *Zip*

Email dobarker@aarp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing AARP Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

640
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consumer Finance

Name Alice Vickers

Job Title Attorney

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Tallahassee FL 32303
City *State* *Zip*

Phone 850 556-3121

Email alicevickers@flaja.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 662
INTRODUCER:	Commerce and Tourism Committee and Senators Stargel and Taddeo
SUBJECT:	Protection for Vulnerable Investors
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Little	McKay	CM	**Fav/CS**
3.	Johnson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 662 authorizes a dealer, investment adviser, or associated person to place a delay on a financial transaction or disbursement when there is a reasonable belief that exploitation of a vulnerable investor has occurred, is occurring, or has been attempted. Such delay expires after 15 business days. However, a dealer, investment adviser, or associated person may extend the delay for up to 10 additional business days if the facts and circumstances continue to support a reasonable belief of exploitation. A court of competent jurisdiction is also authorized to extend or shorten the length of the delay at any time.

Under the bill, dealers and investment advisers must:

- Report suspected abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families (DCF) through the Florida Abuse Hotline;
- Report specified information, on a quarterly basis, to the Office of Financial Regulation (OFR) regarding any delays placed and the outcome of such delays according;
- Provide written notice to all parties authorized to transact business on and trusted contacts on the account associated with a delay;
- Make all records relating to a delay or report available to the OFR upon request; and
- Develop and implement a training policy or program that educates associated persons on the recognition, reporting, and prevention of exploitation.

The bill also requires the OFR to annually report information related to delays placed by dealers and investment advisers.

II. Present Situation:

Financial Exploitation of Seniors

With the aging of the U.S. population, financial exploitation of seniors is a serious and growing problem. Senior financial abuse schemes are a $2.9 billion industry.[1] Financial exploitation is a fast-growing form of abuse of seniors and adults with disabilities. Situations of financial exploitation commonly involve trusted persons in the life of the vulnerable adult. Recent research has found that elder financial exploitation is widespread and expensive, as noted:

- One in nine seniors reported being abused, neglected or exploited in the past 12 months; the rate of financial exploitation is extremely high, with 1 in 20 older adults indicating some form of perceived financial mistreatment occurring in the recent past.
- Elder abuse is vastly under-reported; only one in 44 cases of financial abuse is reported.
- Abused seniors are three times more likely to die and elder abuse victims are four times more likely to go into a nursing home.
- Ninety percent of abusers are family members or trusted others.
- Almost one in ten financial abuse victims will turn to Medicaid as a direct result of their own monies being stolen from them.
- Cognitive impairment and the need for help with activities of daily living make seniors more vulnerable to financial abuse.[2]

Adult Protective Services/Department of Children and Families

The Adult Protective Services (APS) program, under the Department of Children and Families (DCF), is responsible for investigating allegations of abuse, neglect or exploitation, as provided in the Adult Protective Services Act.[3] Section 415.101, F.S., provides that the legislative intent of this act is to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all vulnerable adults in need of them. Further, it is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable adults. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation.

Handling of Allegations of Abuse, Neglect, or Exploitation

The Florida Abuse Hotline, within the DCF, screens allegations of adult abuse, neglect, and exploitation to determine whether the information meets the criteria of an abuse report. The DCF is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, to initiate a protective investigation within 24 hours.[4] Section 415.102, F.S., defines a

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[1] National Conference of State Legislatures, *Financial Crimes against the Elderly*, available at http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2016-legislation.aspx (last visited Feb. 19, 2018).

[2] National Association of Adult Protective Services Association, *Elder Financial Exploitation*, available at http://www.napsa-now.org/policy-advocacy/exploitation/ (last visited Feb. 19, 2018).

[3] Sections 415.101-415.113, F.S.

[4] Section 415.104(1), F.S.

"vulnerable adult" as "a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging."

For each report it receives, the APS must determine whether the person meets the definition of a vulnerable adult and, if so, whether:

- The person is in need of services;
- There is an indication of abuse, neglect, or exploitation; and
- Protective, treatment, or ameliorative services are necessary to safeguard and ensure the vulnerable adult's wellbeing.[5]

If exploitation is determined to have occurred, the APS notifies the appropriate law enforcement agency and the state attorney's office for a possible criminal investigation. The primary function of the APS is to safeguard the vulnerable adult[6] and law enforcement is responsible for criminal investigations. The APS may obtain a court order when a vulnerable adult lacks the capacity to consent or to refuse services in order to safeguard the vulnerable adult and their assets. Currently, the APS cannot place a temporary hold on any financial transaction without a court order.[7]

Mandatory Reporting and Immunity

Section 415.1034, F.S., provides a mandatory requirement for any person to report to the central abuse hotline if they know, have suspicion, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited. Section 415.106, F.S., provides that any person reporting or that participates in a judicial proceeding is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any civil or criminal liability that otherwise might be incurred or imposed.

Access to Records

Section 415.1045, F.S., provides a protective investigator with access to all relevant medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility, unless specifically prohibited by the vulnerable adult who has capacity to consent. The confidentiality of such documents does not constitute grounds for failure to:

- Report as required by s. 415.1034, F.S.;
- Cooperate with the department in its activities under ss. 415.101-415.113, F.S.;
- Give access to such records or documents; or
- Give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

[5] Section 415.104(2), F.S.
[6] Department of Children and Families; Protecting Vulnerable Adults, *available at* http://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults (last visited Feb. 19, 2018).
[7] Department of Children and Families, *Analysis of SB 662* (Dec. 6, 2017) (on file with the Senate Banking and Insurance Committee).

If any person refuses to allow a law enforcement officer or the protective investigator to have access to relevant information, the DCF may petition the court for an order requiring the person to allow access to the record or document. The petition must allege specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to allow access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to allow access to and permit the inspection or copying of the medical, social, or financial record or document.[8]

Release of Confidential Information

In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation are confidential and exempt from public record provisions under s. 119.07(1), F.S. The records may not be disclosed, except as specifically authorized by ss. 415.101-415.113, F.S,[9] which provides a few exceptions. Currently, the DCF may not share information concerning open cases or disposition of cases with any third parties other than law enforcement.[10]

Any person or organization, including the DCF, may petition the court to make public the records of the DCF pertaining to an investigation of alleged abuse, neglect, or exploitation of a vulnerable adult. The court determines whether good cause exists for public access by balancing the best interests of the vulnerable adult together with the privacy right of other persons identified in the reports against the public interest.[11]

Criminal Penalties

Section 415.111, F.S., provides that a person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult, except as provided in ss. 415.101-415.113, F.S., commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

Federal Regulation of Securities

The Securities and Exchange Commission (SEC), created by the federal Securities Act of 1934 (‘34 Act), has broad authority over all aspects of the securities industry, including the power to register, regulate, and oversee broker-dealers, brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs). [12] The New York Stock Exchange, the NASDAQ Stock Market, the Chicago Board of Options, and the Financial Industry Regulatory Authority (FINRA) are forms of SROs.

[8] Section 415.1045(5), F.S.
[9] Section 415.107, F.S.
[10] Department of Children and Families correspondence (Dec. 20, 2017) (on file with Senate Banking and Insurance Committee).
[11] Section 415.1071, F.S.
[12] 15 U.S.C. ss. 78c(4) and 78o; U.S. SECURITIES AND EXCHANGE COMMISSION, *Guide to Broker-Dealer Registration*, http://www.sec.gov/divisions/marketreg/bdguide.htm#II (last visited Feb. 19, 2018).

Generally, any person acting as "broker" or "dealer," as defined in the '34 Act, must be registered with the SEC and must join an SRO, like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. The '34 Act broadly defined "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to persons involved in any of the key aspects of a securities transaction, such as solicitation, negotiation, and execution.[13] A "dealer" is defined as "any person engaged in the business of buying and selling securities… for such person's own account through a broker or otherwise."[14] Certain entities in the securities industry are referred to as "broker-dealers" because the institution is a "broker" when executing trades on behalf of a customer, but is a "dealer" when executing trades for its own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

FINRA Rules

In April 2015, the FINRA launched its Securities Helpline for Seniors, which has highlighted some of the issues firms are facing relating to senior investors, including how firms respond when they suspect a senior customer is being exploited. Two years later, the helpline had fielded more than 8,600 calls and recovered over $4.3 million in voluntary reimbursements from firms to customers.[15] In response to this issue, the FINRA proposed rules addressing financial exploitation of specified adults.

In February 2017, the SEC approved the adoption of a new FINRA Rule 2165[16] (Financial Exploitation of Specified Adults) to allow members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers. The SEC also adopted amendments to FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person (trusted contact) for a customer's account.[17] Rule 2165 and the amendments to Rule 4512 became effective February 5, 2018. Most broker-dealers in the United States are members of FINRA, and therefore subject to FINRA rules and examinations.

Key Provisions of the Rules[18]

The rules provide protections for a specified adult, who is defined as a natural person age 65 or older, or a natural person age 18 or older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. Rule 2165 provides a safe harbor for a member to place a temporary hold on a disbursement of funds

[13] *Id.*
[14] 15 U.S.C. s. 78c(5).
[15] FINRA, *FINRA Receives SEC Approval on Rule Proposal Addressing Financial Exploitation of Seniors, available at* http://www.finra.org/newsroom/2017/finra-receives-sec-approval-rule-proposal-addressing-financial-exploitation-seniors (last visited Feb. 19, 2018).
[16] FINRA, http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=12784 (last visited Feb. 19, 2018).
[17] *See* Securities Exchange Act Release No. 79964 (Feb. 3, 2017), 82 FR 10059 (Feb. 9, 2017) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-039).
[18] FINRA, Frequently Asked Questions Regarding FINRA Rules Relating to Financial Exploitation of Seniors, available at http://www.finra.org/industry/frequently-asked-questions-regarding-finra-rules-relating-financial-exploitation-seniors (last visited Feb. 19, 2018).

or securities from the account of a specified adult if the member reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted. Rule 2165 does not apply to transactions in securities. For example, Rule 2165 would not apply to a customer's order to sell his shares of a stock. However, if a customer requested that the proceeds of a sale of shares of a stock be disbursed out of an account held at a member's business, then Rule 2165 could apply to the disbursement of the proceeds where the customer is a specified adult and there is reasonable belief of financial exploitation.

The FINRA has stated that, where a questionable disbursement involves less than all assets in an account, a member should not place a blanket hold on the entire account. Each disbursement should be analyzed separately. In addition, the FINRA noted that where a disbursement at issue involves all of the assets of the account (*e.g.*, a transfer request), the member must permit disbursements from the account where there is not a reasonable belief of financial exploitation regarding such disbursements (*e.g.*, regular bill payments). The FINRA notes that some members intend, for operational reasons, to place a temporary hold or restrictions on an entire account when they have a reasonable belief of financial exploitation regarding a disbursement or disbursements from the account, but also intend to permit legitimate disbursements from the account in these circumstances. The FINRA believes that placing a temporary hold or restrictions on an entire account but allowing legitimate disbursements from the account is consistent with Rule 2165 and members may proceed in such a manner as long as they have procedures reasonably designed to permit legitimate disbursements. The FINRA emphasizes that a member may not avail itself of the Rule 2165 safe harbor if it blocks disbursements where there is not a reasonable belief of financial exploitation regarding such disbursements.

Florida Regulation of Securities

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker-dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.[19]

In Florida, the Securities and Investor Protection Act, ch. 517, F.S. (act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act. There are 2,607 dealers, 5,984 investment advisers, 10,539 branches, and 319,941 stockbrokers registered in Florida.[20]

[19] U.S. Securities and Exchange Commission, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited Feb. 19, 2018).
[20]Office of Financial Regulation, *Fast Facts*, available at https://www.flofr.com/StaticPages/documents/FastFacts.pdf (Dec. 2017) (last visited Feb. 19, 2018).

The act requires the following individuals or businesses to be registered with the OFR under s. 517.12, F.S., in order to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:[21]

- "Dealers," which include:
  - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
  - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities, which are issued or are proposed to be issued by the issuer.[22]
- "Investment advisers," which:
  - Include any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.[23]
  - Do not include a "federal covered adviser."[24]
- "Associated persons," which, with respect to a federal covered adviser, includes any person who is an investment adviser representative and who has a place of business in this state, and with respect to a dealer or investment adviser, includes any of the following:
  - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
  - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
  - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in s. 517.021, F.S.[25]

III. Effect of Proposed Changes:

Section 1 amends s. 415.1034, F.S., to require dealers, investment advisers, and associated persons to report suspected abuse, neglect, or exploitation of vulnerable adults to the DCF through the Florida Abuse Hotline.

Section 2 creates s. 517.34, F.S., relating to the protection of specified adults.

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[21] Section 517.12(1), F.S.
[22] Section 517.021(6)(a), F.S. The term "dealer", as defined under Florida law, encompasses the definitions of "broker" and "dealer" under federal law.
[23] Section 517.021(14)(a), F.S.
[24] Section 517.021(9) and (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice filing to the OFR. ss. 517.021 and 517.1201, F.S.
[25] Section 517.021(2), F.S.

Definitions

The bill defines the term "specified adult" as "a natural person who is 65 years of age or older or a vulnerable adult as defined in s. 415.102, F.S."[26] The bill also creates definitions for the terms "exploitation," "law enforcement agency," and "trusted contact."

Delays

A dealer, investment adviser, or associated person may place a delay on a transaction or disbursement related to an account of a specified adult if the dealer, investment adviser, or associated person reasonably believes that the specified adult is being or has been financially exploited. The dealer, investment adviser, or associated person (reporting party) is required to notify the DCF of the suspected exploitation through the agency's abuse hotline.

Within 3 days of placing a delay, the reporting party must provide written notification to all parties authorized to transact business on the account and any trusted contact on the account, unless the parties are believed to be involved in the suspected exploitation. At minimum, this notification must include a description of the transaction or disbursement, a statement that a delay was placed, the basis for the reasonable belief of exploitation, and an explanation of the delay process.

A delay expires 15 business days after the date the delay is placed. However, the dealer, investment adviser, or associated person may extend the delay up to an additional 10 business days if a review of the available facts and circumstances continue to support the reasonable belief of exploitation. The length of the delay may also be shortened or extended by a court of competent jurisdiction.

Reporting Requirements and Access to Records

A dealer, investment adviser, or associated person must provide notification quarterly to the OFR regarding any delays placed and the outcome of such delays. Upon request, a dealer or investment adviser must also make additional information related to delays or reports available to the OFR.

The quarterly notification provided to the OFR should not contain information identifying the specified adult or other involved parties. The notification must include:

- The name of the firm and person placing the delay on the transaction or disbursement;
- A general description of the reason for placing the delay; and
- The length of the delay and whether the transaction or disbursement ultimately took place.

By October 1 of each year, the OFR is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must summarize the information from the quarterly reports of dealers, investment advisers, and associated persons during the previous fiscal year. The bill provides that this reporting requirement will expire on October 1, 2023.

[26] Section 415.102, F.S., defines a "vulnerable adult" as "a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging."

Under the bill, a dealer, investment adviser, or associated person may provide access to, or copies of, any records that are relevant to the suspected exploitation to the DCF or a law enforcement agency. Notwithstanding any law to the contrary, the DCF may inform the reporting party on the status of its investigation or any final disposition.

Immunity

Absent clear and convincing evidence of a lack of reasonable belief, the bill provides civil and administrative immunity to a dealer, investment adviser, or associated person who acts in accordance with the provisions of the bill. The bill does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules. The bill does not limit the right of a dealer, investment adviser, or associated person to refuse or place a delay on a transaction under other laws or rules or under a customer agreement.

Training

Dealers and investment advisers who place delays according to the provisions of the bill, must develop and implement a training process to educate associated persons on the recognition, reporting, and prevention of exploitation. Associated persons are required to receive a minimum of 1 hour of training and dealers and investment advisers are required to maintain a written record of compliance with the training requirements.

Under the bill, associated persons must be initially trained by July 1, 2019, and newly hired associated persons must be trained within 3 months after beginning employment. The bill requires all associated persons to be subsequently trained every 2 years.

Section 3 provides the bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. However, the bill will provide additional tools for dealers, investment advisers, and associated persons to protect their senior and other specified adult clients from alleged financial exploitation in a more effective and expedient manner.

C. Government Sector Impact:

Office of Financial Regulation. To implement the bill, the OFR expects to incur costs of approximately $177,500 to update its existing technology system and to hire one FTE as a Financial Specialist.

Department of Children and Families. The DCF does not anticipate incurring additional costs associated with handling reports of suspected abuse, neglect, or exploitation to the Florida Abuse Hotline.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 415.1034 of the Florida Statutes.
This bill creates section 517.34 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 Commerce and Tourism on February 20, 2018:
The committee substitute:

- Provides definitions for the terms "exploitation" and "trusted contact" and removes the definition for the term "records;"
- Establishes that dealers, investment advisers, and associated persons have the authority to delay a transaction under a reasonable belief of exploitation, rather than a good faith belief;
- Requires dealers and investment advisers to:
  - Report suspected abuse, neglect, or exploitation of vulnerable adults to the DCF's central abuse hotline;
  - Report specified information, on a quarterly basis, to the OFR regarding any delays placed and the outcome of such delays according;
  - Make all records relating to a delay or report available to the OFR upon request;
  - Provide written notice to all parties authorized to transact business an account associated with a delay; and

    - Develop and implement a training process to educate associated persons on the recognition, reporting, and prevention of exploitation.
- Removes the provision allowing the DCF or other agencies of competent jurisdiction to shorten or extend the length of a delay on a transaction;
- Requires the OFR to annually report information related to delays placed by dealers and investment advisers to the Legislature; and
- Provides civil and administrative immunity for individuals who place a delay pursuant to the provisions in the bill, unless a lack of reasonable belief is shown by clear and convincing evidence.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senators Stargel and Taddeo

577-03439-18 2018662c1

A bill to be entitled

An act relating to protection for vulnerable investors; amending s. 415.1034, F.S.; requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; creating s. 517.34, F.S.; defining terms; authorizing dealers, investment advisers, and associated persons to delay certain transactions or disbursements if such persons reasonably believe certain exploitation of a specified adult has occurred, is occurring, has been attempted, or will be attempted; providing the basis for such reasonable belief; requiring a dealer or investment adviser to provide the Office of Financial Regulation a specified notice at certain timeframes; requiring the Financial Services Commission to adopt a form by rule; requiring the office to submit an annual report to the Governor and Legislature; providing for expiration; specifying notification requirements for dealers, investment advisers, and associated persons placing delays on transactions or disbursements; specifying the expiration of such delays; providing that such delays may be extended for a certain timeframe under certain circumstances; providing that such delays may be shortened or extended by an agency or court of competent jurisdiction; providing that delays may be terminated by dealers, investment

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577-03439-18 2018662c1

advisers, or associated persons under certain circumstances; specifying when certain records may or must be shared with certain agencies; authorizing the Department of Children and Families to inform reporting parties on the status of an investigation; providing immunity from civil and administrative liability to dealers, investment advisers, and associated persons for certain actions based on a reasonable belief; specifying requirements for dealers and investment advisers in training their associated persons; providing construction; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

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4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. Employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council or Disability Rights Florida member or a representative of the State Long-Term Care Ombudsman Program; ~~or~~

8. Bank, savings and loan, or credit union officer, trustee, or employee; or

9. Dealer, investment adviser, or associated person under chapter 517,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

Section 2. Section 517.34, Florida Statutes, is created to read:

517.34 Protection of specified adults.—

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

(a)1. "Exploitation" means:

a. With respect to a person who stands in a position of trust and confidence with a specified adult, who knowingly, by deception or intimidation, obtains or uses, or endeavors to

obtain or use, the specified adult's funds, assets, or property with the intent to temporarily or permanently deprive the specified adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the specified adult; or

b. With respect to a person who knows or should know that a specified adult lacks the capacity to consent, who obtains or uses, or endeavors to obtain or use, the specified adult's funds, assets, or property with the intent to temporarily or permanently deprive the specified adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the specified adult.

2. "Exploitation" may include, but is not limited to:

a. A breach of a fiduciary relationship, such as the misuse of a power of attorney or the abuse of guardianship duties resulting in the unauthorized appropriation, sale, or transfer of property;

b. An unauthorized taking of personal assets;

c. Misappropriation, misuse, or transfer of moneys belonging to a specified adult from a personal or joint account; or

d. Intentional or negligent failure to effectively use a specified adult's income and assets for the necessities required for that person's support and maintenance.

(b) "Law enforcement agency" means an agency or political subdivision of this state or of the United States whose primary responsibility is the prevention and detection of crime or the enforcement of the penal laws of this state or the United States and whose agents and officers are empowered by law to conduct

criminal investigations or to make arrests.

(c) "Specified adult" means a natural person 65 years of age or older or a vulnerable adult as defined in s. 415.102.

(d) "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified in writing as a person who may be contacted about the account.

(2) A dealer, investment adviser, or associated person may delay a transaction on, or a disbursement of funds or securities from, an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if the dealer, investment adviser, or associated person reasonably believes that exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the transaction or disbursement.

(a) The dealer's, investment adviser's, or associated person's reasonable belief may be based on the facts and circumstances observed in such dealer's, investment adviser's, or associated person's business relationship with the specified adult.

(b)1. A dealer or investment adviser must notify the office, on a quarterly basis and on a form adopted by commission rule, of every delay he or she places and the outcome of such delay. The notice may not directly or indirectly identify the specified adult or the parties to the transaction or disbursement. The notice must include:

a. The name of the firm and dealer, investment adviser, or associated person placing the delay on the transaction or disbursement.

b. A general description of the reason why the dealer,

investment adviser, or associated person placed the delay on the transaction or disbursement.

c. The length of the delay on the transaction or disbursement and whether or not the transaction or disbursement ultimately took place.

2. On or before October 1 of each year, the office must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives summarizing the information provided to the office by dealers, investment advisers, and associated persons under subparagraph 1. during the prior fiscal year. This subparagraph expires October 1, 2023.

(c)1. Within 3 business days after the date on which the delay was first placed, the dealer, investment adviser, or associated person must notify in writing, which may be provided electronically, all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, unless the dealer, investment adviser, or associated person reasonably believes that any such party engaged or is engaging in the suspected exploitation of the specified adult.

2. The notice provided pursuant to this paragraph must include, at a minimum, a description of the transaction or disbursement, a statement that a delay was placed on such transaction or disbursement pursuant to this section, the basis for the reasonable belief regarding exploitation of the specified adult, and an explanation of the delay process.

(3) A delay on a transaction or disbursement under subsection (2) expires 15 business days after the date on which

the delay was first placed. However, a dealer, investment adviser, or associated person may extend the delay for up to 10 additional business days if its review of the available facts and circumstances continues to support its reasonable belief that exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended at any time by an agency or court of competent jurisdiction. This subsection does not prevent a dealer, investment adviser, or associated person from terminating a delay after communication with the specified adult or trusted contact.

(4) A dealer, investment adviser, or associated person may provide access to or copies of any records that are relevant to the suspected exploitation of a specified adult to the Department of Children and Families or a law enforcement agency at their request. The records may include records of prior transactions or disbursements, in addition to the transactions or disbursements comprising the suspected exploitation. A dealer, investment adviser, or associated person subject to the jurisdiction of the office must make available to the office, upon request, all records relating to a delay or report made by the dealer, investment adviser, or associated person pursuant to this section.

(5) Notwithstanding any law to the contrary, the Department of Children and Families may inform the reporting party on the status of an investigation initiated under this section and any final disposition.

(6) A dealer, investment adviser, or associated person who delays a transaction or disbursement pursuant to this section,

who provides records to an agency of competent jurisdiction pursuant to this section, or who participates in a judicial or arbitration proceeding resulting therefrom is presumed to be acting based upon a reasonable belief and is immune from any civil or administrative liability that otherwise might be incurred or imposed, unless lack of such reasonable belief is shown by clear and convincing evidence. This subsection does not supersede or diminish any immunity in chapter 415.

(7) A dealer or investment adviser relying on this section must develop training policies or programs designed to educate associated persons on issues pertaining to exploitation and must conduct training of all associated persons accordingly. The dealer or investment adviser must initially train all of its associated persons by July 1, 2019, must train any newly hired associated persons within 3 months after beginning employment, and must subsequently train all associated persons every 2 years thereafter. The training policies and programs must provide for the associated person to receive a minimum of 1 hour of such training, which must include recognition of indicators of exploitation, the manner in which suspected exploitation must be reported to supervisory personnel and to the appropriate regulatory and law enforcement agencies, and steps that may be taken to prevent exploitation. The dealer or investment adviser must maintain a written record of compliance with this subsection.

(8) This section does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules. In addition, this section does not limit the right of a dealer, investment adviser, or

associated person to otherwise refuse or place a delay on a transaction or disbursement under other applicable laws or rules or under an applicable customer agreement.

(9) This section does not alter a dealer's, investment adviser's, or associated person's obligation to comply with instructions from a client to close an account or transfer an account to another dealer, investment adviser, or associated person absent a reasonable belief of exploitation as provided in this section.

Section 3. This act shall take effect July 1, 2018.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

662

Meeting Date | *Bill Number (if applicable)*

Topic Vulnerable Investor protection

Amendment Barcode (if applicable)

Name Sean Stafford

Job Title

Address 115 E. Park Ave *Street* Phone 727-5000

City *State* *Zip* Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLA. Securities Dealers Assn / Financial Svcs 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)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/01/2018
Meeting Date

662
Bill Number (if applicable)

Topic Protection for Vulnerable Investors

Amendment Barcode (if applicable)

Name Warren Husband

Job Title

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee FL 32302
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Securities Industry and Financial Markets 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)

W/D

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

662
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Speaking on SB 662

Name Jamie Mongiovi (MON - JOE - VEE)

Job Title Dir., Communications & Govt. Relations

Address FL Office of Financial Regulation *Street*

Phone 850-559-7003

Tallahassee *City* FL *State* 32399 *Zip*

Email jamie.mongiovi@flofr.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing FL 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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 720
INTRODUCER:	Senators Young and Campbell
SUBJECT:	Children's Initiatives
DATE:	February 28, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Favorable**
2.	Cochran	Yeatman	CA	**Favorable**
3.	Preston	Phelps	RC	**Favorable**

I. Summary:

SB 720 codifies the Tampa Sulphur Springs Neighborhood Promise Zone and the Overtown Children and Youth Coaltion in Miami that are currently in existence and have been designated by the Ounce of Prevention Fund (Ounce) as a Florida children's initiative pursuant to section 409.147, F.S. The bill provides that the initiatives are designed to encompass an area large enough to include all necessary components of community life, but small enough to reach every member of each neighborhood who wishes to participate.

II. Present Situation:

Harlem Children's Zone

The Harlem Children's Zone (HCZ) began in 1970 as an organization working with young children and their families as the city's first truancy-prevention program.[1] In the early 1990s, the HCZ ran a pilot project that brought a range of support services to a single block. The idea was to address all the problems that poor families were facing including crumbling apartments, failing schools, violent crime, and chronic health problems.[2]

Believing that for children to do well, their families have to do well, and for families to do well, their community must do well, the HCZ works to strengthen families as well as empowering them to have a positive impact on their children's development. The two fundamental principles of the HCZ are to help kids in a sustained way, starting as early in their lives as possible, and to create a critical mass of adults around them who understand what it takes to help children succeed.[3]

[1] Harlem Children's Zone, *available at* http://www.hcz.org/index.php/about-us/history/ (last visited January 18, 2018). The organization was then known as the Rheedlen Centers for Children and Families.
[2] *Id*.
[3] Harlem Children's Zone, *available at* https://hcz.org/about-us/ (last visited January 18, 2018).

The HCZ Project began as a one-block pilot in the 1990s, then following a 10-year business plan to ensure its best-practice programs were operating as planned, it expanded to 24 blocks, then 60 blocks, then ultimately 97 blocks. The HCZ became a model among nonprofits that began carefully evaluating and tracking the results of their work. Those evaluation results enabled staff to see if programs were achieving their objectives and to take corrective actions if they were not.[4]

Children's Zones in Florida

Using the Harlem Children's Zone as a model, the Legislature created children's zones in Florida in 2008.[5] The stated policy and purpose for the zones was:

> It is the policy of this state to provide the necessary means to assist local communities, the children and families who live in those communities, and the private sector in creating a sound educational, social, and economic environment. To achieve this objective, the state intends to provide investments sufficient to encourage community partners to commit financial and other resources to severely disadvantaged areas. The purpose of this section is to establish a process that clearly identifies the severely disadvantaged areas and provides guidance for developing a new social service paradigm that systematically coordinates programs that address the critical needs of children and their families and for directing efforts to rebuild the basic infrastructure of the community. The Legislature, therefore, declares the creation of children's zones, through the collaborative efforts of government and the private sector, to be a public purpose.[6]

The 2008 legislation and the amending 2009 legislation relating to children's initiatives also contained the following provisions:[7]

- Created a nominating process for areas within communities to be designated as children's zones and provided for the creation of a planning team, a strategic community plan, and focus areas to be included in the plan;
- Required the creation of a not for profit corporation to implement and govern a designated children's zone;
- Created a ten-year project within the Liberty City neighborhood in Miami to be known as the Miami Children's Initiative (MCI); and

[4] *Id*.
[5] Chapter 2008-96, Laws of Fla. In 2009, the term "children's zone" was changed to "children's initiative." Shortly after the 2008 legislation was signed into law, the HCZ notified the Florida Legislature that they had trademarked the term "children's zone" and the state was no longer able to use the term. Chapter 2009-43, Laws of Fla.
[6] *Id*.
[7] Section 409.147, F.S., provides that a county or municipality or other designated area may apply to the Ounce to designate an area as a children's initiative. The area must first adopt a resolution stating that the area has issues related to poverty, that changes are necessary for the area to improve, and that resources are necessary for revitalization of the area. The county or municipality must then establish a children's initiative planning team and develop and adopt a strategic community plan. Once a county or municipality has completed these steps, they must create a not-for-profit corporation to facilitate fundraising and secure broad community ownership of the children's initiative. The Ounce is a private, nonprofit corporation dedicated to shaping prevention policy and investing in innovative prevention programs that provide measurable benefits to Florida's children, families and communities.

- Required the Department of Children and Families to contract with an existing private nonprofit corporation, incorporated for certain specified purposes, to implement the newly created Miami Children's Initiative.[8]

Florida children's initiatives were created to assist disadvantaged areas within the state in creating a community-based service network that develops, coordinates, and provides quality education, accessible health care, youth development programs, opportunities for employment, and safe and affordable housing for children and families living within its boundaries. There are currently three Florida children's initiatives that have been recognized in statute; the Miami Children's Initiative, Inc., the New Town Success Zone in Jacksonville, and the Parramore Kidz Zone in Orlando.[9]

Miami Children's Initiative

The idea for the Miami Children's Initiative dates back to 2006, when a group of Liberty City community leaders, local politicians and residents came together to try and determine possible solutions to perceived problems in the community. Liberty City was once a thriving neighborhood for many African Americans, but the high concentration of low-income housing projects, the exit of the area's businesses, increased joblessness, low performing schools, growing poverty, crime, juvenile delinquency, drugs and poor health had eroded the quality of life.[10]

Creation of the MCI in 2008 brought residents and local business people, as well as leaders in health care, education and human services, together to begin to formulate the foundation for this community-wide initiative. Today, the initiative has grown to include early childhood programs, K-12 programs, student enrichment and development programs, an asthma initiative, a fresh food co-op, community vegetable gardens and a gym and fitness facility.[11]

New Town Success Zone

After a trip by city officials to Harlem and a review of a number of Jacksonville neighborhoods, the New Town community was selected by community leadership of Jacksonville in 2008 as the site for a Florida children's initiative. In 2009, a strategic plan was developed and work began on the New Town Success Zone.[12] The initiative's mission is to provide a place-based continuum of services from prenatal to college, the military or some form of postsecondary training for the children and their families living in the neighborhood.[13] In the first five year report to the community, the New Town Success Zone has reported higher FCAT scores, an improvement in school promotion rates, and a reduction in violent crimes, theft and truancy since 2008.[14]

[8] Chapter 2009-43, Laws of Fla.
[9] Section 409.147, F.S.
[10] Miami Children's Initiative, *available at*: http://www.iamlibertycity.org/ (last visited January 18,2018).
[11] Miami Children's Initiative, *available at*: http://www.iamlibertycity.org/our-work/our-work (last visited January 18, 2018).
[12] The New Town Success Zone, *available at:* http://jaxkids.org/afterschool-summer/new-town-success-zone/. *Also see*: New Town Success Zone Five Years Later, available at: http://www.metrojacksonville.com/article/2013-may-new-town-success-zone-five-years-later (last visited January 18, 2018).
[13] *Id*.
[14] New Town Success Zone, Five Year Report to the Community, *available at*: https://issuu.com/jermynshannonel/docs/newtown_5yr_report (last visited January 18, 2018)

Parramore Kidz Zone

The Parramore Kidz Zone (PKZ) was launched by the City of Orlando on July 1, 2006, as part of a comprehensive effort to revitalize Orlando's highest crime, highest poverty neighborhood. The Parramore Kidz Zone replicates some aspects of the Harlem Children's Zone to create positive child-rearing conditions that will result in lower teen pregnancy rates, improved school performance, and decreased juvenile crime and child abuse rates. The Parramore Kidz Zone was implemented by a coalition of nonprofit organizations and neighborhood residents and was designated by the Ounce as a Florida children's initiative in June 2009.[15] The initiative was designed to invest in those things that make a difference in children's lives, such as quality early childhood education, after school programs, programs that build family economic success, youth development programs for teenagers, access to health care, and mentoring.[16]

Since 2006, program evaluators have documented a 61% decline in juvenile arrests, a 56% decline in teen pregnancies, and a 38% decline in child abuse cases in the neighborhood since PKZ started, as well as across-the-board increases in the percentage of elementary, middle and high school students performing at grade level in math and reading. Every year the number of Parramore youth who attend college increases. Today, 70 PKZ youth are in college, all of whom are the first generation in their families to attend.[17]

III. Effect of Proposed Changes:

Section 1 amends s. 409.147, F.S., relating to children's initiatives, to add the Tampa Sulphur Springs Neighborhood of Promise Success Zone and the Overtown Children and Youth Coalition as entities designated by the Ounce of Prevention Fund as children's initiatives.

The bill provides that the initiatives are subject to Florida public records laws, public meeting laws, and procurement laws, and that the initiatives are designed to encompass an area large enough to include all necessary components of community life, but small enough to reach every member of each neighborhood who wishes to participate.

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[15] The Ounce of Prevention Fund of Florida, Parramore Kidz Zone, *available at*: https://www.ounce.org/fci_communities.html (last visited January 18, 2018).
[16] City of Orlando, Parramore Kidz Zone, available at: http://www.cityoforlando.net/parramorekidzzone/ (last visited January 18, 2018).
[17] *Id*.

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:

The bill substantially amends s. 409.147 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Young

18-00403-18 2018720__

A bill to be entitled

An act relating to children's initiatives; amending s. 409.147, F.S.; creating the Tampa Sulphur Springs Neighborhood of Promise Success Zone within the City of Tampa in Hillsborough County and the Overtown Children and Youth Coalition within the City of Miami in Miami-Dade County; providing for the projects to be managed by not-for-profit corporations that are not subject to control, supervision, or direction by any department of the state; providing legislative intent; requiring the corporations to be subject to public records and public meeting requirements and to requirements for the procurement of commodities and contractual services; providing that the success zone and the coalition are designed to encompass areas large enough to include certain components but small enough to allow programs and services to reach participants; providing implementation of the coalition and the success zone; providing an effective date.

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

Section 1. Present subsection (11) of section 409.147, Florida Statutes, is redesignated as subsection (13) and amended, and a new subsection (11) and subsection (12) are added to that section, to read:

409.147 Children's initiatives.—

(11) CREATION OF THE TAMPA SULPHUR SPRINGS NEIGHBORHOOD OF PROMISE (SSNOP) SUCCESS ZONE.—

(a) There is created within the City of Tampa in Hillsborough County a 10-year project that shall be managed by an entity organized as a not-for-profit corporation that is registered, incorporated, organized, and operated in compliance with chapter 617. The Tampa SSNOP Success Zone is not subject to control, supervision, or direction by any department of the state in any manner. The Legislature determines, however, that public policy dictates that the corporation operate in the most open and accessible manner consistent with its public purpose. Therefore, the Legislature declares that the corporation is subject to chapter 119, relating to public records, chapter 286, relating to public meetings and records, and chapter 287, relating to procurement of commodities or contractual services.

(b) This initiative is designed to encompass an area that is large enough to include all of the necessary components of community life, including, but not limited to, schools, places of worship, recreational facilities, commercial areas, and common space, yet small enough to allow programs and services to reach every member of the neighborhood who is willing to participate in the project.

(12) CREATION OF THE OVERTOWN CHILDREN AND YOUTH COALITION.—

(a) There is created within the City of Miami in Miami-Dade County a 10-year project that shall be managed by an entity organized as a not-for-profit corporation that is registered, incorporated, organized, and operated in compliance with chapter 617. The Overtown Children and Youth Coalition is not subject to control, supervision, or direction by any department of the

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

state in any manner. The Legislature determines, however, that public policy dictates that the corporation operate in the most open and accessible manner consistent with its public purpose. Therefore, the Legislature declares that the corporation is subject to chapter 119, relating to public records, chapter 286, relating to public meetings and records, and chapter 287, relating to procurement of commodities or contractual services.

(b) This initiative is designed to encompass an area that is large enough to include all of the necessary components of community life, including, but not limited to, schools, places of worship, recreational facilities, commercial areas, and common space, yet small enough to allow programs and services to reach every member of the neighborhood who is willing to participate in the project.

(13)~~(11)~~ IMPLEMENTATION.—

(a) The Miami Children's Initiative, Inc., the New Town Success Zone, ~~and~~ the Parramore Kidz Zone, the Tampa SSNOP Success Zone, and the Overtown Children and Youth Coalition have been designated as Florida Children's Initiatives consistent with the legislative intent and purpose of s. 16, chapter 2009-43, Laws of Florida, and as such shall each assist the disadvantaged areas of the state in creating a community-based service network and programming that develops, coordinates, and provides quality education, accessible health care, youth development programs, opportunities for employment, and safe and affordable housing for children and families living within their boundaries.

(b) In order to implement this section for the Miami Children's Initiative, Inc., the Department of Children and

Families shall contract with a not-for-profit corporation, to work in collaboration with the governing body to adopt the resolution described in subsection (4), to establish the planning team as provided in subsection (5), and to develop and adopt the strategic community plan as provided in subsection (6). The not-for-profit corporation is also responsible for the development of a business plan and for the evaluation, fiscal management, and oversight of the Miami Children's Initiative, Inc.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

January 24, 2018

Senator Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 720 relating to Children's Initiatives has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

This bill adds both Tampa Sulphur Springs and Miami Overton to the program.

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

Sincerely,

Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Senate Rules Committee

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

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

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 756
INTRODUCER:	Rules Committee and Senator Grimsley
SUBJECT:	Unfair Insurance Trade Practices
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Favorable**
2.	Little	McKay	CM	**Favorable**
3.	Knudson	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 756 creates an exemption from the Unfair Insurance Trade Practices Act. Under the bill, an insurer may refuse to insure a person for failure to purchase motor vehicle services from a membership organization that, as of January 1, 2018, is affiliated with an admitted property and casualty insurer.

II. Present Situation:

The Unfair Insurance Trade Practices Act[1] (Act) regulates trade practices relating to insurance by prohibiting all practices, which constitute unfair methods of competition, or unfair or deceptive acts or practices.[2] The prohibited practices are set forth primarily[3] in s. 626.9541, F.S., examples of which include false advertising, unfair discrimination in issuing coverage or calculating rates, unfair claim settlement practices, and unlawful inducement to purchase insurance by providing securities or unlawful rebates.

[1] Sections 626.951–626.99, F.S.

[2] Section 626.951, F.S.

[3] Examples of other practices prohibited by the Act include but are not limited to coercing a person to use a particular insurer as a condition of lending money or credit (s. 626.9551, F.S.), failing to allow Holocaust victims to make insurance claims irrespective of a statute of limitations under a reasonable standard of proof and failing to diligently and expeditiously investigate all such claims (s. 626.9543, F.S.), increasing motor vehicle insurance rates or refusing to issue such coverage because of certain minor traffic violations (s. 626.9702, F.S.), refusing to issue a life insurance or disability insurance policy or issuing such policy at a rate higher than permitted by statute because the policyholder has a severe disability or sickle-cell trait. (ss. 626.9705, 626.9706, and 626.9707, F.S.).

Current law prohibits an insurer from refusing to insure an individual or risk solely because the insured or applicant fails to purchase noninsurance services or commodities, including automobile services.[4] Motor vehicle services are described in s. 624.124, F.S., which allows any person to sell the following motor vehicle related services without being deemed an insurer and without being subject to the Florida Insurance Code:

- Towing service.
- Procuring from an insurer group coverage for bail and arrest bonds or for accidental death and dismemberment.
- Emergency service.
- Procuring prepaid legal services, or providing reimbursement for legal services, except that this is not an exemption from the legal expense insurance requirements of ch. 642, F.S.
- Offering assistance in locating or recovering stolen or missing motor vehicles.
- Paying emergency living and transportation expenses of the owner of a damaged motor vehicle.

The Act is enforced by the Department of Financial Services (DFS) and Office of Insurance Regulation (OIR), which, within their respective regulatory jurisdictions, have authority to examine and investigate every person involved in the business of insurance to determine compliance.[5] Each non-willful violation of the act is subject to a fine of $5,000, up to an aggregate of $20,000. Each willful violation is subject to a fine of $40,000, up to an aggregate of $200,000.[6] Certain prohibited actions are subject to higher fines.[7]

The OIR and DFS each have authority to conduct a hearing in accordance with ch. 120, F.S., when there is reason to believe that a person has engaged, or is engaging in, an unfair or deceptive trade practice prohibited by s. 626.9541, F.S., or s. 626.9551, F.S., or is engaging in the business of insurance without a license.[8] Upon a final order that a person has engaged in an unfair or deceptive act, or that a person is unlawfully transacting insurance, the OIR or DFS must enter a cease and desist order.[9] The OIR and DFS may also suspend or revoke a certificate of authority, license, or eligibility for a certificate of authority or license if the violator knew, or reasonably should have known, he or she violated the Act.[10]

III. Effect of Proposed Changes:

The bill creates an exemption from the Unfair Insurance Trade Practices Act that will allow an insurer to refuse to insure a person who fails to purchase motor vehicle services from a membership organization that, as of January 1, 2018, is affiliated with an admitted property and casualty insurer.

The bill takes effect on July 1, 2018.

[4] Section 626.9541(1)(x)4., F.S.
[5] Section 626.9561, F.S.
[6] Section 626.9521(2), F.S.
[7] *See* s. 626.9521(3), F.S.
[8] Section 626.9571, F.S.
[9] Section 626.9581, F.S.
[10] Section 626.9601, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows insurers to sell motor vehicle insurance only to persons who purchase motor vehicle services from a membership organization that, as of January 1, 2018, is affiliated with an admitted property and casualty insurer. This may result in more motor vehicle insurance companies that require policyholders to purchase motor vehicle services from an affiliated membership organization.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.9541 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules Committee on March 1, 2018:

- The CS deletes the requirement in the previous version of the bill that applies the exemption created by the bill to motor vehicle services purchased from a membership organization that, since January 1, 2018, has more than 1 million members in this state since January 1, 2018.
- The CS also revises the requirement that the membership organization be affiliated with an admitted insurer to require affiliation with an admitted property and casualty insurer.

B. Amendments:

None.

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

339504

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Grimsley) recommended the following:

Senate Amendment

Delete lines 37 - 38
and insert:
as of January 1, 2018, is affiliated with an admitted property and casualty insurer;

By Senator Grimsley

26-00813A-18 2018756__

A bill to be entitled

An act relating to unfair insurance trade practices; amending s. 626.9541, F.S.; authorizing insurers to refuse to insure or refuse to continue to insure an applicant or insured for failing to purchase certain noninsurance motor vehicle services; providing an effective date.

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

Section 1. Paragraph (x) 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:

(x) *Refusal to insure.*—In addition to other provisions of this code, the refusal to insure, or continue to insure, any individual or risk solely because of:

1. Race, color, creed, marital status, sex, or national origin;

2. The residence, age, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, or lawful occupation of the individual or the location of the risk and the coverage issued or to be issued;

3. The insured's or applicant's failure to agree to place collateral business with any insurer, unless the coverage

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

26-00813A-18 2018756__

applied for would provide liability coverage which is excess over that provided in policies maintained on property or motor vehicles;

4. The insured's or applicant's failure to purchase noninsurance services or commodities, including motor vehicle ~~automobile~~ services as defined in s. 624.124 except for motor vehicle services purchased from a membership organization that, since January 1, 2018, has more than 1 million members in this state and is affiliated with an admitted insurer;

5. The fact that the insured or applicant is a public official; or

6. The fact that the insured or applicant had been previously refused insurance coverage by any insurer, when such refusal to insure or continue to insure for this reason occurs with such frequency as to indicate a general business practice.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #756**, relating to Unfair Insurance Trade Practices, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Denise Grimsley

Senator Denise Grimsley
Florida Senate, District 26

cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 756
Bill Number (if applicable)

Topic SB 756

Amendment Barcode (if applicable)

Name Heather Drake

Job Title VP Govt. Relations, AIAA

Address 120 W. Washington Sq.
Street

Phone 517 896 2029

Lansing, MI 48933
City *State* *Zip*

Email hkdrake@aaamichigan.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AIAA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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 762
INTRODUCER:	Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Mayfield
SUBJECT:	Permissible Insurance Acts
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Little	McKay	CM	**Fav/CS**
3.	Matiyow	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 762 amends the Unfair Insurance Trade Practices Act to allow insurers or their agents to give gifts, certain services, donations, or other items not exceeding $100 in value per calendar year to insureds, prospective insureds, and others.

Current law limits the gifting of promotional merchandise to $25 or less per gift to an insured, prospective insured, or any person, for the purpose of advertising. There is no limit on the frequency of giving or the aggregate value of advertising merchandise given over any period of time. The bill specifies that insurers or their agents are allowed to either give a gift to or make a charitable contribution on behalf of insureds, prospective insureds, or others. The gift or donation may not exceed a value of $100 per calendar year, per insured or prospective insured.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate $25 gift value per calendar year, rather than a limit of $25 per gift with no annual aggregate limitation.

The bill is effective July 1, 2018.

II. Present Situation:

The Unfair Insurance Trade Practices Act[1] (Act) prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance. The Act prohibits certain inducements for the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to prospective insurance purchasers. However, the Act also provides exceptions to these provisions.

The Act allows a licensed insurer or its agent to provide a gift for the purpose of advertising to insureds, prospective insureds, and others in the form of any article of merchandise having a value of not more than $25.[2] Such gifts are exceptions to the Act's prohibitions against issuing specified stock, benefit certificates, shares, securities, or contracts as an inducement to insurance;[3] engaging in specified acts of unfair discrimination;[4] and providing unlawful rebates. While the exception restricts the value of the advertising gift, it does not limit the frequency of giving or the aggregate value of gifts given over any period of time.

III. Effect of Proposed Changes:

Section 1 amends s. 626.9541(1)(m), F.S., regarding advertising gifts permitted under the Unfair Insurance Trade Practices Act. The bill allows insurers or their agents to either make a gift to or make a charitable contribution on behalf of insureds, prospective insureds, or others.

The bill expands the items that insurers or their agents may give to include goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items.

The bill provides that total value of gifts or charitable contributions may not exceed $100 in a calendar year and prohibits the giving of both merchandise and charitable contributions to a policyholder or prospective policyholder in the same year.

The bill exempts such gifts and charitable contributions from the prohibitions in paragraphs (f), (g), and (h) of s. 626.9541(1), F.S. Generally, rebates are unlawful under the Act. For example, it is an unfair method of competition and unfair act or practice to pay any valuable consideration or inducement not specified in the insurance contract as an inducement to insurance under s. 626.9541(1)(h)1.b., F.S. The bill eliminates the requirement that gifts be for the purpose of advertising, thus converting the provision allowing advertising gifts to a provision allowing certain inducements to purchase insurance.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate $25 gift value per calendar year, rather than a limit of a $25 value per gift with no annual aggregate limitation.

Section 2 provides an effective date of July 1, 2018.

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[1] Section 626.9541, F.S.
[2] The $25 limit has been in place since 1989. Chapter 89-360, Laws of Fla.; Section 626.9541(1)(m), F.S.
[3] Section 626.9541(1)(f), F.S.
[4] Section 626.9541(1)(g), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers and agents will be allowed to provide insureds, prospective insureds, and others with a limited amount of gifts, gift cards and services, or provide a charitable donation, as an appreciation for doing business.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.9541 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 Commerce and Tourism on February 6, 2018:
The committee substitute removes the provisions allowing group life and health insurers to offer policyholders funeral planning services and grief counseling provided by the proper license holders.

CS by Banking and Insurance on January 23, 2018:
The CS:

- Changes the term customer to insured.
- Clarifies that merchandise and a charitable contribution cannot both be provided to insureds or prospective insureds in the same year.
- Allows group life and health insurers to offer policyholders, at no additional cost, funeral planning services and grief counseling provided by the proper license holders. Such added benefits are not considered an advertisement, designation, direction, inducement or rebate under the Unfair Insurance Trade Practices Act.

B. Amendments:

None.

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

By the Committees on Commerce and Tourism; and Banking and Insurance; and Senator Mayfield

577-02891-18 2018762c2

A bill to be entitled

An act relating to permissible insurance acts; amending s. 626.9541, F.S.; revising the types, value, and frequency of advertising and promotional gifts that licensed insurers or their agents may give to insureds, prospective insureds, or others; authorizing such insurers and agents to make specified charitable contributions on behalf of insureds or prospective insureds; providing that title insurance agents, title insurance agencies, or title insurers may give insureds, prospective insureds, or others advertising gifts up to a specified value; providing applicability; providing an effective date.

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

Section 1. 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:

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

1. ~~No provision of~~ Paragraph (f), paragraph (g), or paragraph (h) does not ~~shall be deemed to~~ prohibit a licensed insurer or its agent from:

a. Giving to insureds, prospective insureds, or ~~and~~ others~~,~~

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

577-02891-18 2018762c2

~~for the purpose of advertising,~~ any article of merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items having a total value of $100 or less per insured or prospective insured within 1 calendar year; or ~~having a value of not more than $25.~~

b. Making charitable contributions, as defined in s. 170(c) of the Internal Revenue Code, on behalf of insureds or prospective insureds of up to $100 per insured or prospective insured within 1 calendar year.

2. Paragraph (f), paragraph (g), or paragraph (h) does not prohibit 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, from giving to insureds, prospective insureds, or others, for the purpose of advertising, any article of merchandise having a value of not more than $25. A person or entity governed by this subparagraph is not subject to subparagraph 1.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DEBBIE MAYFIELD
17th District

COMMITTEES:
Education, Vice Chair
Appropriations Subcommittee on the Environment and Natural Resources
Appropriations subcommittee on General Government
Banking and Insurance
Judiciary

JOINT COMMITTEES:
Joint Legislative Auditing Committee, Alternating Chair

February 8, 2018

The Honorable Lizbeth Benacquisto
Chair, Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 762

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 762, a bill relating to Permissible Insurance Acts, 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,

Debbie Mayfield

Senator Debbie Mayfield
District 17

Cc: John Phelps, Cyndi Futch, Matthew Hunter, Timothy Morris

REPLY TO:
☐ 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

762

Meeting Date | *Bill Number (if applicable)*

Topic Permissible Insurance Acts

Amendment Barcode (if applicable)

Name Sean Stafford

Job Title

Address 115 E. Park Avenue

Street

Phone 727-5000

City *State* *Zip*

Email

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

Waive Speaking: [ ] In Support [ ] Against

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

Representing Star & Shield Insurance Agency

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 776
INTRODUCER:	Criminal Justice Committee and Senator Grimsley
SUBJECT:	Theft
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.	Akhavein	Becker	AG	**Favorable**
3.	Cellon	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 776 amends s. 812.014(2)(c)7., F.S., to increase the fine in felony cases of theft of specified commercially farmed animals and registered bee colonies to $10,000. Currently the fine is up to $5,000.

Current law provides for a $10,000 fine in cases of felony grand theft of aquaculture species raised at a certified aquaculture facility.

The bill is effective October 1, 2018.

II. Present Situation:

Property Theft

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant's history of theft convictions or, in some cases, the type of property taken.

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[1]

Third degree grand theft, a third degree felony,[2] is theft of:

- Property valued at $300 or more, but less than $20,000.
- Specified property including:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - A motor vehicle;
  - Any commercial farmed animal including any animal of the equine,[3] bovine,[4] or swine[5] class, or other grazing animal;[6]
  - Any bee colony of a registered beekeeper;[7]
  - Any aquaculture species raised at a certified aquaculture facility;[8]
  - Any fire extinguisher;
  - Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit;
  - Property taken from a designated, posted construction site;
  - Any stop sign;
  - Anhydrous ammonia; and
  - Any amount of a controlled substance as defined in s. 893.02, F.S.[9]
- Property from a dwelling or its unenclosed curtilage if the property is valued at $100 or more, but less than $300.[10]

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[1] Section 812.014(1), F.S.
[2] A third degree felony is punishable by up to 5 years' incarceration and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[3] "Equine" means a horse or other member of the horse family. The Oxford Dictionaries, available at https://en.oxforddictionaries.com/definition/equine (last visited February 12, 2018); *See also* s. 773.01, F.S.: "Equine" means a horse, pony, mule, or donkey.
[4] "Bovine" means an animal of the cattle group, which also includes buffaloes and bison. The Oxford Dictionaries, available at https://en.oxforddictionaries.com/definition/bovine (last visited February 12, 2018).
[5] "Swine" means pig. The Oxford Dictionaries, available at https://en.oxforddictionaries.com/definition/swine (last visited February 12, 2018).
[6] Grazing animals may include sheep and goats in addition to horses and cattle. *Save Our Magnificent Meadows,* available at http://www.magnificentmeadows.org.uk/assets/pdfs/Types_of_Livestock.pdf (last visited February 12, 2018). *See also* s. 585.01(13), F.S.: "Livestock" means grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas which are raised for private use or commercial purposes.
[7] Beekeepers are required by the Florida Department of Agriculture and Consumer Services to register and identify their hives. All honey bee hives must be permanently imprinted on the upper left-hand corner in letters at least ½ inch in height with the beekeeper's registration number issued by the department. Florida Department of Agriculture and Consumer Services, *Beekeeper Registration*, available at https://www.freshfromflorida.com/Business-Services/Bees-Apiary/Beekeeper-Registration (last visited February 12, 2018).
[8] The Florida Department of Agriculture and Consumer Services inspects and certifies aquaculture businesses. Aquaculture includes fish, mollusks, and aquatic plants. Florida Department of Agriculture and Consumer Services, *Aquaculture Certification Application Taxonomic Listing* and *Aquaculture Best Management Practices Manual, November 2016* available at https://www.freshfromflorida.com/Business-Services/Aquaculture/Aquaculture-Certificate-of-Registration (last visited February 12, 2018).
[9] Section 812.014(2)(c), F.S.
[10] Section 812.014(2)(d), F.S.

Currently, s. 812.014(2), F.S., requires that a fine of $10,000 be imposed for theft of aquaculture species raised at a certified aquaculture facility.[11] The fine for theft of a commercially farmed animal or bee colony is a maximum amount of $5,000, the general fine for a third degree felony offense.[12]

Thefts of Cattle and Beehives in Florida

Theft of cattle has been more prevalent since beef prices have risen since 2012. Yearling cows weighing 600-700 pounds that once sold for around $600 are now worth $1,000 to $1,200, according to Florida Cattlemen's Association Executive Vice President Jim Handley.[13]

A cattle rancher in Martin County was the victim of what the Martin County Sheriff called "the largest cattle rustling scheme in the county's history" in 2013.[14] The man accused of stealing the cattle, taking them to market, and keeping the proceeds was the manager of the ranch. The ranch manager sold 175 cows for a total of $102,000. The total loss from the theft forced the cattle rancher to discontinue his cattle business.[15]

Beekeepers have been the target of theft as well with more than $100,000 worth of hives stolen in Southwest Florida. One beekeeper who was hit by thieves explained that sometimes entire hives are taken, other times just the queen bee is taken so the thief can use her to begin a new hive. [16]

III. Effect of Proposed Changes:

Section 1 amends s. 812.014(2)(c)7., F.S., to increase the fine from up to $5,000 to $10,000 in cases of felony theft of a commercially farmed animal, including an animal of the equine, avian,[17] bovine, or swine class or other grazing animal; or a bee colony of a registered beekeeper.

This fine increase puts these agriculture-related thefts on par with aquaculture species theft which currently requires a $10,000 fine.[18]

Section 2 reenacts s. 932.701(2)(a), F.S., to incorporate the amendment made to s. 812.014(2)(c), F.S., by the bill.

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[11] Section 812.014(2)(c)7, F.S.
[12] Section 812.014(2)(c), F.S.
[13] *Former Osceola deputy in jail after being charged with stealing cattle*, The Orlando Sentinel, November 11, 2015, available at http://www.orlandosentinel.com/news/breaking-news/os-keith-collins-cattle-rustling-osceola-20151106-story.html (last visited February 12, 2018).
[14] *Sheriff calls cattle theft largest in Martin County's history*, WPBF News, October 29, 2013, available at http://www.wpbf.com/article/sheriff-calls-cattle-theft-largest-in-martin-county-s-history/1319401 (last visited February 12, 2018).
[15] *Id.*
[16] *Beehive theft cases on the rise in SWFL*, NBC-2 WBBH News, August 17, 2016, available at http://www.nbc-2.com/story/32779137/10000-reward-offered-for (last visited January 24, 2018); *See also Theft of hives hits southwest Florida bee farmers*, The Orlando Sentinel, August 28, 2016, available at http://www.orlandosentinel.com/business/os-ap-theft-bee-hive-florida-20160828-story.html (last visited February 12, 2018).
[17] "Avian" means relating to, or derived from birds. The Merriam-Webster Dictionary, available at https://www.merriam-webster.com/dictionary/avian (last visited February 12, 2018).
[18] Section 812.014(2)(c)7, F.S.

Section 3 provides that this act shall take effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may help farmers and ranchers recover a portion of the losses experienced from the thefts of their herds, birds, or bees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 812.014 of the Florida Statutes.

This bill reenacts section 932.701 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 Criminal Justice on January 29, 2018:
The committee substitute includes animals of the avian (bird) species among the commercially farmed animals to which the $10,000 fine provided for in the bill would apply.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Grimsley

591-02576-18 2018776c1

A bill to be entitled

An act relating to theft; amending s. 812.014, F.S.; increasing the fine for the theft of a commercially farmed animal or a bee colony of a registered beekeeper; reenacting s. 932.701(2)(a), F.S., relating to the definition of the term "contraband article," to incorporate the amendment made to s. 812.014, 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 (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an

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591-02576-18 2018776c1

animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, ~~then~~ a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at

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

$10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 2. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 932.701, Florida Statutes, is reenacted to read:

932.701 Short title; definitions.—

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling

laws of the state.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s.

320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201.

12. Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person’s third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

Section 3. This act shall take effect October 1, 2018.

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: February 15, 2018

I respectfully request that **Senate Bill #776**, relating to Theft, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Denise Grimsley

Senator Denise Grimsley
Florida Senate, District 26

cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

The Florida Senate

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/SJR 792
INTRODUCER:	Ethics and Elections Committee and Senator Lee
SUBJECT:	Chief Financial Officer
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	**Fav/CS**
2.	Cibula	Cibula	JU	**Favorable**
3.	McVaney	Hansen	AP	**Favorable**
4.	Carlton	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SJR 792 is a joint resolution to amend the State Constitution by establishing additional responsibilities for the state's Chief Financial Officer (CFO). Specifically, the resolution provides that the CFO shall participate as a principal in consensus economic, demographic, and revenue estimating conferences. The resolution further provides the CFO with the authority to review and certify, prior to execution, that state contracts in excess of $10 million comply with state law, include all provisions required by statute, and do not require payment exceeding amounts appropriated or authorized by law.

The Department of Financial Services (DFS) indicates the joint resolution could require a significant impact for the staffing required to perform such tasks within DFS' Division of Accounting and Auditing. In addition, there are two technology options available to implement this change in the review and certification of state contracts: modification of either the Department of Management Services' (DMS) Purchasing Web Site system or modification of the DFS' Florida Accountability Contract Tracking System (FACTS).

The cost of updating the DMS' Purchasing Web Site systems is indeterminate. The DFS estimates the cost of updating FACTS to be in excess of $1.5 million with licensing and maintenance costs of approximately $300,000 annually thereafter.[1]

Each house of the Legislature must pass the joint resolution by a three-fifths vote in order for it to be placed on the ballot for approval by the electors. Thereafter, it must be approved by 60 percent of the electors voting. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

II. Present Situation:

Chief Financial Officer

The Chief Financial Officer (CFO) is an elected constitutional officer and member of the Cabinet. The CFO's duties, as described by the Florida Constitution, are to serve as the chief fiscal officer of the state, settle and approve accounts against the state, and keep all state funds and securities. The CFO, the Governor, and the Attorney General serve as State Board of Administration. The CFO, the Governor, the Attorney General, and the Commissioner of Agriculture serve as the trustees of the Internal Improvement Trust Fund and as the agency head of the Department of Law Enforcement.[2] The elected CFO, not a designee, serves in these capacities.

Among the CFO's many statutory responsibilities is the responsibility to "examine, audit, and settle all accounts, claims, and demands, whatsoever, against the state, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon."[3] The CFO must also train agency contract managers, and the CFO may audit executed agency contracts.[4]

Requirement for State Contracts

Chapter 287, F.S., Procurement of Personal Property and Services, contains most of the statutes governing contracting by state agencies. These requirements become more detailed as the value of the contracts increase. Contract documents must also contain provisions required by statute based on the value of goods and services involved or the type of contract.

In some cases, for example, an agency contract must:

- State that agency contractors and subcontractors must comply with the public records laws.[5]
- Include specifications that clearly establish all the tasks that a contractor is required to perform.[6]

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[1] Department of Financial Services, *Analysis of SB 792* (November 29, 2017) (on file with Senate Appropriations Subcommittee on General Government).
[2] FLA. CONST. art. IV, s. 4(a), (c), (e), (f), and (g).
[3] Section 17.03(1), F.S.
[4] Sections 287.057(14) and 287.136, F.S.
[5] Section 287.0571(5)(j), F.S.
[6] Section 287.056(1)(a), F.S.

- State that bills for fees or other compensation for services or expenses must be submitted in detail sufficient to allow for a proper preaudit and postaudit of the bills or fees.[7]
- Identify the financial consequences that the agency will apply if the contractor fails to perform the contract.[8]
- Address the property rights in intellectual property related to the contract and the state's rights regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.[9]

If a contract binds the state for longer than one fiscal year, the contract must state that the government's obligation to pay under the contract is contingent upon an annual appropriation by the Legislature.[10]

Generally, an executive or judicial branch entity is prohibited from executing a contract which binds the state for the purchase of services or tangible personal property in excess of $5 million unless the contract identifies the specific appropriation of state funds from which the state will make payment under the contract in the first year of the contract.[11] This statutory provision recognizes that state agencies are authorized to enter into multi-year contracts.

State Planning and Budgeting Processes

In 1992, the voters approved article III, section 19(a)(1) of the Florida Constitution. This provision requires the Legislature to prescribe by general law "the adoption of annual state budgetary and planning processes." These constitutionally required planning and budgetary processes are set forth in detail in chapter 216, F.S.

In 1985, the Legislature formalized the consensus estimating conference process used to develop the official information for purposes of the state planning and budgeting system.[12] Official information includes data, forecasts, estimates, analyses and studies on a particular matter, and the consensus process requires the unanimous consent of all of the principals of an estimating conference.[13] Once official information is developed by a conference, state agencies and the judicial branch must use the information in carrying out their duties under the state planning and budgetary system.[14]

The principals of a consensus conference include:
- Professional staff of the Executive Office of the Governor who are designated by the Governor;
- The coordinator of the Office of Economic and Demographic Research and other professional staff of EDR which are designated by the coordinator to serve as a principal;
- Professional staff of the Senate designated by the President of the Senate; and

[7] Section 287.058(1)(a), F.S.
[8] Section 287.058(1)(h), F.S.
[9] Section 287.058(1)(i), F.S.
[10] Section 287.0582, F.S.
[11] Section 216.313, F.S.
[12] Section 216.134(1), F.S.
[13] Section 216.133, F.S.
[14] Section 216.135, F.S.

- Professional staff of the House of Representatives designated by the Speaker of the House of Representatives.[15]

The ten consensus estimating conferences and a general description of their areas of responsibility are set forth below:

- **Economic Estimating Conference**—develops official information with respect to the national and state economies, as the conference determines is needed for the state planning and budgeting system. This information includes long-term trend forecasts.[16]
- **Demographic Estimating Conference**—develops official information with respect to the population of the nation and state by age, race, and sex, as the conference determines is needed for the state planning and budgeting system.[17]
- **Revenue Estimating Conference**—develops official information with respect to anticipated state and local government revenues, as the conference determines is needed for the state planning and budgeting system. This information may include estimates of trust fund revenues.[18]
- **Education Estimating Conference**—develops official information relating to the state public and private educational system, including forecasts of student enrollments, the national average of tuition and fees at public postsecondary educational institutions, the number of students qualified for state financial aid programs and for the William L. Boyd, IV, Florida Resident Access Grant Program and the appropriation required to fund the full award amounts for each program, fixed capital outlay needs, and Florida Education Finance Program formula needs, as the conference determines is needed for the state planning and budgeting system.[19]
- **Criminal Justice Estimating Conference**—develops official information relating to the criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population, as the conference determines is needed for the state planning and budgeting system.[20]
- **Social Services Estimating Conference**—develops official information relating to the social services system of the state, including forecasts of social services caseloads, utilization, and expenditures, as the conference determines is needed for the state planning and budgeting system. The conference also develops information relating to the Florida KidCare program that the conference determines is needed to plan for and project future budgets and the drawdown of federal matching funds.[21]
- **Workforce Estimating Conference**—develops official information on the workforce development system planning process, as it relates to the personnel needs of current, new, and emerging industries as the conference determines is needed by the state planning and budgeting system. This information must include at least: short-term and long-term forecasts of employment demand for jobs by occupation and industry; entry and average wage forecasts among those occupations; and estimates of the supply of trained and qualified individuals available or potentially available for employment in those occupations, with

[15] Section 216.134(4)(c), F.S.
[16] Section 216.136(1), F.S.
[17] Section 216.136(2), F.S.
[18] Section 216.136(3), F.S.
[19] Section 216.136(4), F.S.
[20] Section 216.136(5), F.S.
[21] Section 216.136(6), F.S.

special focus upon those occupations and industries which require high skills and have high entry wages and experienced wage levels.[22]

- **Early Learning Programs Estimating Conference**—develops estimates and forecasts of the unduplicated count of children eligible for the school readiness program and of children eligible for the Voluntary Prekindergarten Education Program, as the conference determines are needed to support the state planning, budgeting, and appropriations processes.[23]
- **Self-Insurance Estimating Conference**—develops official information on self-insurance related issues, as the conference determines is needed by the state planning and budgeting system.[24]
- **Florida Retirement System Actuarial Assumption Conference**—develops official information with respect to the economic and noneconomic assumptions and funding methods of the Florida Retirement System necessary to perform the system actuarial study.[25]

Department of Financial Services

The CFO serves as the head of the Department of Financial Services (DFS), which executes the duties of the CFO. The DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agents and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Insurance Consumer Advocate;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud[26]

Also established within DFS are:

- The Financial Services Commission;[27]
- The Board of Funeral, Cemetery, and Consumer Services;[28] and

[22] Section 216.136(7), F.S.
[23] Section 216. 136(8), F.S.
[24] Section 216.136(9), F.S.
[25] Section 216.136(10), F.S.
[26] s. 20.121(2), F.S.
[27] The Financial Services Commission is composed of the Governor and the Cabinet members and includes the Office of Insurance Regulation and the Office of Financial Regulation. The offices are responsible for activities of the commission relating to regulation and investigation of violations of law relating to insurance and financial institutions. Section 20.121(3)(a), F.S.
[28] The Board of Funeral, Cemetery, and Consumer Services is created within the Division of Funeral, Cemetery, and Consumer Services and regulates licenses issued under ch. 497, F.S. Sections 20.121(4) and 497.103, F.S.

- The Strategic Markets Research and Assessment Unit.[29]

Florida Accountability Contract Tracking System (FACTS)

In 2009, the Florida Legislature enacted the Transparency Florida Act.[30] The CFO is required to establish and maintain a secure online contract working system known as the Florida Accountability Contract Tracking System (FACTS).[31] Within 30 calendar days after executing a contract, each state entity[32] is required to post the following information relating to contracts on FACTS:

- The names of the contracting entities;
- The procurement method;
- The contract beginning and ending dates;
- The nature or type of the commodities or services purchased;
- Applicable contract unit prices and deliverables;
- Total compensation to be paid or received under the contract;
- All payments made to the contractor to date;
- Applicable contract performance measures;
- If a competitive solicitation was not used to procure the goods or services, the justification of such action, including citation to a statutory exemption or exception from competitive solicitation, if any; and
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential or exempt information.[33]

Within 30 days of an amendment[34] to an existing contract, state entities must update the information on FACTS.[35]

Current law also requires each state agency[36] to report to DFS, within three working days of executing a contract, the following information relating to certain contracted activities that are not awarded by competitive solicitation:[37]

- The nature of the commodities or services purchased;

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[29] The Strategic Markets Research and Assessment Unit creates reports on issues, trends, and threats that broadly affect the condition of the financial services industries. Section 20.121(6), F.S.
[30] Section 215.985, F.S.
[31] Section 215.985(4), F.S. *See* FACTS website, https://www.myfloridacfo.com/division/AA/FACTSReporting/default.htm (last visited February 9, 2018).
[32] The term "state entity" means an official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; a state attorney, public defender, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Justice Administrative Commission; the Public Service Commission; and any part of the judicial branch of state government. Section 215.985(14)(h)2., F.S.
[33] Section 215.985(14)(a), F.S.
[34] An amendment to a contract includes, but is not limited to, a renewal, termination, or extension of the contract or a modification of the terms of the contract. *See* s. 215.985(14)(b), F.S.
[35] Section 215.985(14)(b), F.S.
[36] The term "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. The term includes, but is not limited to, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Section 216.011(1)(qq), F.S.
[37] Agencies must submit the information to DFS for contracts in excess of Category Two ($35,000) if the goods and services were not purchased by competitive solicitation or from a state term contract. Section 216.0111(2), F.S.

- The term of the contract;
- The final obligation made by the agency;
- A summary of any time constraints that apply to the procurement;
- The justification for not using the competitive solicitation, including any statutory exemption or exception; and
- Other information regarding the contract or the procurement that DFS requires.[38]

Department of Management Services

The Department of Management Services (DMS) is the business branch of Florida government. The primary mission of DMS is to support sister agencies and former state employees with workforce and business-related functions. The DMS is divided into two major services areas: Business Operations and Workforce Operations.[39]

Business Operations is responsible for managing general business operations of state government, including:
- State Purchasing;
- Real Estate Development and Management;
- Telecommunications;
- Fleet and Federal Surplus Property; and
- Private Prison Monitoring.[40]

Workforce Operations is responsible for managing the state personnel system, which consists of:
- Human Resource Management;
- People First;
- State Group Insurance; and
- Florida Retirement System.

Division of State Purchasing

The Division of State Purchasing (division) within the DMS comprises the following areas: State Contracts and Agreements, MyFloridaMarketPlace(MFMP), Public Procurement Professional Development and Office of Supplier Diversity (OSD).

The division procures state contracts and agreements for commodities and services that are frequently used by multiple state agencies.

MyFloridaMarketPlace (MFMP)

Pursuant to s. 287.057(22), F.S., the DMS is required to maintain a program for online procurement of commodities and contractual services in consultation with the CFO and the Agency for State Technology (AST). The DMS has authority to contract for equipment and services to develop and implement online procurement in consultation with the AST and in

[38] Section 216.0111(1), F.S.
[39] https://www.dms.myflorida.com/about_us (last visited February 9, 2018).
[40] https://www.dms.myflorida.com/about_us (last visited February 9, 2018).

compliance with standards of AST.[41] The DMS is required to adopt rules for the administration of the program for online procurement.[42] The DMS may also impose and collect fees for use of the online procurement system.[43]

The DMS's online procurement program is MyFloridaMarketPlace (MFMP). MFMP is used by the division for formal solicitations (ITB, RFP, and ITN) and by state agencies for informal quotes and electronic invoicing. MFMP allows for the registration of vendors, creation of solicitations by customers, management and display of catalogs for contracted commodities and services, order placement, purchase approvals, invoice reconciliations, and payment approvals. MFMP has been in operation for more than ten years.[44]

The DMS' Purchasing Web Site system holds all the state term contracts. Those contracts are cited by contract ID in MFMP where purchase orders are created, approved, and finalized through a "workflow" engine. Orders are created and then pushed automatically to approvers for review and approval. Purchase order data is sent to the DFS' Florida Accounting Information System (FLAIR)[45] where payments to contractors are made upon confirmation of delivery of the goods or services.[46]

III. Effect of Proposed Changes:

The joint resolution amends the State Constitution to require the state Chief Financial Officer to:

- Participate as a principal in consensus economic, demographic, and revenue estimating conferences.
- Review and certify that certain state contracts comply with general laws relating to procurement, include all provisions required by general law for such contracts, and do not require payments in any fiscal year in excess of the amount authorized by general law.

Principal of estimating conferences

As the joint resolution is drafted, it appears the elected CFO, not a designee, is required to be a principal in the estimating conferences. As a principal, the CFO will be required to attend the various conferences and reach consensus with the other principals on any official information adopted by these estimating conferences.

The Demographic and Economic Estimating conferences each generally meet three times per year. The Revenue Estimating Conference meets at least three times annually in the following subconferences:

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[41] Section 287.057(22)(a), F.S. Also, see s. 282.0051(4), F.S. (AST has responsibility to perform project oversight on all state agency information technology project costs of $10 million or more that are funded in the General Appropriations Act or other law.)
[42] Section 287.057(22)(b), F.S. *See* Rules 60A-1.030-1.033, F.A.C.
[43] Section 287.057(22)(c), F.S.
[44] *See* http://www.dms.myflorida.com/business_operations/state_purchasing (last visited February 9, 2018).
[45] The Florida Accounting Information Resource (FLAIR) is a double entry, computer-based general ledger accounting system, which is utilized to perform the State of Florida's accounting and financial management functions. https://flair.dbf.state.fl.us/ (last visited February 9, 2018).
[46] Department of Financial Services, *Analysis of SB 792* (November 29, 2017) (on file with Senate Appropriations Subcommittee on General Government).

- Ad valorem taxes;
- Article V fees and transfers;
- Documentary stamp taxes;
- General Revenue;
- Gross Receipts and Communication Services Taxes;
- Highway Safety Fees;
- Indian Gaming Revenues;
- Lottery Revenues;
- Public Education Capital Outlay;
- Slot Machine Revenue;
- Tobacco Settlement;
- Tobacco Taxes and Surcharges;
- Transportation Revenues; and
- Unclaimed Property.

In addition to these subconferences, the Revenue Estimating Conference holds "impact conferences" on legislation filed for consideration by the Legislature. The impact conferences generally occur weekly from mid-September through the end of the legislative Regular Session. After session, the conference meets to finalize the impacts on enacted legislation.

In each case, in order for "official information" to be adopted, all principals of the conference, including the CFO, must unanimously consent. Without unanimous consent, the conference cannot develop official information for the state agencies and judicial branch to use for planning and budgeting purposes.

Review and certification of state contracts

Under the joint resolution, the CFO is required to review and certify, before execution, certain state contracts proposed by or on behalf of any state agency, entity, or officer of the executive branch. This provision specifically applies only to state contracts that require a payment or aggregate payments in excess of $10 million from appropriated funds. This $10 million threshold will be adjusted for inflation every four years. The joint resolution expressly requires that the processes for review and certification of contracts be established by implementing legislation.

Compliance with state procurement and contracting law

The purpose of the contract review is to ensure that contracts comply with state procurement law and contain the provisions required by statute. Under current law, state agencies are required to comply with the laws and are subject to bid protests if a vendor claims the agency has failed to comply. It is unclear under the joint resolution whether the CFO can substitute his or her judgment for the judgment of a court who has upheld the agency's actions during a procurement. If yes, it may raise due process issues for vendors that have sought redress in the courts but have been frustrated by the CFO's decision regarding compliance.

Requirement for appropriations

The CFO must also review contracts to ensure that any payments required to be made by the state agency, entity, or officer under the contract in any fiscal year do not exceed the amount appropriated for that fiscal year or the amount authorized by law for the purpose of the contract.

As a practical matter, the Legislature does not typically provide specific appropriations beyond the current fiscal year and next fiscal year. The Legislature does note that some appropriations are intended to be "recurring" in nature. This means that the affected agency can expect to receive a similar appropriation in the next fiscal year; however, it is not the lawful appropriation until the Legislature takes another action (passes the bill actually making that appropriation for the next fiscal year). A strict reading of the joint resolution may not allow the CFO to certify that an appropriation exists in the future years of a multi-year contract unless the Legislature changes its behavior and actually appropriates funds for more than one or two fiscal years. As a result, the application of the joint resolution may reduce the ability of executive branch agencies to enter into multi-year contracts.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, s. 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, s. 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 use 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.'"[47]

Article XI, s. 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.

[47] *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:

None.

B. Private Sector Impact:

To the extent that the joint resolution, when implemented by law, ensures that expenditures of public funds comply with law, the public may receive more public goods and services at a lower cost.

C. Government Sector Impact:

Impact of Contract Reviews

The pre-execution review of contracts exceeding $10 million may slow the negotiations for the contracts in some instances. Additionally, the Chief Financial Officer (CFO) will likely need some additional staff to perform the reviews. However, the pre-execution contract reviews may lessen the staff time required for post-execution audits of the contracts.

Advertising Costs

The Division of Elections (DOE) is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment is be submitted to the electors. The DOE is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the DOE, the projected cost to advertise constitutional amendments for the 2018 primary and general election cycle was $120.31 per word. Using those rates, the cost to advertise this amendment in newspapers and produce booklets for the 2018 general election could be $76,396.85, at a minimum. This cost estimate is contingent on multiple amendments needing advertising, as there is an inverse relationship between the price per word and the length of the advertisements. If no other amendments need to be advertised, the price per word may be significantly higher. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known.

Total expenses related to constitutional amendment advertising for the 2018 election cycle are likely to be significant, as the 2018 ballot will include amendments placed there by the Constitutional Revision Commission (when the Commission last met in 1998, 13 amendments were placed on the ballot). Amendments can also be placed on the ballot via the initiative petition process, or by a joint resolution of the Florida Legislature. So far, four amendments will appear on the 2018 ballot.

Information Technology Costs

The Department of Financial Services (DFS) indicates there are two information technology options available to implement the review and certification of agreements of ten million dollars or greater: modification of either the Department of Management Services' (DMS) Purchasing Web Site system or modification of the DFS' Florida Accountability Contract Tracking System (FACTS).

To accommodate the process, the DFS suggests the DMS Purchasing Web Site system could be expanded to include all contracts valued over ten million dollars or MyFloridaMarketPlace (MFMP) or similar site could be modified to include a workflow specifically for DFS' "review and certification" of these contracts before agencies are allowed to use them. The cost of updating the DMS' Purchasing Web Site system is indeterminate.[48] However, DFS states "from an information technology perspective, this approach may be more effective because much of the prerequisite data, similar workflow processes and the inception of many purchases already happen in these systems."[49] DMS may be able to modify workflow, which could be accommodated within existing resources.

In comparison, FACTS has limited functionality and its purpose is retrospective. The DFS indicates updating FACTS to accommodate the contract review process would require substantial modification and augmentation in order to ensure all contracts valued above ten million dollars are uploaded before they are finalized by the agencies and to include a workflow process for review and certification of each. The DFS estimates the cost of updating FACTS to be in excess of $1.5 million with licensing and maintenance costs of approximately $300,000 annually thereafter.[50]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This joint resolution substantially amends Article IV, section 4 of the Florida Constitution.

[48] Department of Financial Services, *Analysis of SB 792* (November 29, 2017) (on file with Senate Appropriations Subcommittee on General Government).
[49] *Id*.
[50] *Id*.

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 January 30, 2018:
The Committee Substitute differs from the original bill in that it makes technical structural changes and specifically requires the Legislature to implement the changes via implementing legislation.

B. Amendments:

None.

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

By the Committee on Ethics and Elections; and Senator Lee

582-02642-18 2018792c1

Senate Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article IV of the State Constitution to revise the duties and responsibilities of the Chief Financial Officer.

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

That the following amendment to Section 4 of Article IV of the State Constitution is 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 IV

EXECUTIVE

SECTION 4. Cabinet.—

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related

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

582-02642-18 2018792c1

transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, and shall:

(1) Settle and approve accounts against the state~~; and shall~~

(2) Keep all state funds and securities;

(3) Participate as a principal in consensus economic, demographic, and revenue estimating conferences; and

(4) As prescribed by general law, review and certify, before execution, that each proposed contract of a state agency, entity, or officer of the executive branch requiring a payment or aggregate payments in excess of ten million dollars from funds appropriated to the state agency, entity, or officer:

a. Complies with general laws relating to procurement;

b. Includes all provisions required by general law for state agency contracts; and

c. Does not require payments by the state agency, entity, or officer in any fiscal year in excess of the amount appropriated for that fiscal year or the amount authorized by general law, for the purpose of the contract.

The legislature shall enact legislation to implement this paragraph, including the adjustment, to be adjusted at least every four years, of the contract amount threshold to reflect

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

the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or a successor index, as calculated by the United States Department of Labor Bureau of Labor Statistics, or its successor agency.

(d) The commissioner of agriculture shall have supervision of matters pertaining to agriculture except as otherwise provided by law.

(e) The governor as chair, the chief financial officer, and the attorney general shall constitute the state board of administration, which shall succeed to all the power, control, and authority of the state board of administration established pursuant to Article IX, Section 16 of the Constitution of 1885, and which shall continue as a body at least for the life of Article XII, Section 9(c).

(f) The governor as chair, the chief financial officer, the attorney general, and the commissioner of agriculture shall constitute the trustees of the internal improvement trust fund and the land acquisition trust fund as provided by law.

(g) The governor as chair, the chief financial officer, the attorney general, and the commissioner of agriculture shall constitute the agency head of the Department of Law Enforcement.

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

CONSTITUTIONAL AMENDMENT

ARTICLE IV, SECTION 4

DUTIES OF THE CHIEF FINANCIAL OFFICER.—Expands the Chief Financial Officer's duties to require that he or she participate

as a principal in consensus economic, demographic, and revenue estimating conferences and review and certify certain state contracts above a threshold dollar amount to ensure compliance with certain laws and that such contracts do not require payments in any fiscal year which exceed the amount appropriated or the amount authorized by law. Requires the Legislature to enact legislation to implement the amendment.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Senate Committee on Rules

Subject: Committee Agenda Request

Date: February 15, 2018

I respectfully request that **SJR #792**, relating to **Chief Financial Officer**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

The Florida Senate

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 804
INTRODUCER:	Rules Committee and Senator Passidomo
SUBJECT:	Possession of Real Property
DATE:	March 2, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.	Present	Yeatman	CA	**Favorable**
3.	Davis	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 804 amends and modernizes real property provisions controlling ejectment, unlawful and forcible entry, and unlawful detainer actions. The bill also creates a section of statute governing the "customary use" of private property for public use.

Ejectment, unlawful and forcible entry, and unlawful detainer actions all involve a person entitled to possession of real property who is wrongfully removed but seeks to recover possession of the property. The current statutes are amended in this bill to:

- Create new definitions,
- Clarify which courts have jurisdiction,
- Modernize statutory pleading requirements, and
- Provide remedies.

A final section of the bill addresses the common law doctrine of customary use or the general right of the public to use and access the dry sand area of a beach on private property. The bill details the process by which a governmental entity may seek the judicial determination of a recreational customary use of private beach property.

II. Present Situation:

Ejectment Actions

An ejectment action is a legal proceeding in which a person who is wrongfully ejected from real property seeks to recover possession of that property as well as damages and costs. In these actions, the plaintiff must allege that he or she has:

- Title to the land,
- Been wrongfully deprived or dispossessed, and
- Suffered damages.[1]

Chapter 66, Ejectment, provides little statutory framework for ejectment actions. The little statutory framework that exists provides that the common law practice of naming fictitious parties is abolished and establishes some minor procedural, verdict, and judgment requirements. The chapter, however, does not provide for basic elements of ejectment actions such as a definition of "ejectment" or establish which trial court maintains jurisdiction or address whether presuit notice[2] is necessary in beginning an action. While some of these provisions are established in case law, it would be helpful to practitioners if these items were set forth in the ejectment chapter.

Forcible Entry and Unlawful Detainer Actions

Chapter 82, which addresses Forcible Entry and Unlawful Detainer, is intended to provide a peaceful and efficient process for someone to recover possession of real property that is unlawfully taken from them.

Unlawful Entry and Forcible Entry

The "unlawful entry and forcible entry" statute prohibits a person from entering any lands or tenements, except when that entry is permitted by law, and prohibits a person when entry is permitted from entering with "strong hand or with multitude of people." The statute permits entry only in "a peaceable, easy and open manner."[3]

Unlawful Entry and Unlawful Detention

The "unlawful entry and unlawful detention" statute states that no person who enters without consent into any lands or tenements "in a peaceable, easy and open manner" may "hold them afterwards against the consent of" someone who is entitled to possess them. This action does not apply to residential tenancies, which are governed by the Landlord and Tenant Act.[4]

Remedies, Summary Procedure, and Time Limit for an Action

The next section of the statutes relating to unlawful detention provides a remedy for the party who is turned out or deprived of possession by "unlawful entry or forcible entry" and states that

[1] BLACK'S LAW DICTIONARY (10th ed. 2014).
[2] Several provisions in statute require a plaintiff to notify prospective defendants before filing a lawsuit. See, for example, ss. 70.001, 400.0233, 429.293, and 766.106, F.S.
[3] Section 82.01, F.S.
[4] Section 82.02, F.S.

he or she is entitled to the summary procedure[5] for the expeditious resolution of the action within 3 years afterwards.[6]

Title Questions

An action for forcible entry and unlawful detainer may only address the right of possession and damages. No question of title is involved in the action.

Presuit Notice

This chapter does not require presuit notice by a plaintiff. However, because the chapter is silent, it may lead to confusion as to whether presuit notice is required.

Customary Use

Florida Constitution

In Florida, the public has the right to access shorelines and beaches that are located below what is referred to as the "mean high tide line." The State Constitution, in Article X, section 11, provides that "title to the lands under navigable waters, within the boundaries of the state . . . including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people."[7] This is known as the common law public trust doctrine.

State Statute

The beaches of the state include additional land beyond what is described in the public trust doctrine. The dry sands above the mean high water line may be owned privately, as recognized by statute.[8] Additionally, the Legislature has noted in its State Comprehensive Plan, Coastal and Marine Resources, that it is a policy to "Ensure the public's right to reasonable access to beaches."[9]

Florida Supreme Court

The courts have recognized the public's ability to acquire rights to the dry sand areas of privately owned sections of a beach but have not rendered many decisions in the area. In 1974, the Florida Supreme Court generally established the customary use doctrine in Florida when it held:

> If the recreational use of the sandy area adjacent to the mean high tide has been ancient, reasonable, without interruption and free from dispute, such use as a matter of custom, should not be interfered with by the owner. However, the owner may make any use of his property which is consistent with such public use and

[5] Summary procedure is set forth in s. 51.01, F.S. A summary procedure is a non-jury proceeding designed to settle a matter in a relatively prompt and simple manner. BLACK'S LAW DICTIONARY (10th ed. 2014).
[6] Section 82.03, F.S.
[7] Sea Grant Florida, the University of Florida, *Common Law Tools to Promote Beach Access*, https://www.flseagrant.org/wateraccess/common-law-statutes/ (last visited Jan. 17, 2018).
[8] Section 177.28, F.S.
[9] Section 187.201(8)(b)2., F.S.

> not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area.[10]

Attorney General Opinion

The Florida Attorney General issued an opinion in 2002[11] addressing the regulation of the dry sand portion of beaches. The City of Destin adopted a beach management ordinance to provide for the regulation of public use and conduct on the beach. The Sheriff of Okaloosa County and the mayor of Destin inquired about the regulation. The Attorney General issued three findings in its opinion:

- The City may regulate in a reasonable manner the beach within its corporate limits to protect the public health, safety, and welfare. This regulation must have a rational relation to and be reasonably designed to accomplish a purpose necessary for the protection of the public. The city may not exercise its police power in an arbitrary, capricious, or unreasonable manner. Such regulation may be accomplished regardless of the ownership of this area, with the exception of state ownership, and without regard to whether the public has been expressly or impliedly allowed to use that area of the beach by a private property owner who may hold title to the property.
- The right of a municipality to regulate and control dry sand beach property within its municipal boundaries is not dependent on the finding of the Florida Supreme Court in *City of Daytona Beach v. Tona-Rama, Inc.*
- Private property owners who hold title to dry sand areas of the beach falling within the jurisdictional limits of the City of Destin may utilize local law enforcement for purposes of reporting incidents of trespass as they occur.[12]

District Court of Appeal

The customary use doctrine articulated by the Florida Supreme Court was limited in 2007 with a 5th District Court of Appeal decision, *Trepanier v. County of Volusia*.[13] The court noted

> While some may find it preferable that proof of these elements of custom be established for the entire state by judicial fiat in order to protect the right of public access to Florida's beaches, it appears to us that the acquisition of a right to use private property by custom is intensely local and anything but theoretical. "Custom" is inherently a source of law that emanates from long-term, open, obvious, and widely-accepted and widely-exercised practice. It is accordingly impossible precisely to define the geographic area of the beach for which evidence of a specific customary use must be shown, because it will depend on the particular geography and the particular custom at issue.[14]

[10] *City of Daytona Beach v. Tona-Rama, Inc*., 294 So. 2d 73, 78 (1974).
[11] Op. Att'y Gen. Fla. 2002-38 (2002).
[12] *Id*.
[13] *Trepanier v. County of Volusia*, 965 So. 2d 276 (Fla. 5th DCA 2007).
[14] *Id*. at 289.

It should be noted that the court also held that a determination of customary use "requires the courts to ascertain in each case the degree of customary and ancient use the beach has been subject to . . . ."[15]

Federal Court Decision

The most recent decision published on the customary use doctrine was issued by the U.S. District Court for the Northern District of Florida, in Pensacola, in November, 2017.[16] The Court was asked to decide whether a Walton County customary use ordinance was enacted *ultra vires* or beyond the scope of the county's authority. In its ordinance, Walton County declared that the county's dry sand areas were subject to the customary use doctrine. Accordingly, the ordinance prohibited certain signs, ropes, fences, or chains in the dry sand portion of a beach which were designed to exclude the public from the dry sand area. Violators were subject to a $500 fine.

In its lengthy decision, the Court held that Walton County did not act outside its authority in adopting the ordinance that recognized and regulated customary use.[17] The Court did note, however, that "property owners have a right under Florida law to *de novo* as-applied judicial review and a determination of the existence of customary use rights."[18] The decision was recently appealed to the United States Court of Appeals for the Eleventh Circuit in Atlanta.[19]

It is apparent from these opinions that private individuals and governmental entities are challenged when trying to understand the scope of the customary use doctrine when it affects private property rights.

III. Effect of Proposed Changes:

Ejectment (Section 1)

Three subsections are added to the beginning of chapter 66, F.S., to define ejectment, clarify which court has jurisdiction, and address presuit notification.

Definition

The bill adds a "right of action" provision which states that a person with a superior title to possess real property may maintain an ejectment action to recover possession of the property. This addition clarifies what an ejectment action is and reduces confusion to both lay people and practitioners as to when an ejectment action is the appropriate remedy when seeking to recover real property. The absence of a current definition may create confusion as to whether an ejectment action in chapter 82, F.S., or a landlord and tenant action in chapter 83, F.S., is proper.

[15] *Id*. at 288 quoting *Reynolds v. County of Volusia*, 659 So. 2d 1186 (Fla. 5th DCA 1995).
[16] *Alford, et al., v. Walton County*, 3:16-cv-00362-MCR-CJK, Order filed Nov. 22, 2017.
[17] *Id*. at 45.
[18] *Id*.
[19] The case was docketed for appeal on December 27, 2017, and is case 17-15741.

Jurisdiction

Circuit courts possess exclusive original jurisdiction "in actions of ejectment"[20] as provided in chapter 26, F.S. The addition of this language in the ejectment chapter eliminates any confusion as to where these actions are maintained.

Presuit Notice

Language is added which states that a plaintiff is not required to provide any presuit notice or demand to a defendant before an action may begin. While some civil actions do require presuit notice and demands, this clarifies that ejectment actions do not. The additional language is essentially the codification of case law.

Statutory Pleading Requirements

The bill modernizes and simplifies the statutory language of existing pleading requirements for ejectment actions. However, the pleading requirements are not substantially changed by the bill.

Operation

A new "operation" subsection is added to provide that the ejectment section is "cumulative to other existing remedies and may not be construed to limit other remedies . . . ." This language or similar language is found in other statutes. According to Black's Law Dictionary, a cumulative remedy is a remedy that is "available to a party in addition to another remedy that still remains in force."[21] This additional language is also consistent with case law on ejectment actions.

Forcible Entry and Unlawful Detainer (Bill Sections 2-9)

Definitions (Bill Section 2)

The bill deletes the current definitions of "unlawful entry and forcible entry" and "unlawful entry and unlawful detention" and replaces them with modernized definitions of forcible entry, unlawful detention, and unlawful entry.

A definition of real property is added and means land or any existing permanent or temporary building or structure on the land and any attachments generally held out for the use of persons in possession of the real property. The term "real property" is then used for consistency throughout the section and replaces the term "dwelling" in the remedy for unlawful detention by a transient occupant of residential property. This change in terminology appears to allow for the use of unlawful detainer actions to regain possession of a broader array of properties.

A definition of record titleholder is supplied and means someone who holds title to real property as evidenced by an instrument recorded in the public records of the county where the real property is located.

[20] Section 26.012(2)(f), F.S.
[21] BLACK'S LAW DICTIONARY (10th ed. 2014).

Applicability (Bill Section 3)

A new section is added to explain when these provisions apply. They do not apply to residential tenancies in the Landlord and Tenant chapter nor do they apply to the possession of real property in the Mobile Home and Recreational Vehicle Parks chapter or the Mobile Park Lot Tenancies chapter.

Remedies, Summary Procedure, and Time Limit for an Action (Bill Section 4)

The bill, consistent with existing statutes and case law, establishes that a person entitled to possession of the real property has a cause of action against someone who obtained possession by forcible entry, unlawful entry, or unlawful detention and may recover possession and damages. However, the bill reorganizes and rewords many of the related statutory requirements and makes few substantive changes. If a court determines that the defendant entered or detained the property in a willful and knowingly wrongful manner, the bill provides that a plaintiff may receive damages that are double the reasonable rental value of the property from the beginning of the wrongful entry or detention until the plaintiff receives possession of the property. This measure of damages is a restatement of existing law. In addition, the bill allows a plaintiff to recover other damages which may include, but are not limited to, damages for waste. Finally, the bill provides that actions for possession and damages may be bifurcated by the court.

The reorganized and reworded statutory provisions continue to provide for the use of the summary judicial procedures to expeditiously resolve forcible entry, unlawful entry, and unlawful detainer actions.

The bill deletes language requiring that summary procedure actions for forcible entry, unlawful entry, and unlawful detainer actions be brought within 3 years after possession has been withheld from the plaintiff.

Advancing the Cause on the Calendar (Bill Section 4)

Language is added in the bill to require a court to "advance the cause of action [for forcible entry, unlawful entry, or unlawful detention] on the calendar." This is a new provision not found in the existing statutes, however, identical language is found in the Landlord and Tenant Act in s. 83.59, F.S., regarding an action for possession after a rental agreement is terminated and a tenant does not vacate the premises. The effect of the language may be to emphasize that courts must ensure that actions using the summary procedure are resolved expeditiously.

Service of Process (Bill Section 7)

The current statute regulating service of process provides that when a defendant cannot be found at his or her usual place of residence, a summons may be served by posting a copy of the summons in a conspicuous place on the property described in the complaint and summons. The bill provides a simplified process to provide notice by posting if personal service on the defendant cannot be obtained. The bill provides that if, after at least two attempts to obtain personal service, a defendant cannot be found in the county where the action is pending and the defendant does not have a usual place of abode in the county or there is no one 15 years old or older residing at that usual place in the county, then the sheriff must serve the summons and

complaint by attaching it to a conspicuous part of the real property involved in the proceeding. At least 6 hours must elapse between the two attempts to obtain personal service.

If the plaintiff anticipates providing notice using the attachment method described above, the plaintiff must provide the clerk of the court with two additional copies of the summons and complaint and two prestamped envelopes addressed to the defendant. One of the envelopes must be addressed to the defendant's residence, if it is known. The other envelope must be addressed to the defendant's last known business address, if it is known. The clerk must then immediately mail the copies of the summons and complaint by first-class mail, note in the docket that the mailing has occurred, and file a certificate in the court file noting the fact of the mailing and date. Service is effective on the date of posting or mailing, whichever is later, and at least 5 days must have elapsed after the date of service before a final judgment for removal of the defendant may be entered.[22]

Effect of Judgment (Bill Section 9)

While chapter 82, F.S., currently provides that no judgment for a plaintiff or defendant bars an action of trespass for injury to property or ejectment between the parties regarding the same real property, the bill adds more language. The bill provides that a judgment is not conclusive as to the facts in any future action for ejectment or quiet title. It also states that a judgment rendered pursuant to chapter 82, F.S., may be superseded, in whole or in part, by a subsequent judgment in an action for trespass for injury to the real property, ejectment, or quiet title involving the same parties with respect to the same real property.

Sections Repealed (Bill Sections 11-14)

The bill repeals s. 82.061, F.S., relating to service of process, s. 82.071, F.S., relating to trials and evidence as to damages, and s. 82.081, F.S., relating to trial and verdict forms. The first two sections are contained in other provisions of the bill and the third section is removed because the forms are outdated.

Establishment of Recreational Customary Use (Bill Section 10)

The bill establishes a process by which a governmental entity may seek the judicial determination of a recreational customary use of private beach property. The process appears designed to reduce ongoing and protracted litigation among property owners and governments. After defining what a governmental entity is, the bill provides that a governmental entity may not adopt or keep in effect an ordinance or rule that is based upon customary use of any portion of a beach above the mean high-water line, unless the ordinance or rule is based upon a judicial declaration affirming recreational customary use of the beach.

Notice

The new procedure created in the bill requires that the governmental entity, at a public hearing, adopt a formal notice of intent to affirm the existence of a recreational customary use on private property.

[22] This language is very similar to that found in s. 48.031, F.S., Service of process generally; service of witness subpoenas and s. 48.183, F.S., Service of process in action for possession of premises.

The notice must specifically identify:

- The parcels of property or the specific portions of the property, for which the customary use affirmation is sought;
- The detailed, specific, and individual use or uses of the parcels to which the customary use affirmation is sought; and
- Each source of evidence the governmental entity will rely upon to prove that the recreational customary use has been ancient, reasonable, without interruption, and free from dispute.

The governmental entity must provide notice of the public hearing to the owner of each parcel of property at the address recorded in the county property appraiser's records. The notice must:

- Be provided at least 30 days before the public meeting by certified mail with return receipt requested;
- Be published in a newspaper of general circulation in the area where the parcels of property are located; and
- Be posted on the governmental entity's website.

Judicial Determination

Within 60 days after adopting the notice of intent, the governmental entity must file a Complaint for Declaration of Recreational Customary Use with the circuit court in the county where the subject property is located. This is a newly created cause of action and is similar to a declaratory judgment.[23] The governmental entity must provide notice of filing the complaint to the owner of each parcel as required above for the notice of intent. The notice must allow the owner to intervene in the proceeding within 45 days after receiving the notice. The governmental entity must also provide verification that the notice has been served to the property owners so that the court may establish a schedule for the proceedings.

The proceedings will be conducted de novo, or anew. The court must determine whether the evidence presented by the governmental entity demonstrates that the recreational customary use or uses identified in the notice of intent have been ancient, reasonable, without interruption, and free from dispute. No presumption exists regarding the existence of a recreational customary use of the property in question. The governmental entity bears the burden of proof to demonstrate that the recreational customary use exists. A parcel owner who is subject to the complaint may intervene in the proceeding as a party defendant in the proceeding.

Application

These customary use provisions do not apply to a governmental entity having an ordinance or rule that was adopted and in effect on or before January 1, 2016. Additionally, the provisions do not deprive a governmental entity from raising customary use as an affirmative defense in any proceeding that challenges an ordinance or rule that was adopted before July 1, 2018.

The bill takes effect July 1, 2018.

[23] A declaratory judgment is a binding adjudication in which a court establishes the rights of the parties without requiring enforcement of its decision. It is generally used to resolve legal uncertainties for the parties. BLACK'S LAW DICTIONARY (10th ed. 2014).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 66.021, 82.01, 82.02, 82.03, 82.04, 82.05, 82.091, and 82.101.
The bill redesignates section 82.045 as section 82.035 of the Florida Statutes.
This bill creates section 163.035 of the Florida Statutes.
This bill repeals the following sections of the Florida Statutes: 82.061, 82.071, and 82.081.

IX. Additional Information:

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

CS by Rules on March 1, 2018:
The committee substitute differs from the underlying bill only in section 10 which pertains to the establishment of recreational customary use. The original bill provided that a common law claim of customary use must apply to a particular parcel and must be determined by a court. The committee substitute deletes that provision and provides an efficient process by which a governmental entity may affirm customary use rights by first adopting an ordinance and then seeking a judicial determination of the recreational customary use.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 343 - 348

and insert:

Section 10. Section 163.035, Florida Statutes, is created to read:

163.035 Establishment of recreational customary use.—

(1) DEFINITION.—The term "governmental entity" includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently



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exercises governmental authority.

(2) ORDINANCES AND RULES RELATING TO CUSTOMARY USE.—A governmental entity may not adopt or keep in effect an ordinance or rule that finds, determines, relies on, or is based upon customary use of any portion of a beach above the mean high-water line, as defined in s. 177.27, unless such ordinance or rule is based on a judicial declaration affirming recreational customary use on such beach.

(3) NOTICE OF INTENT TO AFFIRM RECREATION PUBLIC USE ON PRIVATE PROPERTY; JUDICIAL DETERMINATION.—A governmental entity that seeks to affirm the existence of a recreational customary use on private property must follow the procedures set forth in this subsection.

(a) *Notice.*—The governing board of a governmental entity must, at a public hearing, adopt a formal notice of intent to affirm the existence of a recreational customary use on private property. The notice of intent must specifically identify the following:

1. The specific parcels of property, or the specific portions thereof, upon which a customary use affirmation is sought;

2. The detailed, specific, and individual use or uses of the parcels of property to which a customary use affirmation is sought; and

3. Each source of evidence that the governmental entity would rely upon to prove a recreational customary use has been ancient, reasonable, without interruption, and free from dispute.

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The governmental entity must provide notice of the public hearing to the owner of each parcel of property subject to the notice of intent at the address reflected in the county property appraiser's records no later than 30 days before the public meeting. Such notice must be provided by certified mail with return receipt requested, publication in a newspaper of general circulation in the area where the parcels of property are located, and posting on the governmental entity's website.

(b) *Judicial determination.*—

1. Within 60 days after the adoption of the notice of intent at the public hearing, the governmental entity must file a Complaint for Declaration of Recreational Customary Use with the circuit court in the county in which the properties subject to the notice of intent are located. The governmental entity must provide notice of the filing of the complaint to the owner of each parcel of property subject to the complaint in the same manner as is required for the notice of intent in paragraph (a). The notice must allow the owner receiving the notice to intervene in the proceeding within 45 days after receiving the notice. The governmental entity must provide verification of the service of the notice to the property owners required in this paragraph to the court so that the court may establish a schedule for the judicial proceedings.

2. All proceedings under this paragraph shall be de novo. The court must determine whether the evidence presented demonstrates that the recreational customary use for the use or uses identified in the notice of intent have been ancient, reasonable, without interruption, and free from dispute. There is no presumption regarding the existence of a recreational

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customary use with respect to any parcel of property, and the governmental entity has the burden of proof to show that a recreational customary use exists. An owner of a parcel of property that is subject to the complaint has the right to intervene as a party defendant in such proceeding.

(4) APPLICABILITY.—This section does not apply to a governmental entity with an ordinance or rule that was adopted and in effect on or before January 1, 2016, and does not deprive a governmental entity from raising customary use as an affirmative defense in any proceeding challenging an ordinance or rule adopted before July 1, 2018.

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

And the title is amended as follows:

Delete lines 3 - 57

and insert:

amending s. 66.021 F.S.; authorizing a person with a superior right to possession of real property to recover possession by ejectment; declaring that circuit courts have exclusive jurisdiction; providing that a plaintiff is not required to provide any presuit notice or demand to a defendant; requiring that copies of instruments be attached to a complaint or answer under certain circumstances; requiring a statement to list certain details; providing for construction; amending s. 82.01, F.S.; redefining the terms "unlawful entry" and "forcible entry"; defining the terms "real property," "record titleholder," and "unlawful detention"; amending s. 82.02, F.S.;

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exempting possession of real property under part II of ch. 83, F.S., and under chs. 513 and 723, F.S.; amending s. 82.03, F.S.; providing that a person entitled to possession of real property has a cause of action to regain possession from another person who obtained possession of real property by forcible entry, unlawful entry, or unlawful detainer; providing that a person entitled to possession is not required to give a defendant presuit notice; requiring the court to award plaintiff extra damages if a defendant acted in a willful and knowingly wrongful manner; authorizing bifurcation of actions for possession and damages; requiring that an action be brought by summary procedure; requiring the court to advance the cause on the calendar; renumbering and amending s. 82.045, F.S.; conforming provisions to changes made by the act; amending s. 82.04, F.S.; requiring that the court determine the right of possession and damages; prohibiting the court from determining question of title unless necessary; amending s. 82.05, F.S.; requiring that the summons and complaint be attached to the real property after two unsuccessful attempts to serve a defendant; requiring a plaintiff to provide the clerk of the court with prestamped envelopes and additional copies of the summons and complaint if the defendant is served by attaching the summons and complaint to the real property; requiring the clerk to immediately mail copies of the summons and complaint and note the fact of mailing in the docket; specifying

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that service is effective on the date of posting or mailing; requiring that 5 days elapse from the date of service before the entry of a judgment; amending s. 82.091, F.S.; providing requirements after a judgment is entered for the plaintiff or the defendant; amending s. 82.101, F.S.; adding quiet title to the types of future actions for which a judgment is not conclusive as to certain facts; providing that the judgment may be superseded by a subsequent judgment; creating s. 163.035, F.S.; defining the term "governmental entity"; prohibiting a governmental entity from adopting or keeping in effect certain ordinances and rules based upon customary use; providing an exception; requiring a governmental entity seeking to affirm the existence of a recreational customary use on private property to follow certain procedures; providing notice requirements for a governmental entity seeking to affirm such recreational customary use; requiring the governmental entity to file a specified complaint with a certain circuit court within a certain time; providing notice requirements for the filing of such complaint; specifying that proceedings resulting from such complaint are de novo; requiring the court to consider specific factors when determining whether a recreational customary use exists; specifying that the governmental entity has the burden of proof; specifying that an owner of a parcel of property subject to the complaint has the right to intervene in

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the proceeding; providing applicability; repealing s. 82.061,

By Senator Passidomo

28-00413A-18 2018804__

A bill to be entitled

An act relating to the possession of real property; amending s. 66.021. F.S.; authorizing a person with a superior right to possession of real property to recover possession by ejectment; declaring that circuit courts have exclusive jurisdiction; providing that a plaintiff is not required to provide any presuit notice or demand to a defendant; requiring that copies of instruments be attached to a complaint or answer under certain circumstances; requiring a statement to list certain details; providing for construction; amending s. 82.01, F.S.; redefining the terms "unlawful entry" and "forcible entry"; defining the terms "real property," "record titleholder," and "unlawful detention"; amending s. 82.02, F.S.; exempting possession of real property under part II of ch. 83, F.S., and under chs. 513 and 723, F.S.; amending s. 82.03, F.S.; providing that a person entitled to possession of real property has a cause of action to regain possession from another person who obtained possession of real property by forcible entry, unlawful entry, or unlawful detainer; providing that a person entitled to possession is not required to give a defendant presuit notice; requiring the court to award plaintiff extra damages if a defendant acted in a willful and knowingly wrongful manner; authorizing bifurcation of actions for possession and damages; requiring that an action be brought by summary procedure; requiring the court to advance the

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cause on the calendar; renumbering and amending s. 82.045, F.S.; conforming provisions to changes made by the act; amending s. 82.04, F.S.; requiring that the court determine the right of possession and damages; prohibiting the court from determining question of title unless necessary; amending s. 82.05, F.S.; requiring that the summons and complaint be attached to the real property after two unsuccessful attempts to serve a defendant; requiring a plaintiff to provide the clerk of the court with prestamped envelopes and additional copies of the summons and complaint if the defendant is served by attaching the summons and complaint to the real property; requiring the clerk to immediately mail copies of the summons and complaint and note the fact of mailing in the docket; specifying that service is effective on the date of posting or mailing; requiring that 5 days elapse from the date of service before the entry of a judgment; amending s. 82.091, F.S.; providing requirements after a judgment is entered for the plaintiff or the defendant; amending s. 82.101, F.S.; adding quiet title to the types of future actions for which a judgment is not conclusive as to certain facts; providing that the judgment may be superseded by a subsequent judgment; creating s. 704.09, F.S.; requiring that a claim of customary use for the public use of private property be applied to a particular parcel; providing for judicial determination of claims; repealing s. 82.061, F.S., relating to service of process; repealing s.

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

82.071, F.S., relating to evidence at trial as to damages; repealing s. 82.081, F.S., relating to trial verdict forms; providing an effective date.

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

Section 1. Section 66.021, Florida Statutes, is amended to read:

66.021 Ejectment ~~Procedure~~.—

(1) RIGHT OF ACTION.—A person with a superior right to possession of real property may maintain an action of ejectment to recover possession of the property.

(2) JURISDICTION.—Circuit courts have exclusive jurisdiction in an action of ejectment.

(3) NOTICE.—A plaintiff may not be required to provide any presuit notice or presuit demand to a defendant as a condition to maintaining an action under this section.

(4) ~~(1)~~ LANDLORD NOT A DEFENDANT.—When it appears before trial that a defendant in an action of ejectment is in possession as a tenant and that his or her landlord is not a party, the landlord must ~~shall~~ be made a party before further proceeding unless otherwise ordered by the court.

(5) ~~(2)~~ DEFENSE MAY BE LIMITED.—A defendant in an action of ejectment may limit his or her defense to a part of the property mentioned in the complaint, describing such part with reasonable certainty.

(6) ~~(3)~~ WRIT OF POSSESSION; EXECUTION TO BE JOINT OR SEVERAL.—When plaintiff recovers in an action of ejectment, he or she may have one writ for possession and for~~,~~ damages and

costs or, at his or her election ~~if the plaintiff elects~~, may have separate writs for possession and for damages and costs.

(7) ~~(4)~~ CHAIN OF TITLE.—The ~~Plaintiff with his or her~~ complaint and the ~~defendant with his or her~~ answer must include ~~shall serve~~ a statement setting forth, chronologically, the chain of title upon which the party ~~on which he or she~~ will rely at trial. Copies of each instrument identified in the statement must be attached to the complaint or answer. ~~If any part of the chain of title is recorded,~~ The statement must include ~~shall set forth~~ the names of the grantors and the grantees, the date that each instrument was recorded, and the book and page or the instrument number for each recorded instrument ~~of the record thereof; if an unrecorded instrument is relied on, a copy shall be attached. The court may require the original to be submitted to the opposite party for inspection~~. If a ~~the~~ party relies on a claim or right without color of title, the statement must ~~shall~~ specify how and when the claim originated and the facts on which the claim is based. If defendant and plaintiff claim under a common source, the statement need not deraign title before the common source.

(8) ~~(5)~~ TESTING SUFFICIENCY.—If either party seeks ~~wants~~ to test the legal sufficiency of any instrument or court proceeding in the chain of title of the opposite party, the party must ~~shall~~ do so before trial by motion setting up his or her objections with a copy of the instrument or court proceedings attached. The motion must ~~shall~~ be disposed of before trial. If either party determines that he or she will be unable to maintain his or her claim by reason of the order, that party may so state in the record and final judgment shall be entered for

the opposing ~~opposite~~ party.

(9) OPERATION.—This section is cumulative to other existing remedies and may not be construed to limit other remedies that are available under the laws of this state.

Section 2. Section 82.01, Florida Statutes, is amended to read:

82.01 Definitions ~~"Unlawful entry and forcible entry" defined~~.—As used in this chapter, the term:

(1) "Forcible entry" means entering into and taking possession of real property with force, in a manner that is not peaceable, easy, or open, even if such entry is authorized by a person entitled to possession of the real property and the possession is only temporary or applies only to a portion of the real property.

(2) "Real property" means land or any existing permanent or temporary building or structure thereon, and any attachments generally held out for the use of persons in possession of the real property.

(3) "Record titleholder" means a person who holds title to real property as evidenced by an instrument recorded in the public records of the county in which the real property is located.

(4) "Unlawful detention" means possessing real property, even if the possession is temporary or applies only to a portion of the real property, without the consent of a person entitled to possession of the real property or after the withdrawal of consent by such person.

(5) "Unlawful entry" means the entry into and possessing of real property, even if the possession is temporary or for a

portion of the real property, when such entry is not authorized by law or consented to by a person entitled to possession of the real property ~~No person shall enter into any lands or tenements except when entry is given by law, nor shall any person, when entry is given by law, enter with strong hand or with multitude of people, but only in a peaceable, easy and open manner~~.

Section 3. Section 82.02, Florida Statutes, is amended to read:

82.02 Applicability ~~"Unlawful entry and unlawful detention" defined~~.—

(1) This chapter does not apply to residential tenancies under part II of chapter 83 ~~No person who enters without consent in a peaceable, easy and open manner into any lands or tenements shall hold them afterwards against the consent of the party entitled to possession~~.

(2) This chapter does not apply to the possession of real property under chapter 513 or chapter 723 ~~This section shall not apply with regard to residential tenancies~~.

Section 4. Section 82.03, Florida Statutes, is amended to read:

82.03 Remedies ~~Remedy for unlawful entry and forcible entry~~.—

(1) A person entitled to possession of real property, including constructive possession by a record titleholder, has a cause of action against a person who obtained possession of that real property by forcible entry, unlawful entry, or unlawful detention and may recover possession and damages. The person entitled to possession is not required to notify the prospective defendant before filing the action.

(2) If the court finds that the entry or detention by the defendant is willful and knowingly wrongful, the court must award the plaintiff damages equal to double the reasonable rental value of the real property from the beginning of the forcible entry, unlawful entry, or unlawful detention until possession is delivered to the plaintiff. The plaintiff may also recover other damages, including, but not limited to, damages for waste.

(3) Actions for possession and damages may be bifurcated.

(4) All actions under this chapter must be brought by summary procedure as provided in s. 51.011, and the court shall advance the cause on the calendar ~~If any person enters or has entered into lands or tenements when entry is not given by law, or if any person enters or has entered into any lands or tenements with strong hand or with multitude of people, even when entry is given by law, the party turned out or deprived of possession by the unlawful or forcible entry, by whatever right or title the party held possession, or whatever estate the party held or claimed in the lands or tenements of which he or she was so dispossessed, is entitled to the summary procedure under s. 51.011 within 3 years thereafter~~.

Section 5. Section 82.045, Florida Statutes, is redesignated as section 82.035, Florida Statutes, and amended to read:

82.035 ~~82.045~~ Remedy for unlawful detention by a transient occupant of residential property.—

(1) As used in this section, the term "transient occupant" means a person whose residency in real property ~~a dwelling~~ intended for residential use has occurred for a brief length of

time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.

(a) Factors that establish that a person is a transient occupant include, but are not limited to:

1. The person does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy of the property.

2. The person does not have any property utility subscriptions.

3. The person does not use the property address as an address of record with any governmental agency, including, but not limited to, the Department of Highway Safety and Motor Vehicles or the supervisor of elections.

4. The person does not receive mail at the property.

5. The person pays minimal or no rent for his or her stay at the property.

6. The person does not have a designated space of his or her own, such as a room, at the property.

7. The person has minimal, if any, personal belongings at the property.

8. The person has an apparent permanent residence elsewhere.

(b) Minor contributions made for the purchase of household goods, or minor contributions towards other household expenses, do not establish residency.

(2) A transient occupant unlawfully detains a residential property if the transient occupant remains in occupancy of the residential property after the party entitled to possession of the property has directed the transient occupant to leave.

(3) Any law enforcement officer may, upon receipt of a sworn affidavit of the party entitled to possession that a person who is a transient occupant is unlawfully detaining residential property, direct a transient occupant to surrender possession of residential property. The sworn affidavit must set forth the facts, including the applicable factors listed in paragraph (1)(a), which establish that a transient occupant is unlawfully detaining residential property.

(a) A person who fails to comply with the direction of the law enforcement officer to surrender possession or occupancy violates s. 810.08. In any prosecution of a violation of s. 810.08 related to this section, whether the defendant was properly classified as a transient occupant is not an element of the offense, the state is not required to prove that the defendant was in fact a transient occupant, and the defendant's status as a permanent resident is not an affirmative defense.

(b) A person wrongfully removed pursuant to this subsection has a cause of action for wrongful removal against the person who requested the removal, and may recover injunctive relief and compensatory damages. However, a wrongfully removed person does not have a cause of action against the law enforcement officer or the agency employing the law enforcement officer absent a showing of bad faith by the law enforcement officer.

(4) A party entitled to possession of real property ~~a dwelling~~ has a cause of action for unlawful detainer against a transient occupant pursuant to s. 82.03 ~~s. 82.04~~. The party entitled to possession is not required to notify the transient occupant before filing the action. If the court finds that the defendant is not a transient occupant but is instead a tenant of

residential property governed by part II of chapter 83, the court may not dismiss the action without first allowing the plaintiff to give the transient occupant the notice required by that part and to thereafter amend the complaint to pursue eviction under that part.

Section 6. Section 82.04, Florida Statutes, is amended to read:

82.04 Questions involved in this proceeding ~~Remedy for unlawful detention~~.—The court shall determine only the right of possession and any damages. Unless it is necessary to determine the right of possession or the record titleholder, the court may not determine the question of title.

~~(1) If any person enters or has entered in a peaceable manner into any lands or tenements when the entry is lawful and after the expiration of the person's right continues to hold them against the consent of the party entitled to possession, the party so entitled to possession is entitled to the summary procedure under s. 51.011, at any time within 3 years after the possession has been withheld from the party against his or her consent.~~

~~(2) This section shall not apply with regard to residential tenancies.~~

Section 7. Section 82.05, Florida Statutes, is amended to read:

82.05 Service of process ~~Questions involved in this proceeding~~.—

(1) After at least two attempts to obtain service as provided by law, if the defendant cannot be found in the county in which the action is pending and either the defendant does not

have a usual place of abode in the county or there is no person 15 years of age or older residing at the defendant's usual place of abode in the county, the sheriff must serve the summons and complaint by attaching it to some conspicuous part of the real property involved in the proceeding. The minimum amount of time allowed between the two attempts to obtain service is 6 hours.

(2) If a plaintiff causes, or anticipates causing, a defendant to be served with a summons and complaint solely by attaching them to some conspicuous part of real property involved in the proceeding, the plaintiff must provide the clerk of the court with two additional copies of the summons and the complaint and two prestamped envelopes addressed to the defendant. One envelope must be addressed to the defendant's residence, if known. The second envelope must be addressed to the defendant's last known business address, if known. The clerk of the court shall immediately mail the copies of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. Service is effective on the date of posting or mailing, whichever occurs later, and at least 5 days must have elapsed after the date of service before a final judgment for removal of the defendant may be entered ~~No question of title, but only right of possession and damages, is involved in the action~~.

Section 8. Section 82.091, Florida Statutes, is amended to read:

82.091 Judgment and execution.—

(1) If the court enters a judgment for the plaintiff, the ~~verdict is in favor of plaintiff, the court shall enter judgment~~

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

~~that~~ plaintiff shall recover possession of the real property that he or she is entitled to and ~~described in the complaint with his or her~~ damages and costs. The court~~, and~~ shall award a writ of possession to be executed without delay and execution for the plaintiff's damages and costs.

(2) If the court enters a judgment for the defendant, the court shall ~~verdict is for defendant, the court shall enter judgment against plaintiff dismissing the complaint and~~ order that the defendant recover costs.

Section 9. Section 82.101, Florida Statutes, is amended to read:

82.101 Effect of judgment.—No judgment rendered either for the plaintiff or the defendant bars any action of trespass for injury to the real property or ejectment between the same parties respecting the same real property. A judgment is not conclusive as to ~~No verdict is conclusive of~~ the facts therein ~~found~~ in any future action for ~~of~~ trespass, ejectment, or quiet title. A judgment rendered either for the plaintiff or the defendant pursuant to this chapter may be superseded, in whole or in part, by a subsequent judgment in an action for trespass for injury to the real property, ejectment, or quiet title involving the same parties with respect to the same real property ~~or ejectment~~.

Section 10. Section 704.09, Florida Statutes, is created to read:

704.09 Judicial determination; customary use.—A common law claim of customary use for the public use of private property must apply to a particular parcel and must be determined by the court.

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

Section 11. Section 82.061, Florida Statutes, is repealed.

Section 12. Section 82.071, Florida Statutes, is repealed.

Section 13. Section 82.081, Florida Statutes, is repealed.

Section 14. This act shall take effect July 1, 2018.

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/2018
Meeting Date

804
Bill Number (if applicable)

Topic Customary Use

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title VP Policy

Address 100 N Duval Street
Street

Phone 850-322-9941

Tallahassee FL 32301
City *State* *Zip*

Email snuzzo@jamesmadison.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

804
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name DAVID CULLEN

Job Title _____

Address 1674 UNIVERSITY PKWY #266 Phone 941-323-2404
Street

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

Speaking: ☐ For ☑ Against ☐ Information

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

Representing SIERRA CLUB FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 806
INTRODUCER:	Rules Committee and Senator Baxley
SUBJECT:	Water Management District Surplus Lands
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Favorable**
2.	Caldwell	Caldwell	GO	**Favorable**
3.	Istler	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 806 makes the following changes to the procedures a water management district (WMD) must follow when selling surplus lands:

- Provides that the first publication of the required notice of intention to sell must occur at least 30 days, but not more than 360 days, before any sale is approved by a WMD. Current law only requires that the first publication of the required notice of intent to sell take place before any sale and the change is meant to provide clarity.
- Requires that the notice of intention to sell be published on the WMD's website.
- Authorizes, rather than requires, the governing board of a WMD to sell surplus parcels of land valued at $25,000 or less to adjacent property owners. Currently, the law requires WMDs to give adjacent property owners the first opportunity to purchase these lands.
- Authorizes a WMD to sell surplus parcels of land valued at $25,000 or less at any time to the general public for the highest price obtainable, if the parcel is not sold to an adjacent property owner.

Defines the term "adjacent property owners" to mean "those owners whose property abuts the parcel."

II. Present Situation:

There are five water management districts (WMDs) established within the state which are responsible for the administration of water resources at the regional level.[1] The four core mission areas of WMDs include water supply, water quality, flood protection and floodplain management, and natural systems. To accomplish these goals and responsibilities, WMDs are authorized to acquire fee or less than fee title to land.[2] Of the approximately 5.6 million acres of land that the state owns, the WMDs collectively own 2.15 million acres of land.[3] The following is a breakdown of the land in acres owned by each WMD:

- Northwest Florida: 210,740.
- Suwannee River: 160,330.
- St. Johns River: 625,000.
- Southwest Florida: 337,810.
- South Florida: 818,840.[4]

Each WMD assesses its land inventory to ensure that the present and future uses of the lands it owns will be utilized in the most effective manner and support the WMD's core mission requirements. Lands determined to be surplus may be offered for public bid and sold pursuant to s. 373.089, F.S., conveyed by a WMD to another governmental entity pursuant to s. 373.056, F.S., or used in potential real estate exchange transactions. In most cases and depending on the source of funds that were initially used to purchase the lands, the proceeds from the disposition of lands revert to the fund from which the lands were acquired to be used for the purchase of acquiring additional lands.[5]

Sale of Surplus WMD Lands

The governing board of a WMD may sell lands, or interests or rights in lands, to which the WMD has acquired title, if the governing board declares the lands surplus. To declare lands surplus, a governing board must determine:

- For lands designated as acquired for conservation purposes, that the lands are no longer needed for conservation purposes.[6]
- For all other lands, that the lands are no longer needed.[7]

Upon determining that the lands are surplus, the governing board may dispose of conservation lands by a two-thirds vote and all other lands by a majority vote.[8]

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[1] Department of Environmental Protection (DEP), *Water Management Districts*, https://floridadep.gov/water-policy/water-policy/content/water-management-districts (last visited Jan. 17, 2018).
[2] *Id*.; s. 373.139, F.S.
[3] DEP, *State of Florida Lands and Facilities Inventory Search*, State Lands Dashboard (01/07/2018), http://prodenv.dep.state.fl.us/DslPi/stateLandDashboard.action (last visited Jan. 17, 2018).
[4] *Id*.
[5] Section 373.139(6), F.S.
[6] FLA. CONST., art. x, s. 18.
[7] Section 373.089(6), F.S.
[8] *Id*.

The governing board of a WMD must first offer any land that was acquired in whole or in part using Florida Forever funds to the Board of Trustees of the Internal Improvement Trust Fund (BOT), unless the disposition of the land is for the following purposes:

- Linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances.
- The disposition of the fee interest in the land where a conservation easement is retained by the WMD to fulfill the conservation objectives for which the land was acquired.
- An exchange of the land for other lands that meet or exceed the conservation objectives for which the original land was acquired.
- To be used by a governmental entity for a public purpose.
- The portion of an overall purchase deemed surplus at the time of the acquisition.[9]

Any surplus lands, including lands acquired with Florida Forever funds if the BOT declines to accept title, may be sold by the WMD at any time for the highest price obtainable; however, the selling price may not be less than the appraised value of the lands, as determined by a certified appraisal obtained within 360 days before the effective date of a contract for sale.[10]

Before selling surplus lands, a WMD must publish a notice of its intention to sell, which includes a description of the lands to be offered for sale, in a newspaper circulated in the county in which the lands are located once each week for three successive weeks. The first publication must occur at least 30 days, but no more than 360 days, before any sale.

Expedited process for parcels valued at $25,000 or less

If the governing board of a WMD determines that a parcel of land is no longer essential or necessary for conservation purposes and the parcel is valued at $25,000 or less as determined by a certified appraisal obtained within 360 days before the effective date of the contract for sale, the governing board may determine that the parcel of land is surplus.

The governing board must publish, one time only, a notice of intention to sell in a newspaper that is published within the county in which the parcel for sale is located at least 30 days, but not more than 360 days, before any sale.[11] The governing board is required to send the notice of intention to sell the parcel to adjacent property owners and post notice on its website. Fourteen days after publication of the notice, the WMD may sell the parcel to an adjacent property owner or, if there are two or more owners of adjacent property, accept sealed bids and sell the parcel to the highest bidder or reject all offers.[12] Thirty days after publication of the notice, the WMD must accept sealed bids and may sell the parcel to the highest bidder or reject all offers.[13]

[9] Section 373.089(7), F.S.
[10] Section 373.089, F.S.
[11] Section 373.089(8), F.S.
[12] Section 373.089(8), F.S.
[13] *Id*.

III. Effect of Proposed Changes:

CS/SB 806 amends s. 373.089, F.S., to revise the procedures a WMD must follow when selling surplus lands.

Under current law, a WMD must publish a notice of intention to sell in a newspaper published in the county in which the land is located for three successive weeks. The first publication of the notice must occur at least 30 days, but not more than 360 days, before any sale. The bill specifies that the first publication of the required notice must occur at least 30 days, but not more than 360 days, before any sale is approved by a WMD. The bill requires a WMD to publish the notice of intention to sell on its website.

The bill revises the expedited process for surplus properties valued at $25,000 or less to authorize, rather than require, a WMD to sell the land to an adjacent property owner. The bill removes the requirement that a WMD accept sealed bids and sell the property to the highest bidder or reject all offers 30 days after publication of the notice of intention to sell.

The bill authorizes a WMD to sell a surplus parcel valued at $25,000 or less at any time to the general public for the highest price obtainable, if the WMD does not elect to sell the parcel to the adjacent property owner.

If, however, a WMD does choose to sell to an adjacent property owner, the WMD must publish, one time only, a notice of intention to sell in a newspaper published in the county in which the land is located at least 30 days, but not more than 360 days, before any sale is approved by the WMD. The WMD is required to wait 14 days after publication of the notice before selling the parcel to an adjacent property owner. The bill defines the term “adjacent property owners” to mean “those owners whose property abuts the parcel.”

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a positive, indeterminate fiscal impact on WMDs selling surplus lands valued at $25,000 or less by authorizing the parcels to be sold more efficiently by removing the requirement that a WMD must offer the land to adjacent property owners first and wait 30 days from publication of its notice of intention to sell before accepting offers from individuals who are not adjacent property owners.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.089 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on March 1, 2018:
The CS requires a water management district to publish a notice of intention to sell surplus lands on its website in addition to publishing such notice in a newspaper published in the county in which the land for sale is situated.

B. Amendments:

None.

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

936338

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete line 21
and insert:
sell on its website and in a newspaper published in the county in which the land,

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 3
and insert:

936338

lands; amending s. 373.089, F.S.; requiring a water management district to publish its notice of intention to sell surplus lands on its website; revising the

By Senator Baxley

12-00876-18 2018806__

A bill to be entitled

An act relating to water management district surplus lands; amending s. 373.089, F.S.; revising the circumstances when a water management district must publish its intention to sell surplus lands; revising the process for selling certain lower valued surplus lands; defining the term "adjacent property owners"; providing an effective date.

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

Section 1. Subsections (3) and (8) of section 373.089, Florida Statutes, are amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(3) Before selling any surplus land, or interests or rights in land, the district shall publish a notice of intention to sell in a newspaper published in the county in which the land, or interests or rights in the land, is situated once each week for 3 successive weeks, three insertions being sufficient. The first publication of the required notice must occur at least 30 days, but not more than 360 days, before any sale is approved by the district and must include a description of lands, or interests or rights in lands, to be offered for sale.

(8)(a) If a parcel of land is no longer essential or necessary for conservation purposes and is valued at $25,000 or

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

12-00876-18 2018806__

less as determined by a certified appraisal obtained within 360 days before the effective date of a contract for the sale, as specified in subsection (1), the governing board may determine that the parcel of land is surplus and may offer to sell it to the adjacent property owners. If the governing board elects to offer for sale the parcel to adjacent property owners pursuant to this subsection, the governing board must publish the notice of intention to sell ~~must be published~~ as required under subsection (3), one time only, and~~.~~ the governing board must ~~shall~~ send the notice of intention to sell the parcel to adjacent property owners by certified mail and publish the notice on its website. For the purpose of this subsection, the term "adjacent property owners" means those owners whose property abuts the parcel.

(b) Fourteen days after publication of such notice, the district may sell the parcel to an adjacent property owner or, if there are two or more owners of adjacent property, accept sealed bids and sell the parcel to the highest bidder or reject all offers.

(c) If the parcel is not sold to an adjacent property owner pursuant to paragraph (b), the district may sell the parcel at any time to the general public for the highest price obtainable ~~Thirty days after publication of such notice, the district shall accept sealed bids and may sell the parcel to the highest bidder or reject all offers~~.

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the

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

provisions of this section.

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

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

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

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

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 14, 2018

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

Dear Senator Benacquisto,

I respectfully request that SB 806 & 808 Surplus Lands and Surplus Lands Public Records be placed on your next available agenda.

Senate Bill 806 relating to water management district surplus lands requires before selling any surplus land, or interests or rights in land, the district shall publish a notice of intention to sell for three successive weeks and the first publication must occur at least 30 days before any sale is approved by the district. If the property is no longer essential or necessary for conservation and the value is less than $25,000, the governing board may offer to sell it to the adjacent property land owner. If the parcel is not sold to an adjacent property owner, the district may sell the parcel at any time to the general public for the highest price obtainable.

Senate Bill 808 provides an exemption for valuation of land determined to be surplus, related documents used to form, or which pertain to the valuation; and written offers to purchase such surplus land are confidential.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 808
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Baxley
SUBJECT:	Public Records/Surplus Lands
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Brown	Caldwell	GO	**Favorable**
3.	Istler	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 808 provides a public records exemption for certain records related to the sale of surplus lands. Specifically, the bill designates the following information as confidential and exempt from disclosure requirements:

- A written valuation of land determined to be surplus by the governing board of a water management district (WMD);
- Related documents used to form, or which pertain to the valuation; and
- Written offers to purchase surplus lands.

The bill provides that the exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the WMD.

Additionally, the bill authorizes a WMD to disclose the records before the exemption expires to potential purchasers to facilitate or expedite closure of the land sale:

- During the negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

In accordance with the Open Government Sunset Review Act, the exemption automatically repeals on October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that date.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill is linked to SB 806 that revises provisions on the sale of surplus lands in water management districts, and takes effect on the same date that SB 806 or similar legislation takes effect either in the same legislative session or an extension of the session.

II. Present Situation:

Public Records Law

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

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

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

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(a).
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[12] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[13]

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.[14] 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.[15] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[16] 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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[7] *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).
[11] *Halifax Hosp. Medical Center v. New-Journal Corp.,* 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.
[12] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[13] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[14] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[15] Section 119.15(3), F.S.
[16] 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;[17]
- 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;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] 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.[21] 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.[22]

Valuation of state lands for sale

Pursuant to s. 253.0341(8)(a), F.S., a written valuation of land determined to be surplus by the Board of Trustees of the Internal Improvement Trust Fund (BOT) and related documents used to form the valuation or which pertain to the valuation are confidential and exempt from disclosure.[23] This exemption expires two weeks before the time that the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the BOT.[24]

Before expiration of the exemption, however, the Division of State Lands within the Department of Environmental Protection is authorized to disclose these appraisals, valuations, or valuation information regarding the surplus land:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of the effort or process;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.[25]

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[17] Section 119.15(6)(b)1., F.S.
[18] Section 119.15(6)(b)2., F.S.
[19] Section 119.15(6)(b)3., F.S.
[20] 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?

[21] FLA. CONST. art. I, s. 24(c).
[22] Section 119.15(7), F.S.
[23] Section 253.0341(8)(a), F.S.
[24] Section 253.0341(8)(a)1., F.S.
[25] Section 253.0341(8)(a)2., F.S.

While a public records exemption exists for written valuations of land determined to be surplus by the BOT, a similar exemption does not exist for written valuations of land determined to be surplus by a WMD.

Appraisals and written offers for lands the state is purchasing

There are public records exemptions for appraisals and written offers when the state is seeking to purchase land. When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain, all appraisals, other reports relating to value, and written offers and counteroffers are exempt until the execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency.[26] If the parties do not execute a valid option contract or the agency does not conditionally accept a written offer to sell, then the exemption expires at the conclusion of the condemnation litigation of the subject property.[27]

Similarly, when a WMD is seeking to purchase land, all appraisal reports, offers, and counteroffers are exempt until an option contract is executed or if no option contract is executed, until 30 days before a contract of agreement for purchase is considered for approval by the governing board.[28]

III. Effect of Proposed Changes:

The bill designates the following information as confidential and exempt from the disclosure requirements under the Public Records Act and Art. I, s. 24(a) of the Florida Constitution:

- A written valuation of land determined to be surplus by the governing board of a water management district (WMD);
- Related documents used to form or which pertain to the valuation; and
- Written offers to purchase the surplus lands.

The bill provides that the exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the WMD.

Additionally, the bill authorizes a WMD to disclose the records before the exemption expires to potential purchasers to facilitate or expedite closure of the land sale:

- During the negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

In accordance with the Open Government Sunset Review Act, the exemption shall stand repealed on October 2, 2023, unless the Legislature review and saves the exemption from repeal before that date.

[26] Section 119.0711, F.S.
[27] *Id*.
[28] Section 373.139(3)(a), F.S.

As required by the Florida Constitution, the bill provides a statement of public necessity.[29] As justification for the exemption:

- The exemption is necessary in order to facilitate successful or expedited closure of the sale of surplus lands; and
- The public availability of the valuations, related documents, and written offers can negatively impact the ability of WMDs to negotiate with potential purchasers and potentially places WMDs at a disadvantage in attempting to maximize the return on the sale of surplus land.

The bill is linked to SB 806 that revises provisions on the sale of surplus lands in water management districts. The bill takes effect on the same date that SB 806 or similar legislation takes effect, if adopted in the same legislative session or an extension of the session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Voting Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. As the bill creates a new public record exemption, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill includes a public necessity statement and provides as justification for the exemption that without the exemption, the ability of water management districts to maximize the return on the sale of surplus lands could be compromised.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill specifically exempts written valuations of land determined to be surplus, any related documents, and written offers and provides for the expiration of such exemption upon the contract or agreement being approved, at the conclusion of negotiations or marketing efforts, or the passage of a year. Thus, the bill appears to be no broader than necessary to accomplish the public necessity for this public record exemption.

[29] FLA. CONST. art. I, s. 24(c).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has a negative, indeterminate fiscal impact to the water management districts (WMDs) as they will incur costs related to staff training on the new public records exemption and in redacting the information prior to the release of the record. However, these costs likely can be absorbed as part of the day-to-day responsibilities of the WMD.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.089 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 Environmental Preservation and Conservation on February 5, 2018:
The Committee Substitute:

- Revises the conditions upon when the exemption expires and when a WMD, at its discretion, is authorized to disclose the exempted information.
- Adds the automatic repeal of the exemption as required by the Open Government Sunset Review Act; and
- Makes conforming changes to the public necessity statement.

B. Amendments:

None.

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

By the Committee on Environmental Preservation and Conservation; and Senator Baxley

592-02878A-18 2018808c1

A bill to be entitled

An act relating to public records; amending s. 373.089, F.S.; providing an exemption for valuations, certain records, and sales offers for sales related to surplus lands; authorizing disclosure of such records under certain circumstances; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (1) of section 373.089, Florida Statutes, is amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands, or interests or rights in lands, determined by the governing board to be surplus may be sold by the district, at any time, for the highest price obtainable; however, ~~in no case shall~~ the selling price may not be less than the appraised value of the lands, or interests or rights in lands, as determined by a certified appraisal obtained within 360 days before the effective date of a contract for sale.

(a) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1)

592-02878A-18 2018808c1

and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(b) Before expiration of the exemption established in paragraph (a), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;

2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;

3. When the passage of time has made the conclusions of value invalid; or

4. When negotiations or marketing efforts concerning the land are concluded.

(c) Paragraphs (a) and (b) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the provisions of this section.

Section 2. The Legislature finds that it is a public necessity that written valuation of land determined to be

surplus pursuant to s. 373.089, Florida Statutes, related documents used to form the valuation or which pertain to the valuation, and written offers to purchase surplus land, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district in order to facilitate successful or expedited closure of the sale of surplus lands. The public availability of such valuations, related documents, and written offers can negatively impact the ability of water management districts to negotiate with potential purchasers and potentially places water management districts at a disadvantage in attempting to maximize the return on the sale of surplus land.

Section 3. This act shall take effect on the same date that SB 806 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

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

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 14, 2018

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

Dear Senator Benacquisto,

I respectfully request that SB 806 & 808 Surplus Lands and Surplus Lands Public Records be placed on your next available agenda.

Senate Bill 806 relating to water management district surplus lands requires before selling any surplus land, or interests or rights in land, the district shall publish a notice of intention to sell for three successive weeks and the first publication must occur at least 30 days before any sale is approved by the district. If the property is no longer essential or necessary for conservation and the value is less than $25,000, the governing board may offer to sell it to the adjacent property land owner. If the parcel is not sold to an adjacent property owner, the district may sell the parcel at any time to the general public for the highest price obtainable.

Senate Bill 808 provides an exemption for valuation of land determined to be surplus, related documents used to form, or which pertain to the valuation; and written offers to purchase such surplus land are confidential.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 820
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Powell
SUBJECT:	Firesafety Inspectors
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Fav/CS**
2.	Erickson	Jones	CJ	**Favorable**
3.	Peacock	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 820 creates s. 633.217, F.S., which prohibits certain actions to influence a firesafety inspector by coercion or compensation to violate the Florida Fire Prevention Code, any rules adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

The bill imposes criminal penalties for violation of the prohibited provisions. A first offense is a second degree misdemeanor. A second or subsequent offense is a first degree misdemeanor.

The bill takes effect on October 1, 2018.

II. Present Situation:

Division of the State Fire Marshal

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).[1] Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;[2]

[1] The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* s. 20.121, F.S.

[2] Section 633.128(1), F.S. *See* Part IV, ch. 633, F.S. (Fire Standards and Training).

- Investigates the causes of fires;[3]
- Enforces arson laws;[4]
- Regulates the installation and maintenance of fire equipment;[5]
- Conducts firesafety inspections of state buildings;[6]
- Develops firesafety standards;[7]
- Provides testing facilities for testing firefighting equipment;[8] and
- Operates the Florida State Fire College.[9]

The Division consists of the two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.[10] The Florida Fire College, part of the BFST, trains over 6,000 students per year.[11] The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.[12]

Florida Fire Prevention Code

The State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.[13] The State Fire Marshal adopts a new edition of the FFPC every three years.[14] The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA),[15] including the NFPA's Fire Code (1), Life Safety Code (101), and Guide on Alternative Approaches to Life Safety (101A).[16]

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[3] Sections 633.104(2)(e) and 633.112, F.S.
[4] Section 633.104(2)(e), F.S.
[5] Section 633,104(2)(b), F.S. *See* s. 633.104(2)(c), F.S., and part II, ch. 633, F.S. (Fire Protection and Suppression).
[6] Section 633.218, F.S.
[7] Part II, ch. 633, F.S. (Fire Safety and Prevention).
[8] Section 633.432, F.S.
[9] Section 633.128(1)(h)–(q), F.S. *See* ss. 633.428–633.434, F.S.
[10] *See* State Fire Marshall, available at https://www.myfloridacfo.com/Division/sfm/ (last visited on Jan. 29, 2018).
[11] Division of State Fire Marshal, *About the Florida State Fire Marshal*, available at http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm (last visited on Jan. 29, 2018).
[12] *Id*.
[13] Section 633.202(1), F.S. *See* ch. 69A-60, F.A.C.
[14] *Id*.
[15] Section 633.202(2), F.S. Founded in 1896, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. *See* National Fire Protection Association, *About NFPA*, available at http://www.nfpa.org/about-nfpa (last visited on Jan. 29, 2018).
[16] The NFPA states that the Guide on Alternative Approaches to Life Safety "is intended to be used in conjunction with the NFPA 101: Life Safety Code, not as a substitute." National Fire Protection Association, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, available at https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=101A (last visited on Jan. 29, 2018).

Firesafety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code, which operates uniformly among local governments and in conjunction with the Florida Building Code.[17] These local enforcing authorities may adopt more stringent firesafety standards, subject to certain requirements in s. 633.208, F.S.,[18] but may not enact firesafety ordinances which conflict with ch. 633, F.S., or any other state law.[19]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and the rules prescribed by the State Fire Marshal within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.[20] Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a firesafety inspector (certified by the State Fire Marshal) to conduct all firesafety inspections required by law.[21]

Firesafety Inspectors

Section 633.102(12), F.S., defines a firesafety inspector as an individual who holds a current and valid Fire Safety Inspector Certificate of Compliance issued by the Division under s. 633.216, F.S., who is officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities.[22] The BFST issues certifications for Firesafety Inspector I and Firesafety Inspector II.[23]

A person applying for certification as a Firesafety Inspector I must:
- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of one year or more, or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the Division with a current processing fee; and
- Have a good moral character.[24]

A Firesafety Inspector I Certificate of Compliance will be issued by the Division to an individual who:
- Successfully completes a minimum of 200 hours of basic certification training for firesafety inspectors, or has received equivalent training in another state; and

[17] Sections 633.108 and 633.208, F.S.
[18] *See* Rule 69A-60.002, F.A.C.
[19] Section 633.214(4), F.S. The State Fire Marshal maintains a list of local amendments to the FFPC. This information is available at https://www.myfloridacfo.com/Division/SFM/bfp/LocalAmendments.htm (last visited on Jan. 29, 2018).
[20] Section 633.118, F.S.
[21] Section 633.216(1), F.S.
[22] *See* s. 633.214(1)(a), F.S.
[23] Section 633.216(2), F.S., and ch. 69A-39, F.A.C. *See* Division of State Fire Marshal, BFST, *Certification and Testing* available at https://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm (last visited on Jan. 29, 2018).
[24] Sections 633.216(2) and 633.412(1)-(4), F.S.

- Passes a state written examination.[25]

The Firesafety Inspector I Certificate of Compliance is valid for a period of 4 years from the date of issuance. Renewal of this certificate includes completion of at least 54 hours of continuing education during the preceding 4 year period.[26]

A Firesafety Inspector II Certificate of Compliance will be issued by the Division to an individual who:
- Is certified as a Firesafety Inspector I; and
- Successfully completes a minimum of 160 hours of certification training for Firesafety Inspector II, or has received equivalent training in another state.[27]

Criminal Penalties

Section 633.122, F.S., prohibits a person from falsely assuming or pretending to be the State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or a firesafety inspector by identifying herself or himself as the State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or a firesafety inspector by wearing a uniform or presenting or displaying a badge as credentials that would cause a reasonable person to believe that she or he is a State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or firesafety inspector. A violation of this section is a third degree felony.[28] However, it is a first degree felony[29] if the impersonation occurs during the commission of a separate felony by that person.

Section 468.629, F.S., prohibits a person from influencing a building code enforcement official[30] by coercion or compensation. Any person who violates any provision of Part XII of ch. 468, F.S.,[31] relating to building code administrators and inspectors, commits a first degree misdemeanor.[32] A person who violates any provision of Part XII of ch. 468, F.S., after a previous conviction for such violation commits a third degree felony.

III. Effect of Proposed Changes:

Section 1 creates s. 633.217, F.S., which prohibits:
- Influencing a firesafety inspector by threatening, coercing, tricking, persuading, interfering with, or otherwise influencing; or attempting to threaten, coerce, trick, persuade, interfere with, or otherwise attempting to influence, the firesafety inspector into violating any

[25] *Supra*, n. 23.
[26] Section 633.216(4), F.S., and Rule 69A-39.009(1)(b), F.A.C.
[27] *See supra*, n. 24, and s. 633.216(8), F.S.
[28] A third degree felony is punishable by a term of imprisonment not to exceed 5 years, a fine not to exceed $5,000, or both. Sections 775.082 and 775.083, F.S.
[29] A first degree felony is generally punishable by a term of imprisonment not to exceed 30 years, a fine not to exceed $10,000, or both. Sections 775.082 and 775.083, F.S.
[30] Section 468.603(3), F.S., defines building code enforcement official or enforcement official as a licensed building code administrator, building code inspector, or plans examiner.
[31] Sections 468.601-468.633, F.S.
[32] A first degree misdemeanor is punishable by a jail term not to exceed one year, a fine not to exceed $1,000, or both.

provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.; and
- Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

A person who violates this section commits a second degree misdemeanor.[33] However, a person who commits a second or subsequent violation of this section commits a first degree misdemeanor.

Section 2 provides an effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill creates criminal offenses and penalties. Article VII, Section 18(d) of the Florida Constitution, provides that criminal laws are exempt from the requirements of this section relating to mandates on municipalities and counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill does not create any felony penalties. Therefore, it does not have a prison bed impact. The bill may have a positive indeterminate jail impact.

VI. Technical Deficiencies:

None.

[33] A second degree misdemeanor is punishable by a jail term not to exceed 60 days, a fine not to exceed $500, or both. Sections 775.082 and 775.083, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 633.217 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 January 23, 2018:
The Committee Substitute:

- Revises criminal penalty for first offense from first degree misdemeanor to second degree misdemeanor; and
- Revises criminal penalty for second or subsequent offense from third degree felony to first degree misdemeanor.

B. Amendments:

None.

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

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

585-02376-18 2018820c1

A bill to be entitled

An act relating to firesafety inspectors; creating s. 633.217, F.S.; prohibiting certain actions to influence a firesafety inspector to violate the Florida Fire Prevention Code, other rules of the State Fire Marshal, or ch. 633, F.S.; providing criminal penalties; providing an effective date.

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

Section 1. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; criminal penalties.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, persuading, interfering with, or otherwise influencing; or attempting to threaten, coerce, trick, persuade, interfere with, or otherwise attempting to influence, the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who commits a second or

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subsequent violation of subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 2, 2018

I respectfully request that **Senate Bill #820**, relating to Firesafety Inspectors, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Bobby Powell
Florida Senate, District 30

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03-01-18
Meeting Date

SB 820
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Firesafety Inspectors

Name Ray Colburn

Job Title Executive Director

Address 880 Airport Rd
Street

Ormond Beach FL 32174
City *State* *Zip*

Phone 402-468-6622

Email ray@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 820
Bill Number (if applicable)

Topic Fire Safety Inspectors

Amendment Barcode (if applicable)

Name Jim Millican

Job Title Chief

Address 4760-55 ST N
Street

Phone 727-526-5650

St Pete FL 33714
City *State* *Zip*

Email jmillican@leelmanfire.com

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

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

Representing Florida Fire Marshal's

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

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

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/2018
Meeting Date

820
Bill Number (if applicable)

Topic Fire Safety Inspectors

Amendment Barcode (if applicable)

Name Jeff Branch

Job Title Legislative Advocate

Address Bronough St.
Street

Tallahassee FL
City *State* *Zip*

Phone 701 3655

Email jbranch@flcities

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 822
INTRODUCER:	Rules Committee, Commerce and Tourism Committee; Regulated Industries Committee; and Senator Hutson
SUBJECT:	Beverage Law
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Fav/CS**
2.	Anderson	McKay	CM	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 822 amends the "tied house evil" law in s. 561.42, F.S., which prohibits an alcoholic beverage manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of an alcoholic beverage vendor, and also prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to the vendor.

The bill exempts from the "tied house evil" prohibitions a written agreement between a manufacturer or importer of malt beverages and an alcoholic beverage vendor for brand naming rights, including the right to advertise cooperatively. The agreement must be negotiated at arm's length for no more than fair market value.

Such agreement must be with a vendor who operates a theme park complex; may not involve the sale or distribution of malt beverages; may not permit the vendor to give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer; may not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer or importer, or distributor; and must be registered with the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) within 10 days of its execution.

The bill defines a "theme park" as a complex comprising at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of

recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex.

The manufacturer or importer of malt beverages who is a party to a brand naming rights agreement is prohibited from, directly or indirectly, soliciting or receiving from any of its distributors any portion of the payment it owes to the vendor pursuant to the naming rights agreement. The bill also prohibits a brand naming rights agreement from, directly or indirectly, obligating or placing responsibility, financial or otherwise, upon a distributor.

The bill imposes civil penalties for violations made during a 36 month period. The civil penalty for a first violation may not exceed $25,000 and the civil penalty for a second violation may not exceed $100,000. The division may revoke or suspend an alcoholic beverage license after a third violation within a 36 month period. The division may not impose a civil penalty greater than the financial value of the brand-naming rights agreement.

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

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,[1] which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The division administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."[5]
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."[6]
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.[7]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] Section 561.02, F.S.
[4] Section 563.01, F.S.
[5] Section 561.14(1), F.S.
[6] Section 561.14(2), F.S.
[7] Section 561.01(5), F.S.

any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[8]

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[9] A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.[10]

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[11] Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.[12] Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.[13]

Tied House Evil Prohibitions

States have enacted statutes designed to prevent or limit the control of retail alcoholic beverage vendors by manufacturers, wholesalers, and importers, or to prohibit "tied-house arrangements," such legislation is referred to as "tied house" or "tied house evil" statutes.[14]

Section 561.42, F.S., Florida's "tied house evil" statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans, property, or rebates.[15] The prohibitions also apply to an importer, primary American source of supply,[16] brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit for liquors sold, if made strictly in compliance with the provisions of s. 561.42, F.S.[17]

[8] Section 561.14(3). F.S.
[9] Section 561.14, F.S.
[10] Section 561.22(1), F.S.
[11] Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[12] Section 561.22, F.S.
[13] Sections 563.022(14) and 561.14(1), F.S.
[14] 45 AM. JUR. 2d *Intoxicating Liquors*, s. 94 (2017).
[15] Section 561.42(1), F.S.
[16] *See* s. 564.045, F.S.
[17] Section 564.42(1). Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

Section 561.42, F.S., also prohibits licensed manufacturers and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;[18]
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;[19]
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of the licensed premises;[20] and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.[21]

III. Effect of Proposed Changes:

CS/CS/CS/SB 822 creates s. 561.42(16), F.S., to provide an exemption from the tied house evil prohibitions to permit a manufacturer or importer of malt beverages and vendor to enter into a written agreement for brand naming rights, including the right to advertise cooperatively. The agreement must be negotiated at arm's length for no more than fair market value. The bill defines "at arm's length" agreement for this section of law.[22]

Such written agreement:

- Must be with a vendor who operates a theme park complex;
- May not involve the sale or distribution of malt beverages;
- May not permit the vendor to give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer;
- May not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer, importer, or distributor; and
- Must be registered with the division within 10 days of its execution.

The bill defines a "theme park" as a complex comprising at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of

[18] Section 561.42(4), F.S.
[19] Section 561.42(10), F.S.
[20] Section 561.42(12), F.S.
[21] Section 561.42(14)(a), F.S.
[22] "Arm's length" is not defined by the bill. Black's Law Dictionary defines the term "arm's-length transaction" as a "transaction between two unrelated and unaffiliated parties", and as a "transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises". BLACKS LAW DICTIONARY (14th ed. 2014), when defining forms of the term "transaction".
"Arms length" or "arms-length" is used eight times in the Florida Statutes; where used, those terms are not defined. *See* s. 155.40(4)(b), F.S., (in defining "fair market value" in connection with the sale or lease of county, district, or municipal hospitals); s. 193.114(1)(n), F.S., (as to property tax assessment rolls); s. 212.14(4), F.S., (as to the security required for sales tax dealer registrations); s. 215.4401, F.S., (in connection with the real estate investment portfolio of the State Board of Administration); s. 287.055(2)(l), F.S., (in defining "negotiate" under the "Consultants' Competitive Negotiation Act"); s. 400.462(11), F.S., (in defining "fair market value" in connection with home health agency regulation); s. 456.053(3)(g), F.S., (in defining "fair market value" in connection with financial arrangements between health care providers); and s. 718.117, F.S., (in defining "fair market value" in connection with condominium terminations).

recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex.[23]

The bill imposes civil penalties for violations made during a 36 month period. The civil penalty for a first violation may not exceed $25,000 and the civil penalty for a second violation may not exceed $100,000. The division has the authority to revoke or suspend beverages licenses after a third violation within a 36 month period. The division may not impose a civil penalty greater than the financial value of the brand-naming rights agreement.

The bill also prohibits a manufacturer or importer of malt beverages who is a party to a brand naming rights agreement from, directly or indirectly, soliciting or receiving from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to the naming rights agreement.

A brand naming rights agreement may not, directly or indirectly, obligate or place responsibility, financial or otherwise, upon a distributor.

This bill also clarifies tied house evil prohibitions on vendor assistance.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[23] This definition of "theme park" is similar to the definition of the term "theme park or entertainment complex" in s. 509.013(9), F.S., which relates to public lodging and public food services establishments. Comparable terms are also defined in the Beverage Law. Section 561.01(18), F.S., defines the term "entertainment/resort complex;" s. 565.02(6), F.S., defines the term "theme park complex;" and s. 565.02(7), F.S., defines the term "marine exhibition complex." Each of these definitions also provide that the locations must be comprised of at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of recreational activities and have a minimum of 1 million visitors annually. However, the definitions in ss. 561.01(18), 565.02(6), and 5650.02(7), F.S., have additional requirements not included in s. 509.013(9), F.S., or in SB 822, including the requirement that the 1 million annual visitors pay admission fees.

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 561.42 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules Committee on March 1, 2018
The committee substitute revises the penalties for violations during a 36-month period by:

- Removing the minimum civil penalties for violations;
- Increasing maximum civil penalty for a second violation from $50,000 to $100,000;
- Authorizing the Division of Alcoholic Beverages and Tobacco to suspend or revoke an alcoholic beverage license for a third violation instead of for a fourth violation; and
- Prohibiting the division from imposing a civil penalty in an amount greater than the financial value of the brand-naming rights agreement.

CS/CS by Commerce and Tourism Committee on February 6, 2019:
The committee substitute clarifies tied house evil prohibitions. The CS also adds penalties for manufacturers, vendors, and importers who violate provisions in the newly added subsection of 561.42(16). The civil penalties are issued for the first, second, third, and fourth violations within a three year period. The term “at-arms-length” agreement is defined for the purposes of this section.

CS by Regulated Industries Committee on January 10, 2018:
The committee substitute prohibits a brand naming rights agreement from, directly or indirectly, obligating or placing responsibility, financial or otherwise, upon a distributor.

B. Amendments:

None.

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

646760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 201 - 220

and insert:

1. A civil penalty of not more than $25,000, for a first violation.

2. A civil penalty of not more than $100,000 for a second violation occurring within 36 months after the date of the first violation.

3. At the discretion of the division, in lieu of or in addition to a civil penalty imposed under subparagraph 2.,

646760

suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

A violation occurring more than 36 months after a first violation is deemed a first violation under this paragraph. When imposing a civil penalty within the ranges provided in subparagraphs 1. and 2., the division may not impose a civil penalty in an amount greater than the financial value of the brand-naming rights agreement.

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

And the title is amended as follows:

Delete lines 26 - 29

and insert:

vendors; providing applicability; prohibiting the division from imposing certain civil penalties that are greater than the financial value of a brand-naming rights agreement; providing an effective

By the Committees on Commerce and Tourism; and Regulated Industries; and Senator Hutson

577-02900-18 2018822c2

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.42, F.S.; prohibiting certain entities and persons from directly or indirectly assisting any vendor in certain ways; prohibiting a licensed vendor from accepting certain items and services; authorizing the Division of Alcoholic Beverages and Tobacco to impose administrative sanctions for a violation of certain limitations established in the Beverage Law; prohibiting a vendor from displaying certain signs in the window or windows of his or her licensed premises; authorizing certain entities and persons to give, lend, furnish, or sell certain advertising material to certain vendors; defining the term "decalcomania"; providing exemptions relating to tied house evil for certain sales and purchases of merchandise; providing conditions for the exemptions; defining the term "merchandise"; prohibiting a manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors; defining the term "negotiated at arm's length"; specifying that a brand-naming rights agreement does not obligate or place responsibility upon a distributor; providing civil penalties for violations by manufacturers or importers of malt beverages or vendors; providing applicability; requiring the division to consider the comparative financial value of a brand-naming rights agreement when determining the amount of a civil penalty; providing an effective

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577-02900-18 2018822c2

date.

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

Section 1. Present subsection (13) of section 561.42, Florida Statutes, is redesignated as subsection (14), subsections (1), (8), (11), and (12) and paragraph (b) of present subsection (14) of that section are amended, and a new subsection (13) and subsection (16) are added to that section, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(1) A ~~No~~ manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, may not ~~shall~~ have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor may ~~shall~~ such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, directly or indirectly assist any vendor by furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or

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cooperative advertising, services, ~~any~~ gifts or loans of money or property of any description, or ~~by the giving of any~~ rebates of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~ accept, directly or indirectly, any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of any description, or ~~any~~ rebates of any kind whatsoever from any such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with ~~the provisions of~~ this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. Nothing in this section shall prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

(8) The division may adopt rules and require reports to enforce, and may impose administrative sanctions for any violation of, the limitations established under the Beverage Law on vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, advertising or cooperative advertising, services, gifts or loans of money or property ~~in this section on credits~~,

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coupons, and other forms of assistance.

(11) A vendor may display in the interior of his or her licensed premises, including the window or windows thereof, neon, electric, or other signs, including window painting and decalcomanias applied to the surface of the interior or exterior of such windows; signs that require a power source; ~~,~~ and posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him or her, whether visible or not from the outside of the licensed premises, but a ~~no~~ vendor may not ~~shall~~ display in the window or windows of his or her licensed premises more than one neon, electric, or similar sign that requires a power source~~,~~ advertising the product of any one brand of alcoholic beverage ~~manufacturer~~.

(12) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon, ~~or~~ electric, or similar signs requiring a power source; ~~signs~~, window painting and decalcomanias applied to the surface of the interior or exterior of windows; or~~,~~ posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises. As used in subsection (11) and this subsection, the term "decalcomania" means a picture, design, print, engraving, or label made to be transferred onto a glass surface.

(13) Any manufacturer, distributor, importer, primary

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American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, who regularly sells merchandise to vendors, or any vendor who purchases merchandise from such a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, does not violate subsection (1) if:

(a) Such sale or purchase is not less than the fair market value of the merchandise;

(b) Such sale or purchase is not combined with any sale or purchase of alcoholic beverages;

(c) Such sale or purchase is separately itemized from the sale or purchase of alcoholic beverages; and

(d) Both the seller and purchaser maintain records of any such sale or purchase, including the price and any conditions associated with such sale or purchase of the merchandise.

For purposes of this subsection, the term "merchandise" means commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under chapter 320.

(15)~~(14)~~ The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter. If sold, such items may not be sold at a price less than the actual cost to the industry member who initially purchased the items.

(16)(a) Notwithstanding any other provision of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising, negotiated at arm's length for no more than fair market value if:

1. The vendor operates places of business where consumption on the premises is permitted, the premises are located within a theme park complex consisting of at least 25 contiguous acres owned and controlled by the same business entity, and the complex contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex;

2. Such agreement does not involve, either in whole or in part, the sale or distribution of malt beverages between the manufacturer or importer, or the manufacturer's or importer's distributor, and a vendor;

3. The vendor, as a result of such agreement, does not give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered

into such agreement;

4. Such agreement does not limit, either directly or indirectly, the sale of alcoholic beverages of another manufacturer or importer, or distributor; and

5. Within 10 days after execution of such agreement, the vendor files with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

As used in this paragraph, the term "negotiated at arm's length" means the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

(b) A manufacturer or importer of malt beverages which is a party to a brand-naming rights agreement may not, either directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement. Such agreement exists solely between the manufacturer and the vendor and does not, directly or indirectly, in any way obligate or place responsibility, financial or otherwise, upon a distributor.

(c) Notwithstanding s. 561.29(3) and (4), a manufacturer of malt beverages, an importer of malt beverages, or a vendor who violates this subsection is subject to:

1. A civil penalty of at least $5,000, but not more than $25,000, for a first violation.

2. A civil penalty of at least $25,000, but not more than

$50,000, for a second violation occurring within 36 months after the date of the first violation.

3. A civil penalty of at least $50,000, but not more than $100,000, for a third or subsequent violation occurring within 36 months after the date of the first violation.

4. At the discretion of the division, in lieu of or in addition to a civil penalty imposed under subparagraph 3., suspension or revocation of the alcoholic beverage license for a fourth or subsequent violation occurring within 36 months after the date of the first violation.

A violation occurring more than 36 months after a first violation is deemed a first violation under this paragraph. When imposing a civil penalty within the ranges provided in subparagraphs 1.-3., the division shall consider the comparative financial value of the brand-naming rights agreement as a factor in assigning the amount of the civil penalty.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: February 19, 2018

I respectfully request that **Senate Bill #822**, relating Beverage Law, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1
Meeting Date

822
Bill Number (if applicable)

Topic Beer / theme Parks

646760
Amendment Barcode (if applicable)

Name Eric Criss

Amendment only

Job Title President

Address 110 S. Monroe
Street

Phone 491 3903

City *State* *Zip*

Email ericc@floridabeer.org

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

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

Representing Beer Industry of Florida

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 822
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic BEVERAGE LAW

Name JON COSTELLO

Job Title GOVERNMENT CONSULTANT

Address 119 S MONROE ST #202
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-766-8654

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MILLER COORS

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)

3/1/18
Meeting Date

822
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Melanie Becker

Job Title Director Gov't Affairs Universal Orlando

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Street

Phone 407-310-2561

Orlando FL 32819
City *State* *Zip*

Email Melanie.Becker@UniversalOrlando.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Universal Orlando

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)

3/1/18
Meeting Date

822
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams
Street

Phone 224-7173

TLH FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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 858
INTRODUCER:	Commerce and Tourism Committee; Community Affairs Committee; and Senator Steube and others
SUBJECT:	Daylight Saving Time
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.	Harmsen	McKay	CM	**Fav/CS**
3.	Present	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 858 creates the Sunshine Protection Act (the Act), which provides that the Legislature intends to adopt daylight saving time as the year-round standard time if the United States Congress amends 15 U.S.C. s. 260a, relating to Daylight Saving Time (DST).

II. Present Situation:

History of Daylight Saving Time in the United States[1]

Railroads in the United States and Canada instituted standard time in 1883, but standard time was not established in law until the Act of March 19, 1918, sometimes called the Standard Time Act or the Calder Act. The Standard Time Act also established DST. DST was repealed in 1919, but standard time in time zones remained in law. At that point, DST became a local matter. It was re-established nationally early in World War II, and was continuously observed from February 9, 1942 to September 30, 1945. After World War II, the use of DST varied among states and localities.

The Uniform Time Act of 1966 standardized the beginning and the end of daylight time in the U.S., but allowed for local exemptions from its observance. The Uniform Time Act provides that

[1] United States Naval Observatory, *Daylight Time*, available at http://aa.usno.navy.mil/faq/docs/daylight_time.php (last visited Feb. 12, 2018).

DST begins on the last Sunday in April and ends on the last Sunday in October, with the changeover to occur at 2 a.m. local time. Specifically, clocks are moved forward from 2 a.m. to 3 a.m. in spring, and they are moved back from 2 a.m. to 1 a.m. in fall.

States are not required to observe DST, but if a state chooses to observe DST, it must begin and end on the federally mandated dates. Individual states may exempt themselves from DST and observe standard time[2] year-round by passing a state law if:

- The state lies entirely within a single time zone, and the exemption applies statewide; or
- The state is divided by a time zone boundary, and the exemptions applies either statewide or to the entire part of the state on one side of the time zone boundary.

Currently, Hawaii, most of Arizona,[3] several United States commonwealths and territories,[4] and various Native American nations[5] are exempt from DST.

The U.S. Department of Transportation states that DST saves energy, saves lives, prevents traffic injuries, and reduces crime.[6]

Currently, Florida law does not address DST. However, section 1.02, F.S., states that with regard to any act by an officer or department in Florida, "it shall be understood and intended that the…time shall be the United States standard time of the zone within which the act is to be performed…"

Benefits and Drawbacks of Daylight Savings Time

An extension of DST by 4 weeks in 2007 allowed researchers to study the benefits of DST. One study found that robberies decreased during DST by seven percent, which researchers estimated translated into $59 million per year in avoided social costs.[7] The effect of DST on energy use is more controversial. One study, based on Indiana's residential utility use, found that DST resulted in a one percent overall increase in electricity demand.[8] Conversely, a U.S. Department of Energy (DOE) study found a 0.5 percent, per day decrease in electricity use during DST. The DOE study also found that "some southern portions of the United States exhibited slightly

[2] Standard time is the official time in the United States, as determined by two federal agencies: the National Institute of Standards and Technology (NIST), an agency within the U.S. Department of Commerce; and its military counterpart, the United States Naval Observatory (USNO). The clocks run by these services are kept synchronized with each other as well as with those of other international timekeeping organizations. *See* http://www.usno.navy.mil/USNO/time and https://www.nist.gov/pml/time-and-frequency-division for more information (last visited Feb. 12, 2018).
[3] Native American nations within Arizona have the right to use or opt out of DST. The Navajo Nation, which includes land in Arizona, New Mexico, and Utah, has chosen to use DST.
[4] The commonwealths of the Northern Mariana Islands and Puerto Rico, and the territories of American Samoa, Guam, and the U.S. Virgin Islands do not observe DST.
[5] The Navajo Nation observes DST, but the Hopi Nation does not.
[6] U.S. Department of Transportation, *Purpose of Daylight Saving Time*, available at https://www.transportation.gov/regulations/daylight-saving-time (last visited Feb. 12, 2018).
[7] Jennifer Doleac and Nicholas Sanders, The Brookings Institution, *Fighting Crime With Daylight Savings Time* (Oct. 29, 2015), available at https://www.brookings.edu/blog/brookings-now/2015/10/29/fighting-crime-with-daylight-saving-time/ (last visited Feb. 12, 2018).
[8] Matthew Kotchen and Laura Grant, National Bureau of Economic Research, Does Daylight Saving Time Save Energy? Evidence From a Natural Experiment in Indiana (Oct. 2008), available at http://www.nber.org/papers/w14429.pdf (last visited Feb. 12, 2018).

smaller impacts of extended DST on energy savings compared to the northern regions due to a small, offsetting increase in household air conditioning usage."[9]

III. Effect of Proposed Changes:

Section 1 provides that the Legislature intends to adopt DST as the year-round standard time in the entire state of Florida and all of its political subdivisions if the United States Congress amends 15 U.S.C. s. 260a.

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be indeterminate costs to reprogram computers and other electronic devices to eliminate the automatic changing of the clocks. However, these costs are likely to be insignificant.

C. Government Sector Impact:

There may be indeterminate costs to reprogram computers and other electronic devices to eliminate the automatic changing of the clocks. However, these costs are likely to be insignificant.

VI. Technical Deficiencies:

None.

[9] U.S. Department of Energy, *Impact of Extended Daylight Saving Time on National Energy Consumption* (Oct. 2008), available at https://energy.gov/sites/prod/files/2015/05/f22/epact_sec_110_edst_report_to_congress_2008.pdf (last visited Feb. 12, 2018).

VII. Related Issues:

The bill expresses a future intent, but does not require that Florida switch to DST year-round upon congressional amendment of 15 U.S.C. s. 260a. The Legislature cannot bind a future Legislature by effect of law.[10] Therefore, the bill is a nonbinding declaration of legislative intent.

VIII. Statutes Affected:

This bill creates one unnumbered section 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 Commerce and Tourism Committee on February 12, 2018:

- Removes the portion of the bill that requires the Florida Legislature to request to redesignate the portions of Florida that currently lie within the Central Time Zone to Eastern Time Zone.

CS by Community Affairs Committee on January 23, 2018:

- Provides that it is the intent of the Legislature to adopt DST as the year-round standard time in Florida if the United States Congress amends 15 U.S.C. s. 260a.
- Provides that the Florida Legislature shall submit a request to the Secretary of the United States Department of Transportation to initiate rulemaking to redesignate the portions of Florida that currently lie within the Central Time Zone to the Eastern Time Zone.

B. Amendments:

None.

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

[10] *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821, 824 (Fla. 1985).

By the Committees on Commerce and Tourism; and Community Affairs; and Senators Steube, Mayfield, and Taddeo

577-03112-18 2018858c2

A bill to be entitled

An act relating to daylight saving time; providing a short title; providing legislative intent regarding the State of Florida and its political subdivisions observing daylight saving time year-round under certain conditions; providing an effective date.

WHEREAS, the State of Florida is known as the "Sunshine State," and

WHEREAS, as the "Sunshine State," Florida should be kept sunny year-round, NOW, THEREFORE,

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

Section 1. (1) This section may be cited as the "Sunshine Protection Act."

(2) If the United States Congress amends 15 U.S.C. s. 260a to authorize states to observe daylight saving time year-round, it is the intent of the Legislature that daylight saving time shall be the year-round standard time of the entire state and all of its political subdivisions.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 870
INTRODUCER:	Senator Bracy
SUBJECT:	Capital Felonies
DATE:	February 28, 2018
REVISED:	02/05/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Favorable**
2.	Cellon	Phelps	RC	**Favorable**

I. Summary:

SB 870 sets forth legislative findings and intent related to the implementation of the death penalty by the courts.

During 2016 and 2017 the question of whether a unanimous vote of the jury would be required under Florida law in order for the death penalty to be imposed was settled by the Legislature and the courts.

The Florida Supreme Court and the Legislature have now required jury unanimity and the application of that law by the court has resulted in retroactive applicability to June 24, 2002, the date of *Ring v. Arizona*, 536 U.S. 584 (2002), a U.S. Supreme Court case.

Specifically, the bill sets forth legislative findings in ss. 921.141 and 921.142, F.S., reflecting that:

- The Florida Supreme Court's decision not to apply *Hurst v. State*, 202 So.3d 40 (Fla. 2016), in cases in which the death sentence became final prior to June 24, 2002, will result in a miscarriage of justice for those inmates; and
- The retroactive application of *Hurst* in those cases will provide a more just and final resolution in those cases.

The legislative intent set forth in the bill is that the *Hurst v. State* case apply retroactively in cases in which the death sentence became final prior to June 24, 2002. This will pave the way for inmates under those sentences to seek review under *Hurst*.

Although difficult to quantify, the judiciary, prosecutors, public defenders, and appellate counsel should expect additional workload when the bill becomes law.

The bill is effective July 1, 2018.

II. Present Situation:

Recent Death Penalty Sentencing Background

In 2016, the U.S. Supreme Court decided in *Hurst v. Florida*[1] that "the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death."[2] The U.S. Supreme Court remanded the *Hurst v. Florida* case to the Florida Supreme Court.

The state court issued its opinion applying the *Hurst v. Florida* ruling in October 2016.[3] The Florida Supreme Court found that the [U.S.] Supreme Court's decision in *Hurst v. Florida* requires that "all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury," and that "in order for the trial court to impose a sentence of death, *the jury's recommended sentence of death must be unanimous*."[4]

After the Florida Supreme Court issued its *Hurst v. State* opinion, the 2017 Legislature passed a bill requiring jury unanimity in order for the death penalty to be imposed.[5]

The *Ring v. Arizona Case* and the Retroactive Application of *Hurst*

In *Ring v. Arizona* the U.S. Supreme Court ruled that juries, rather than judges acting alone, must make crucial factual determinations that subject a convicted murderer to the death penalty. The decision was clear as to its application to the Arizona death penalty sentencing scheme.[6] The *Ring* court was not so clear about whether Florida's different sentencing scheme was effected by the *Ring* decision, so over the next 14 years *Ring* was not applied in Florida. However, the U.S. Supreme Court clarified in its 2016 *Hurst v. Florida* opinion that *Ring* applied in Florida just as it did in Arizona.[7]

In the December 2016 *Mosely* case, the Florida Supreme Court held that its *Hurst v. State* decision requiring jury unanimity for a death sentence applied retroactively.[8] The date of the *Ring* opinion[9] became the Florida Supreme Court's bright line for deciding *Hurst's* retroactivity.

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[1] *Hurst v. Florida*, 136 S.Ct. 616 (2016).
[2] *Id.* at p. 619.
[3] *Hurst v. State*, 202 So.3d 40 (Fla. 2016).
[4] *Id.* at p. 44. (emphasis added).
[5] Chapter 2017-1, L.O.F. (2017).
[6] "Capital defendants, no less than noncapital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." *Ring v. Arizona*, 536 U.S. 584, 589 (2002).
[7] "In light of *Ring*, we hold that Hurst's sentence violates the Sixth Amendment." *Hurst v. Florida*,136 S.Ct. 616, 622 (2016).
[8] "[A] major development occurred in 2016, when the United States Supreme Court finally held in *Hurst v. Florida* that the 'analysis the *Ring* Court applied to Arizona's sentencing scheme applies equally to Florida's.'" *Mosley v. State*, 209 So.3d 1248, 1274 (Fla. 2016).
[9] *Ring v. Arizona* was decided on June 24, 2002.

Therefore, if a death sentence became final *prior to* June 24, 2002, under current decisional law the defendant is *not* entitled to *Hurst* relief.[10] If, however, the sentence became final *on or after* June 24, 2002, the defendant *is* entitled to seek *Hurst* relief.[11]

III. Effect of Proposed Changes:

The bill creates the opportunity for inmates whose death sentences became final prior to June 24, 2002, to seek relief under the *Hurst v. State* decision which requires a unanimous jury vote for death in order for a death sentence to be imposed.[12]

The bill sets forth legislative findings in ss. 921.141 and 921.142, F.S., the death penalty statutes, reflecting that:

- The Florida Supreme Court's decision not to apply *Hurst* in cases in which the death sentence became final prior to June 24, 2002,[13] will result in a miscarriage of justice for those inmates; and
- The retroactive application of *Hurst* in those cases will provide a more just and final resolution in those cases.

The legislative intent in the bill is that the *Hurst v. State*[14] case apply retroactively in cases in which the death sentence became final prior to June 24, 2002.

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[10] *Asay v. State*, 210 So.3d 1, 11 (Fla., 2016), *cert. den.* 138 S.Ct. 41 (2017).
A sentence becomes final on the disposition of the petition for writ of certiorari by the U.S. Supreme Court if filed, or 90 days after the Florida Supreme Court's decision affirming a judgment and sentence becomes final if the petition for certiorari review is not filed. Fla. R. Crim. P. 3.851.
[11] *Mosely v. State*, 209 So.3d 1248, 1283 (Fla. 2016).
[12] *Hurst v. State*, 202 So.3d 40 (Fla. 2016).
[13] June 24, 2002, is the date that the U.S. Supreme Court's opinion in *Ring v. Arizona* was decided. *Ring v. Arizona*, 536 U.S. 584 (2002).
[14] *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The number of cases in which the death sentence may be effected by the bill cannot be determined with certainty. There are currently 350 people sentenced to death and housed in the Department of Corrections and an undetermined number of those inmates are already entitled to post-*Ring* case review under the *Hurst* decision.[15] If the bill becomes law all death cases will be under review. For this reason, the judiciary, prosecutors, public defenders, and appellate counsel should expect additional workload.

The Department of Corrections submitted its 2018 Agency Bill Analysis on January 8, 2018, indicating that the fiscal impact to the department resulting from this bill is indeterminate.[16]

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the *Hurst* opinion did require jury unanimity for a death sentence, it did not declare the death penalty itself to be unconstitutional.[17] Therefore, no case to come before the Florida Supreme Court after the court's *Hurst* decision has resulted in a death row inmate being set free or having his or her sentence automatically changed to a life sentence.

As the court has considered death cases raising a *Hurst* claim, the court has ruled that if the jury's recommended death sentence was the result of a vote that was less than unanimous (a *Hurst* claim), then the sentencing error was not harmless.[18] In those cases the court has vacated the death sentences, and remanded the cases to the trial court for a new penalty proceeding.[19]

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[15] Florida Department of Corrections, Corrections Offender Network, Offender Information Search, Death Row Statistics, http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx (last visited January 4, 2018).
[16] Department of Corrections, 2018 Agency Legislative Bill Analysis for Senate Bill 870, p. 4 (January 4, 2018) (on file with the Senate Committee on Criminal Justice).
[17] *Hurst v. State*, 202 So.3d 40, 65 (Fla. 2016).
[18] The harmless error analysis places the burden on the state, as the beneficiary of the error, to prove that there is no reasonable possibility that the error contributed to the conviction or to the sentence recommended in the sentencing proceeding. Where the Court finds that the error was not harmless the case must be remanded to "correct" the error. *State v. DiGuilio*, 491 So.2d 1129, 1138 (Fla. 1986); *Zack v. State*, 753 So.2d 9, 20 (Fla. 2000).
[19] *Hojan v. State*, 212 So.3d 982 (Fla. 2017).

Conversely, if the jury recommendation for death was the result of a unanimous vote, the death sentences have been upheld by the court.[20]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[20] *Cozzie v. State*, 225 So.3d 717 (Fla. 2017).

By Senator Bracy

11-00587-18 2018870__

A bill to be entitled

An act relating to capital felonies; amending ss. 921.141 and 921.142, F.S.; providing legislative findings and intent regarding the retroactive application of Hurst v. State, No. SC12-1947 (Fla., October 14, 2016); providing an effective date.

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

Section 1. Present subsection (9) of section 921.141, Florida Statutes, is redesignated as subsection (10), and a new subsection (9) is added to that section, to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(9) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that the Florida Supreme Court decided in *Asay v. State*, No. SC16-223, SC16-102, and SC16-628 (Fla., December 22, 2016), that *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016), will not apply in cases in which the death sentence became final prior to June 24, 2002, the day that the United States Supreme Court issued its opinion in *Ring v. Arizona*, 536 U.S. 584 (2002). The Legislature finds that the court's decision not to apply *Hurst v. State* in the cases of inmates whose death sentences became final before June 24, 2002, will result in a miscarriage of justice for those inmates. The Legislature further finds that the retroactive application of *Hurst v. State* to death row cases in which the death sentence became final before June 24, 2002, will provide a more just and final resolution in those cases. Therefore, it is the intent of the Legislature that *Hurst v.*

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11-00587-18 2018870__

State, No. SC12-1947 (Fla., October 14, 2016), apply in cases in which the death sentence became final before June 24, 2002.

Section 2. Subsection (1) of section 921.142, Florida Statutes, is amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that trafficking in cocaine or opiates carries a grave risk of death or danger to the public; that a reckless disregard for human life is implicit in knowingly trafficking in cocaine or opiates; and that persons who traffic in cocaine or opiates may be determined by the trier of fact to have a culpable mental state of reckless indifference or disregard for human life.

(b) The Legislature finds that the Florida Supreme Court decided in *Asay v. State*, No. SC16-223, SC16-102, and SC16-628 (Fla., December 22, 2016), that *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016), will not apply in cases in which the death sentence became final prior to June 24, 2002, the day that the United States Supreme Court issued its opinion in *Ring v. Arizona*, 536 U.S. 584 (2002). The Legislature finds that the court's decision not to apply *Hurst v. State* in the cases of inmates whose death sentences became final before June 24, 2002, will result in a miscarriage of justice for those inmates. The Legislature further finds that the retroactive application of *Hurst v. State* to death row cases in which the death sentence became final before June 24, 2002, will provide a more just and final resolution in those cases. Therefore, it is the intent of

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the Legislature that *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016), apply in cases in which the death sentence became final before June 24, 2002.

Section 3. This act shall take effect July 1, 2018.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Rules Committee

Subject: Committee Agenda Request

Date: February 6, 2018

I respectfully request that **Senate Bill #870**, relating to Capital Felonies, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Randolph Bracy
Florida Senate, District 11

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1
Meeting Date

870
Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av.
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/28/2015
Meeting Date

870
Bill Number (if applicable)

Topic SB 870 Death Penalty

Amendment Barcode (if applicable)

Name Agnes Furey

Job Title Retired

Address 3909 Woodrich Dr
Street

Tallahassee FL 32309
City *State* *Zip*

Phone 850 321-7756

Email agnesfurey@gmail.com

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

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

Representing Tallahassee Citizens Against Death Penalty

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

870
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Death Penalty

Name NANCY DANIELS

Job Title Legislative Consultant

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA PUBLIC DEFENDER ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

870
Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-1-18
Meeting Date

SB870
Bill Number (if applicable)

Topic CAPITAL FELONIES

Amendment Barcode (if applicable)

Name NEAL DUPREE

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

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

Representing CAPITAL COLLATERAL REGIONAL COUNSEL-S

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

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

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S-001 (10/14/14)

The Florida Senate

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 918
INTRODUCER:	Rules Committee; Judiciary Committee; and Senator Grimsley
SUBJECT:	Clerks of Circuit Court
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Favorable**
2.	Cibula	Cibula	JU	**Fav/CS**
3.	Jones	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 918 amends statutes that affect the duties of the clerks of the circuit courts. Specifically, these changes affect how the clerks will receive course completion information from driver improvement schools and how clerks will dispose of surplus funds from the judicial sale of property.

Under the bill, driver improvement schools must transmit student course completion certificates to the clerks of the circuit court through the Florida Courts E-Filing Portal. Under the current practice, students must provide their course completion certificates to the clerks.

Other statutory changes eliminate requirements for clerks of court to appoint surplus trustees to locate the owners of surplus funds after property is sold at judicial sale of property to satisfy a judgment. Under current law, a surplus trustee who locates the owner of surplus funds within 1 year after appointment is entitled to 12 percent of the surplus funds. Under the bill, any surplus funds remaining with the clerk of court 1 year after the judicial sale must be remitted to the Department of Financial Services as unclaimed property.

The department currently receives unclaimed property from many public and private entities. Upon receipt, the unclaimed property statutes presently direct DFS to try to notify owners of the existence of their unclaimed property. Those who assist property owners in the recovery unclaimed property may charge fees of up to 20 percent of the amount of a claim, not to exceed $1,000.

II. Present Situation:

Clerks of the circuit court are county officers. They may perform court-related functions as the clerk of court and county-related functions as the "ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds."[1]

Driver Improvement Schools

Section 318.14(9), F.S., provides that any person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial vehicle for certain noncriminal traffic infractions[2] may elect to attend a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. If the individual completes the course, adjudication is withheld and no points may be assessed against the individual's driver license. In addition, the DHSMV may require individuals involved in certain crashes to complete a driver improvement course as a requirement to maintain their driving privileges.[3]

Driver improvement course providers are required to submit course completion information to the DHSMV through the DHSMV's Driver Improvement Certificate Issuance System within 5 days.[4] However, the person who completes the driver improvement course is required to obtain a completion certificate and submit it to the clerk's office (as required by each office) by mail, e-mail, or in-person.[5]

Unclaimed Funds in the Court System

Clerks of the circuit court may come into the possession of unclaimed funds in at least two ways. Funds may have been deposited with the clerk pursuant to judicial proceedings, which remain unclaimed by their owner after the proceedings.[6] Once the funds have remained unclaimed for 5 years, the chief judge of the court or other judge must order that the funds be deposited with the Department of Financial Services.

A second way that unclaimed funds come into possession of a clerk of court is when property is sold at a judicial sale to satisfy a judgment and the sale price exceeds the amount of the judgment.[7] After the sale, any surplus funds must be first made available to satisfy the claims of subordinate lien holders before they may be claimed by the record owner of the property.[8]

Property sold at a judicial sale is sold at a public auction which has been advertised at least two times in a local newspaper in the days before the sale.[9] These advertisements must also include a

[1] FLA. CONST. art. V., s. 16 and art. VIII, s. 1(d).
[2] The option to elect to attend a driver improvement program is not available for violations of ss. 316.183(2), 316.187, 316.189, 320.0605, 320.07(3)(a) and (b), 322.065, and 322.15(1), F.S.
[3] Section 322.0261, F.S.
[4] Section 318.1451(6)(f), F.S.
[5] *See* Florida Association of Court Clerks & Comptrollers, *Bill Analysis of SB 918* (on file with the Senate Committee on Judiciary).
[6] Section 43.19, F.S.
[7] See ss. 45.031-45.035, F.S., for more information about judicial sales procedures.
[8] Section 45.031(1)(a), F.S.
[9] Section 45.031(2) and (3), F.S.

statement that "any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens [usually the date of the lawsuit] must file a claim within 60 days after the sale."[10] If the owner of record or an assignee or transferee claims the surplus funds during the 60 period when subordinate lienholders may claim the funds, the court must hold an evidentiary hearing to determine entitlement to the surplus.[11]

When the 60-day period ends, only the owner of record of the property on the[12] date of the lis pendens is presumed to be the person entitled to the surplus funds, if any.[13] However, the owner of record may assign or transfer the right to the funds. The court will approve the assignment or transfer if the assignee or transferee proves that the right to the surplus funds was transferred or assigned voluntarily.[14]

A transfer or assignment is sufficiently voluntary if the transfer or assignment is in writing and the instrument:

1. If executed prior to the foreclosure sale, includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, and the approximate amount of any equity in the property. If the instrument was executed after the foreclosure sale, the instrument must also specify the foreclosure sale price and the amount of the surplus.
2. Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.
3. Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.

(b) The transfer or assignment is filed with the court on or before 60 days after the filing of the certificate of disbursements.

(c) There are funds available to pay the transfer or assignment after payment of timely filed claims of subordinate lienholders.

(d) The transferor or assignee is qualified as a surplus trustee, or could qualify as a surplus trustee . . . .

(e) The total compensation paid or payable, or earned or expected to be earned, by the transferee or assignee does not exceed 12 percent of the surplus.[15]

Despite the criteria above, a court may approve a nonconforming assignment or transfer that is "procured in good faith and with no intent to defraud the transferor or assignor."[16]

If the surplus funds remain unclaimed by the owner 120 days after the judicial sale, the clerk must appoint a surplus trustee "for the purpose of finding the owner of record in order for the clerk to disburse the surplus, after deducting costs, to the owner of record."[17]

[10] Section 45.031(2)(f), F.S.
[11] Section 45.032(3)(b), F.S.
[12] Section 45.032(3)(a) and (c), F.S.
[13] Section 45.032(2), F.S.
[14] *Id.* and s. 45.033(2) and (3), F.S.
[15] Section 45.033(3), F.S.
[16] Section 45.033(5), F.S.
[17] Section 45.032(3)(c), F.S.

Surplus trustees must be approved by the Department of Financial Services.[18] An entity seeking to qualify as a surplus trustee must:

- Be registered with the Secretary of State to do business in this state.
- Have a minimum of 12 months' experience in the recovery of surplus funds in foreclosure actions.
- Hold a valid Class "A" private investigator license.
- Carry a minimum of $500,000 in liability insurance, cash reserves, or bonding.
- Have a principal who is an attorney or employ a full-time attorney who will supervise the management of the entity during the entity's tenure as a surplus trustee.

According to DFS, there are 83 registered surplus trustee entities.[19] However, many of these entities are owned by the same individuals. For example, "16 are owned by the same individual(s), 15 are owned by another, and 10 by another . . . ."[20]

Cases are assigned to surplus trustees based on a rotation system.[21] Because the same individuals own multiple surplus trustee entities, these individuals obtain a disproportionate share of the appointments under the rotation system.[22] Once appointed, the surplus trustee is entitled to a cost advance of 2 percent of the surplus.[23] If a surplus trustee is successful in having the surplus funds disbursed to the owner of record, the trustee will receive an additional 10 percent of the surplus. If the surplus trustee is unable to locate the owner of record within 1 year after appointment, the appointment terminates, and the clerk must report the surplus funds to DFS as unclaimed property.[24]

Unclaimed Property

Unclaimed property generally includes "[a]ll intangible property, including any income or increment thereon less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and the owner fails to claim such property for more than 5 years after the property becomes payable or distributable is presumed unclaimed . . . ."[25] In practical terms, unclaimed property may include unclaimed paychecks, the contents of a safe deposit box, property held by government entities, property held by trustees, unclaimed utility deposits, the proceeds of life insurance policies, uncashed checks, dormant bank accounts, and more.

A person who holds unclaimed property must file a report with DFS, which describes the property and provides information about the identity and last known address of the owner.[26] With the report, the holder must also pay or deliver the unclaimed property to DFS.[27] Once the

[18] Section 45.034, F.S.
[19] Email from Walter T. Graham, Director, Division of Unclaimed Property, Department of Financial Services (Feb. 15, 2018).
[20] *Id.*
[21] Section 45.034(5), F.S.
[22] See email, *supra* n. 19.
[23] Section 45.034(7), F.S.
[24] Section 45.032(4), F.S.
[25] Section 717.102(1), F.S.
[26] Section 717.117, F.S.
[27] Section 717.919, F.S.

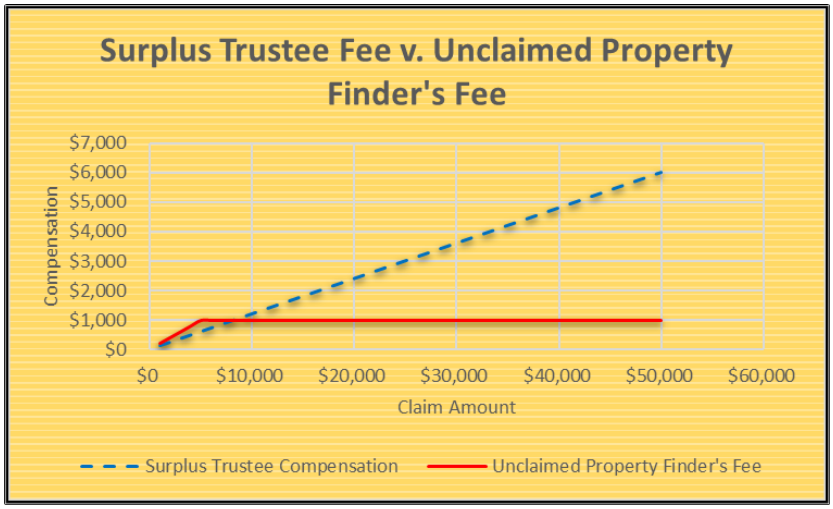
unclaimed property is in the possession of DFS, it has an obligation to try to notify the owners.[28] There is no statute of limitations on claims by owners and they may claim their property any time at no cost.[29]

DFS must retain a portion of the unclaimed property it receives in its Unclaimed Property Trust Fund to promptly pay claims to the owners of the property.[30] The remainder of the funds must be deposited into the State School Fund. The State Constitution requires that the income from the fund be used for the "support and maintenance of free public schools."[31] However, the principal of the fund may be appropriated for these same purposes.

The unclaimed property statutes also allow claimants' representatives to make claims on behalf of an owner using a power of attorney.[32] Similarly, certain attorneys and private investigators may purchase the right to unclaimed property from an owner of the property. Under either mechanism, the maximum compensation to the agent under the power of attorney or the discount received by an attorney or private investigator is limited to 20 percent per account claimed, not to exceed $1,000.

Compensation Comparison for Locating Owners of Fund

The chart to the right compares the fees received by successful surplus trustees with those who charge the maximum fee to assist property owners with unclaimed property claims from DFS' Unclaimed Property Trust Fund. As shown, the formulas and fee cap is more beneficial to the owner of unclaimed property than to the owner of surplus funds when the amount of the claim exceeds $8,333.33. Additionally, DCF has found that the lower fees paid to surplus trustees do not provide a sufficient incentive to locate the owners of surplus funds in amounts that are less than $5,000.[33]



[28] Section 717.118(1), F.S.
[29] DIVISION OF UNCLAIMED PROPERTY, FLORIDA DEPARTMENT OF FINANCIAL SERVICES, FLORIDA UNCLAIMED PROPERTY, https://www.myfloridacfo.com/Division/UnclaimedProperty/ (last visited Feb. 15, 2018).
[30] Section 717.123, F.S.
[31] FLA. CONST. art. IX, s. 6.
[32] Sections 717.135 and 717.1351, F.S.
[33] *See* email, supra n. 19. The email includes an example of another email in which DFS notified a clerk of court of the appointment of a surplus trustee to locate the owner of $913 in surplus funds. According to Mr. Graham, "the $913 case and almost 100% of others like it will be ignored by the surplus trustee. This is generally true for assignments for less than $5,000."

III. Effect of Proposed Changes:

This bill changes how the clerks of the circuit courts will receive course completion information from driver improvement schools and how they will dispose of surplus funds from the judicial sale of property.

Termination of Surplus Trustee Program; Fees (Sections 3, 4, 5 & 6)

The bill amends or repeals several sections of statutes to terminate the use of surplus trustees to locate the owners of surplus funds from judicial sales. These surplus trustees receive 2 percent of the surplus funds upon appointment and an additional 10 percent of the surplus if the surplus trustee locates the owner of the funds and has the funds disbursed to the owner.

By terminating the surplus trustee program, the full amount of unclaimed surplus funds will be transferred to the Department of Financial Services, which is obligated under current law to attempt to locate the owners of the funds at no cost to the owners. However, attorneys, private investigators, and others, pursuant to current law, may receive compensation for locating owners and assisting them with unclaimed property claims. The compensation may not exceed 20 percent of the amount claimed, not to exceed $1,000.

Remission of Unclaimed or Surplus Funds from Courts to the Department of Financial Services (Sections 1, 3 & 8)

Section 1 of the bill repeals s. 43.19, F.S., which requires courts to remit any unclaimed funds that have been in their possession for 5 years to the Department of Financial Services. By default, the repeal of the statute will require courts to pay these funds to DFS 1 year after they become payable or distributable as provided in existing s. 717.113, F.S.

Under current law, surplus funds must be remitted to DFS by the clerk of court approximately 1 year and 120 days after the judicial sale of property resulting in the surplus funds.[34] Under the bill, surplus funds generally must be remitted to DFS as unclaimed property 1 year after the judicial sale. The time for remitting the funds is extended if the owner of the funds has not been determined by the court or if entitlement to the funds is being litigated.

Submission of Claims by Subordinate Lienholders (Sections 2 & 3)

The bill increases the time period in which subordinate lienholders may claim surplus funds resulting from a judicial sale of property to 1 year from 60 days. Nonetheless, the bill retains the provisions of existing law requiring a court to hold an evidentiary hearing to determine entitlement if the record owner claims the funds during the time period for subordinate lienholders to assert claims to the funds. If entitlement to the surplus funds is being litigated when the 1 year period elapses, the clerk of court must retain the funds until the conclusion of the litigation. Once a clerk remits the surplus funds to DFS, only the owner of record of the property sold at a judicial sale or the beneficiary of a deceased owner is entitled to the surplus.

[34] These time periods result from the 60-day period for subordinate lienholders to claim the surplus funds, an additional 60-day period before the appointment of a surplus trustee, and the 1 year appointment of a surplus trustee.

Transmission of Course Completion Information by Driver Improvement Schools (Section 7)

Section 7 of the bill amends s. 318.1451, F.S., to require diver improvement schools to transmit student course completion certificates through the Florida Courts E-Filing Portal to the appropriate clerk of the circuit court within 3 days after a person successfully completes the course. The appropriate clerk is the clerk for the county in which the driving citation was issued which resulted in the student's attendance at the driver improvement school. The requirement for the electronic submission of court completion certificates is intended to eliminate the need for students to obtain and submit course completion certificates to a clerk's office.

Cross-references Conformed (Sections 9, 10 & 11)

Sections 9 – 11 of the bill conform statutory cross-references to the repeal of the surplus trustee program and the transfer of surplus funds to DFS.

Effective Date (Section 12)

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive financial impact on individuals who successfully complete driver improvement school and who will no longer be required to obtain and provide a copy of a course completion certificate to a clerk's office.

The bill may have a negative impact on driver improvement schools that will be required to electronically submit completion certificates. These schools may currently charge a fee to issue a paper completion certificate.

Owners of surplus funds from a judicial sale who need the assistance of a professional to recover them, will likely obtain a greater portion of their funds when larger amounts are involved. Although the bill allows professional locators to obtain a proportionately higher fee for assisting individuals with smaller claims, the higher fee may be a better incentive for locators to assist with smaller claims.

C. Government Sector Impact:

The Department of Financial Services will no longer be required to maintain a rotation system for the assignment of cases to surplus trustees. However, DFS likely will have increased numbers of unclaimed property accounts which contain the proceeds of surplus funds from judicial sales.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 45.031, 45.032, 45.033, 43.035, 318.1451, 717.113, 717.124, 717.138, and 717.1401.

The bill also repeals the following sections of the Florida Statutes: 43.19 and 45.034.

IX. Additional Information:

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

CS/CS by Rules on March 1, 2018:
The committee substitute shortens the timeframe established by the bill that a driver improvement school must transmit a person's completion certificate, from within 7 business days after a person successfully completes the course, to within 3 days after a person successfully completes the course.

CS by Judiciary on February 13, 2018:
The committee substitute differs from the underlying bill in that it no longer includes a provision which would have allowed clerks of court to maintain records at a location other than a county seat. Additionally, the committee substitute includes provisions terminating the surplus trustee program used by clerks of court to locate the owners of surplus funds from a judicial sale of property. Finally, the committee substitute specifies that the appropriate clerk of court for receiving course completion certificates from a driver improvement school is the clerk for the county issuing the citation resulting in the student's attendance at the school.

B. Amendments:

None.

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

923156

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Grimsley) recommended the following:

Senate Amendment

Delete line 291
and insert:
5. Within 3 days after a person successfully

By the Committee on Judiciary; and Senator Grimsley

590-03186-18 2018918c1

A bill to be entitled

An act relating to clerks of the court; repealing s. 43.19, F.S., relating to the disposition of certain money paid into a court which is unclaimed; amending s. 45.031, F.S.; revising the time periods within which certain persons must file claims for certain unclaimed surplus funds; amending s. 45.032, F.S.; deleting provisions defining and specifying the powers of a "surplus trustee"; specifying procedures for the clerk to use in handling surpluses that remain unclaimed; specifying the entities eligible for the surplus once the funds have been remitted to the Department of Financial Services; conforming provisions to changes made by the act; amending s. 45.033, F.S.; conforming a provision to changes made by the act; repealing s. 45.034, F.S., relating to qualifications and appointment of a surplus trustee in foreclosure actions; amending s. 45.035, F.S.; revising service charges that a clerk may receive and deduct from surplus amounts; amending s. 318.1451, F.S.; requiring all driver improvement course providers to transmit, within a specified timeframe, the individual completion certificate and citation number through the Florida Courts E-Filing Portal governed by the Florida Courts E-Filing Authority to the clerk of the circuit court in the county where the citation was issued; amending s. 717.113, F.S.; providing that certain funds remaining after a judicial sale and held in a court registry are not

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

590-03186-18 2018918c1

payable or distributable and are not subject to certain reporting requirements; amending ss. 717.124, 717.138, and 717.1401, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 43.19, Florida Statutes, is repealed.

Section 2. Paragraph (a) of subsection (1), paragraph (f) of subsection (2), and paragraph (b) of subsection (7) of section 45.031, Florida Statutes, are amended to read:

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed as an alternative to any other sale procedure if so ordered by the court.

(1) FINAL JUDGMENT.—

(a) In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff's attorney consents to such time. The final judgment shall contain the following statement in conspicuous type:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS

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

FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER THE SALE~~. IF YOU FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

(2) PUBLICATION OF SALE.—Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale. The notice shall contain:

(f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim before the clerk reports the surplus as unclaimed ~~within 60 days after the sale~~.

The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

(7) DISBURSEMENTS OF PROCEEDS.—

(b) The certificate of disbursements shall be in substantially the following form:

(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name Amount

Total disbursements: $....

Surplus retained by clerk, if any: $....

IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS UNCLAIMED ~~60 DAYS~~, ONLY THE OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE SURPLUS.

WITNESS my hand and the seal of the court on ...., ...(year)....

...(Clerk)...

By ...(Deputy Clerk)...

Section 3. Paragraph (d) of subsection (1) and subsections (3) and (4) of section 45.032, Florida Statutes, are amended, to read:

45.032 Disbursement of surplus funds after judicial sale.—

(1) For purposes of ss. 45.031-45.035, the term:

~~(d) "Surplus trustee" means a person qualifying as a surplus trustee pursuant to s. 45.034.~~

(3) During the period that ~~60 days after~~ the clerk holds

~~issues a certificate of disbursements, the clerk shall hold~~ the surplus pending a court order:~~.~~

(a) If the owner of record claims the surplus before the date that the clerk reports it as unclaimed ~~during the 60-day period~~ and there is no subordinate lienholder, the court shall order the clerk to deduct any applicable service charges from the surplus and pay the remainder to the owner of record. The clerk may establish a reasonable requirement that the owner of record prove his or her identity before receiving the disbursement. The clerk may assist an owner of record in making a claim. An owner of record may use the following form in making a claim:

(Caption of Action)

OWNER'S CLAIM FOR
MORTGAGE FORECLOSURE SURPLUS

State of ....
County of ....

Under penalty of perjury, I (we) hereby certify that:

1. I was (we were) the owner of the following described real property in .... County, Florida, prior to the foreclosure sale and as of the date of the filing of the lis pendens:

...(Legal description of real property)...

2. I (we) do not owe any money on any mortgage on the property that was foreclosed other than the one that was paid

off by the foreclosure.

3. I (we) do not owe any money that is the subject of an unpaid judgment, tax warrant, condominium lien, cooperative lien, or homeowners' association.

4. I am (we are) not currently in bankruptcy.

5. I (we) have not sold or assigned my (our) right to the mortgage surplus.

6. My (our) new address is: .....

7. If there is more than one owner entitled to the surplus, we have agreed that the surplus should be paid .... jointly, or to: ...., at the following address: .....

8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY MONEY TO WHICH I (WE) MAY BE ENTITLED.

9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE PROSECUTED CRIMINALLY FOR PERJURY.

...(Signatures)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

(b) If any person other than the owner of record claims an interest in the proceeds prior to the date that the clerk reports the surplus as unclaimed ~~during the 60-day period~~ or if the owner of record files a claim for the surplus but acknowledges that one or more other persons may be entitled to part or all of the surplus, the court shall set an evidentiary hearing to determine entitlement to the surplus. At the evidentiary hearing, an equity assignee has the burden of proving that he or she is entitled to some or all of the surplus funds. The court may grant summary judgment to a subordinate lienholder prior to or at the evidentiary hearing. The court shall consider the factors in s. 45.033 when hearing a claim that any person other than a subordinate lienholder or the owner of record is entitled to the surplus funds.

(c) One year after the sale, any surplus remaining with the clerk of the court which has not been disbursed as provided in this section is presumed unclaimed as set forth in s. 717.113 and must be reported and remitted to the department in accordance with ss. 717.117 and 717.119, unless there is a pending court proceeding regarding entitlement to the surplus. At the conclusion of any court proceeding and any appeal regarding entitlement to the surplus, the clerk of the court shall, if directed by the court order, report and remit the unclaimed property to the department or to another entity, as applicable, or, if not directed by the court order, to the owner of record. For purposes of establishing entitlement to the surplus after the property has been remitted to the department,

only the owner of record reported by the clerk of the court or the beneficiary of a deceased owner of record reported by the clerk is entitled to the surplus. A surplus of less than $10 escheats to the clerk. For purposes of this paragraph, the term "beneficiary" has the same meaning as in s. 731.201. ~~If no claim is filed during the 60-day period, the clerk shall appoint a surplus trustee from a list of qualified surplus trustees as authorized in s. 45.034. Upon such appointment, the clerk shall prepare a notice of appointment of surplus trustee and shall furnish a copy to the surplus trustee. The form of the notice may be as follows:~~

~~(Caption of Action)~~

~~NOTICE OF APPOINTMENT~~
~~OF SURPLUS TRUSTEE~~

~~The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons named in the certificate of disbursements, and that surplus funds of $.... remain and are subject to disbursement to the owner of record. You have been appointed as surplus trustee for the purpose of finding the owner of record in order for the clerk to disburse the surplus, after deducting costs, to the owner of record.~~

~~WITNESS my hand and the seal of the court on ...., ...(year)....~~

~~...(Clerk)...~~

~~By ...(Deputy Clerk)...~~

~~(4) If the surplus trustee is unable to locate the owner of record entitled to the surplus within 1 year after appointment, the appointment shall terminate and the clerk shall notify the surplus trustee that his or her appointment was terminated. Thirty days after termination of the appointment of the surplus trustee, the clerk shall treat the remaining funds as unclaimed property to be deposited with the Chief Financial Officer pursuant to chapter 717.~~

Section 4. Paragraph (d) of subsection (3) of section 45.033, Florida Statutes, is amended to read:

45.033 Sale or assignment of rights to surplus funds in a property subject to foreclosure.—

(3) A voluntary transfer or assignment shall be a transfer or assignment qualified under this subsection, thereby entitling the transferee or assignee to the surplus funds or a portion or percentage of the surplus funds, if:

~~(d) The transferor or assignee is qualified as a surplus trustee, or could qualify as a surplus trustee, pursuant to s. 45.034.~~

Section 5. Section 45.034, Florida Statutes, is repealed.

Section 6. Paragraphs (b) and (d) of subsection (2) of section 45.035, Florida Statutes, are amended to read:

45.035 Clerk's fees.—In addition to other fees or service charges authorized by law, the clerk shall receive service charges related to the judicial sales procedure set forth in ss. 45.031-45.034 and this section:

(2) If there is a surplus resulting from the sale, the clerk may receive the following service charges, which shall be

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

deducted from the surplus:

~~(b) The clerk is entitled to a service charge of $15 for notifying a surplus trustee of his or her appointment.~~

~~(d) The clerk is entitled to a service charge of $15 for appointing a surplus trustee, furnishing the surplus trustee with a copy of the final judgment and the certificate of disbursements, and disbursing to the surplus trustee the trustee's cost advance.~~

Section 7. Paragraph (h) of subsection (6) of section 318.1451, Florida Statutes, is amended to read:

318.1451 Driver improvement schools.—

(6) The department shall adopt rules establishing and maintaining policies and procedures to implement the requirements of this section. These policies and procedures may include, but shall not be limited to, the following:

(h) *Miscellaneous requirements.*—The department shall require that all course providers:

1. Disclose all fees associated with courses offered by the provider and associated driver improvement schools and not charge any fees that are not disclosed during registration.

2. Provide proof of ownership, copyright, or written permission from the course owner to use the course in this state.

3. Ensure that any course that is offered in a classroom setting, by the provider or a school authorized by the provider to teach the course, is offered at locations that are free from distractions and reasonably accessible to most applicants.

4. Issue a certificate to persons who successfully complete the course.

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

5. Within 7 business days after a person successfully completes the course, transmit the individual completion certificate together with the citation number through the Florida Courts E-Filing Portal governed by the Florida Courts E-Filing Authority to the clerk of the circuit court of the county where the citation is issued.

Section 8. Section 717.113, Florida Statutes, is amended to read:

717.113 Property held by courts and public agencies.—All intangible property held for the owner by any court, government or governmental subdivision or agency, public corporation, or public authority that has not been claimed by the owner for more than 1 year after it became payable or distributable is presumed unclaimed. Except as provided in s. 45.032(3)(c), money held in the court registry for which a court order has not been issued to determine an owner does not become payable or distributable and is not subject to reporting under this chapter. Notwithstanding the provisions of this section, funds deposited in the Minerals Trust Fund pursuant to s. 377.247 are presumed unclaimed only if the funds have not been claimed by the owner for more than 5 years after the date of first production from the well.

Section 9. Subsection (8) of section 717.124, Florida Statutes, is amended to read:

717.124 Unclaimed property claims.—

(8) This section applies to all unclaimed property reported and remitted to the Chief Financial Officer, including, but not limited to, property reported pursuant to ss. 45.032, 732.107, 733.816, and 744.534 ~~ss. 43.19, 45.032, 732.107, 733.816, and 744.534~~.

Section 10. Section 717.138, Florida Statutes, is amended to read:

717.138 Rulemaking authority.—The department shall administer and provide for the enforcement of this chapter. The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter. The authority to adopt rules pursuant to this chapter applies to all unclaimed property reported and remitted to the Chief Financial Officer, including, but not limited to, property reported and remitted pursuant to ss. 45.032, 732.107, 733.816, and 744.534 ~~ss. 43.19, 45.032, 732.107, 733.816, and 744.534~~.

Section 11. Section 717.1401, Florida Statutes, is amended to read:

717.1401 Repeal.—This chapter shall not repeal, but shall be additional and supplemental to the existing provisions of ss. 43.18 and 402.17 ~~ss. 43.18, 43.19, and 402.17~~ and chapter 716.

Section 12. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

918
Bill Number (if applicable)

Topic Clerks of the Court

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Legislative Affairs Director

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Tallahassee FL 32399
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Patronis/Department of Financial Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 920
INTRODUCER:	Rules Committee; Appropriations Committee; Commerce and Tourism Committee; and Senators Bradley and Braynon
SUBJECT:	Deferred Presentment Transactions
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Favorable**
2.	Little	McKay	CM	**Fav/CS**
3.	Sanders	Hansen	AP	**Fav/CS**
4.	Knudson/Matiyow	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 920 authorizes deferred presentment installment transactions under Florida law. A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in consecutive installments, which must be as equal as mathematically practicable. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days and the time between installment payments must be at least 13 days but not greater than 1 calendar month.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees. The maximum fees that may be charged on a deferred presentment installment transaction are 8 percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited. The bill retains current law in s. 560.404(19), F.S., prohibiting a provider from entering into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

If the drawer[1] timely informs the provider in writing or in person that the drawer cannot redeem or pay in full in cash the amount due and owing, the provider must provide a grace period for payment of a scheduled installment.

The impact to state revenues and expenditures is indeterminate. The Office of Financial Regulation (OFR) indicates the bill may impact collected revenues that are assessed for deferred presentation transactions. Currently, $1 is assessed for each deferred presentment transaction. The OFR indicates that there may need to be rule modification to require $1 per month for each outstanding deferred presentment installment transaction, $2 for each 60-day term, and $3 for each 90-day term. According to the OFR, $7,657,486 was collected in Fiscal Year 2016-2017 for the current $1 transaction fee. It is unknown how many deferred presentment installment transactions will result from the bill's passage, what the length of their terms will be, and what the decline will be in the number of current deferred presentment transactions.[2]

The OFR currently contracts with a vendor to host and maintain the existing deferred presentment provider transaction database. The OFR paid the vendor $2,656,269 in Fiscal Year 2016-2017 for the database. Based on modifications of the loan product proposed in the bill, the OFR indicates that it would likely need to procure a new contract. An increased appropriation may be required if current funding is insufficient to pay for a new contract. It is unknown how much a newly procured contract would cost.[3]

The bill takes effect July 1, 2019.

II. Present Situation:

Deferred Presentment

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's check and agreeing to hold the check for a number of days before depositing, presenting, or redeeming the payment instrument.[4] The transactions are commonly referred to as "payday loans." These transactions are governed by part IV, of ch. 560, F.S. The only persons who may engage in deferred presentment transactions are financial institutions as

[1] "Drawer" means a customer who writes a personal check and upon whose account the check is drawn. *See* s. 560.402(4), F.S.
[2] Office of Financial Regulation, *Senate Bill 920 Legislative Analysis* (Jan. 10, 2018) (on file with the Senate Appropriations Subcommittee on General Government).
[3] Id.
[4] *See* s. 560.402, F.S.

defined in s. 655.005, F.S.,[5] and money services businesses licensed under part II[6] or part III[7] of ch. 560, F.S.

Florida law contains provisions designed to prevent consumers from being caught in a "debt trap" wherein the consumer has to continuously enter into lending transactions to pay off the principal and fees from previous transactions. The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[8] Fees generally may not exceed 10 percent of payment provided to the drawer, except that an additional verification fee not to exceed $5 may also be charged.[9] The term of a deferred presentment agreement may not be less than 7 days or greater than 31 days.[10] A deferred presentment provider may not enter into a deferred presentment transaction with a drawer (customer) who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[11] A deferred presentment provider also may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[12]

If the drawer, at the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days. As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within 7 days after the end of the deferment period and complete counseling by the end of the grace period.[13]

The deferred presentment agreement may not include a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the

[5] Section 655.005(1)(i), F.S., defines a "financial institution" as 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.

[6] A "money transmitter" is licensed under part II of ch. 560, F.S., and is defined as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under part III of ch. 560, F.S. *See* s. 560.103(23), F.S.,

[7] A "check casher" is licensed under part III of ch. 560, F.S., and is defined as a person who sells currency in exchange for payment instruments received, except travelers checks. Section 560.1030, F.S.

[8] Section 560.404(5), F.S.

[9] Section 560.404(6), F.S.

[10] Section 560.404(8), F.S.

[11] Section 560.404(19), F.S.

[12] Section 560.404(18), F.S.

[13] Section 560.404(22), F.S.

agreement or any provision of part IV, ch. 560, F.S.[14] The deferred presentment provider must comply with state and federal disclosure requirements.[15]

As of June 30, 2017, there were 923 licensed locations in Florida that engage in deferred presentment transactions.[16] Between July 2016 and June 2017, approximately 7.7 million deferred presentment transactions were conducted in Florida, representing a total advance amount of $3.09 billion with total advance fees of $306 million. The average transaction from July 2016 to June 2017 was $400.77 and the average transaction fee was 9.9 percent of the advance plus an average verification fee of $3.09. Of all consumers who entered into a deferred presentment transaction from July 2016 to June 2017, 31.8 percent engaged in one to three transactions, 30.7 engaged in 4 to 9 transactions, and 37.6 percent engaged in 10 or more transactions. The loan loss rate is 1.8 percent of total transactions representing an advance amount of approximately $50.4 million. Grace periods were used for approximately 0.71 percent of transactions from July 2016 to June 2017.

Bureau of Consumer Financial Protection Rule Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans

On October 5, 2017, the Bureau of Consumer Financial Protection (CFPB) finalized a rule governing certain consumer credit products.[17] The CFPB has stated that the rule is aimed at stopping payday debt traps by requiring lenders to determine upfront whether consumers have the ability to repay their loans.[18] The key provisions of the rule are as follows:[19]

The Lender Must Determine the Consumer's Ability to Repay

It is an unfair and abusive practice for a lender to make covered short-term or longer-term balloon-payment loans,[20] including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay the loans according to their terms. The ability-to-repay standard requires a reasonable determination by the lender that the consumer would be able to make loan payments and also meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days. The lender must:

- Verify the consumer's net monthly income using a reliable record of income payment, unless a reliable record is not reasonably available;
- Verify the consumer's monthly debt obligations using a national consumer report and a consumer report from a registered information system as defined by the rule;
- Verify the consumer's monthly housing costs using a national consumer report if possible, or otherwise rely on the consumer's written statement of monthly housing expenses;

[14] Section 560.404(10), F.S.
[15] Section 560.404(13) and (20), F.S.
[16] Office of Financial Regulation, Florida Trends in Deferred Presentment – State of Florida Deferred Presentment Program Through June 2017 (June 2017) (On file with the Senate Committee on Banking and Insurance).
[17] 82 FR 54472.
[18] Bureau of Consumer Financial Protection, *CFPB Finalizes Rule to Stop Payday Debt Traps* (October 5, 2017) https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps (last accessed March 1, 2018).
[19] The summary of key provisions of the CFPB rule is taken from 82 FR 54472 at pgs. 1-9, unless otherwise indicated.
[20] A balloon payment loan is a larger than usual one-time payment at the end of the loan term.

- Forecast a reasonable amount for basic living expenses, other than debt obligations and housing costs; and
- Determine the consumer's ability to repay the loan based on the lender's projections of the consumer's residual income or debt-to-income ratio.

The rule also prohibits lenders from making a covered loan to a consumer who has already taken out three covered short-term or longer-term balloon-payment loans within 30 days of each other, for 30 days after the third loan is no longer outstanding.

The rule exempts certain loans from the underwriting criteria prescribed in the rule if they have specific consumer protections. Under the exemption, a lender may make up to three covered short-term loans in short succession, provided that the first loan has a principal amount no larger than $500, the second loan has a principal amount at least one-third smaller than the principal amount on the first loan, and the third loan has a principal amount at least two-thirds smaller than the principal amount on the first loan. A lender may not make a covered short-term loan under the exemption if it would result in the consumer having more than six covered short-term loans during a consecutive 12-month period, or being in debt for more than 90 days on covered short-term loans during a consecutive 12-month period.

Payment Practices

The rule makes it an unfair and abusive practice for a lender to attempt to withdraw payment from consumers' accounts after two consecutive failed payments, unless the consumer provides a new, specific authorization to do so. This applies to the same loans as the ability-to-repay requirement, and also applies to specified high-cost longer-term loans. Lenders must provide notices to consumers when the prohibition has been triggered and follow certain procedures in obtaining new authorizations.

Lenders must also provide written notice, depending on means of delivery, a certain number of days before its first attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account. Notice is also required before the lender attempts to withdraw a payment in a different amount than the regularly scheduled payment amount, on a date other than the regularly scheduled payment date, by a different payment channel than the prior payment, or to re-initiate a returned prior transfer. The notice must contain specified information about the upcoming payment attempt and, if applicable, alert the consumer to unusual payment attempts. The notice may be provided electronically with the consumer's consent.

Lender Reporting and Compliance Requirements

Lenders are required to furnish registered information systems with certain information concerning loans covered by the rule. Information must be submitted at loan consummation, during the period that the loan is outstanding, and when the loan ceases to be outstanding. The registered information systems will provide consumer reports that include a reasonably comprehensive record of a consumer's recent and current use of loans addressed by the rule. Before making such loans, a lender must obtain and consider a consumer report from a registered information system.

Lenders must also develop and follow written policies and procedures that are reasonably designed to ensure compliance with the rule. Lenders must retain the loan agreement, documentation obtained for any covered loan, and electronic records regarding origination calculations and determinations, the type of loan, and the loan terms.

Implementation of the Rule

The CFPB rule provides minimum consumer protections and allows state and local jurisdictions to adopt further regulatory measures to protect consumers. Lender compliance with the rule is required on August 19, 2019. Many Florida deferred presentment transactions are affected by the rule because they are for 45 days or less and do not qualify for one of the rule's exceptions. Thus deferred presentment transaction providers are required to comply with the underwriting requirements of the rule or conform their business practices to meet the exception to underwriting.

Reconsideration of the Rule

On January 16, 2018, the Consumer Financial Protection Bureau (CFPB) declared its intent to engage in a rulemaking process to reconsider the rule.[21]

III. Effect of Proposed Changes:

The bill authorizes deferred presentment installment transactions under Florida law. Deferred presentment transactions will be exempt from the underwriting requirement of the Bureau of Consumer Financial Protection (CFPB) rule because such loans will be for a term longer than 30 days, and will not be a longer-term balloon payment loan because the bill requires installment payment to be as equal as mathematically practicable. Provisions of the CFPB rule relating to payment practices, lender reporting, and compliance will apply to deferred presentment installment transaction lenders that provide loans with a term longer than 45 days, with a cost of credit exceeding 36 percent per annum, and that have a leveraged payment mechanism.

Section 1 amends s. 560.402, F.S., to define a "deferred presentment installment transaction" to mean "a deferred presentment transaction that is repayable in installments" and an "outstanding transaction balance" to mean "the amount received by the drawer from the deferred presentment provider that is due and owing, exclusive of the fees allowed under this party, in a deferred presentment transaction."

Section 2 amends s. 560.404, F.S., to authorize deferred presentment installment transactions under Florida law.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days. The bill retains current law in s. 560.404(19), F.S., which prohibits a provider from entering into a deferred presentment

[21] Bureau of Consumer Financial Protection, *CFPB Statement on Payday Rule*, (January 16, 2018). https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/ (last accessed March 1, 2018).

transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

The maximum fees that may be charged by a provider or its affiliate on a deferred presentment installment transaction are 8 percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited.

A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in consecutive and as equal as mathematically practicable installments. The time between installment payments must be at least 13 days but not greater than 1 calendar month. The provider of a deferred presentment installment transaction may accept additional checks bearing the date that the check is given to the provider if the deferred presentment agreement includes the deferment period applicable to each check.[22]

The provider must provide a grace period for payment of a scheduled installment if the drawer informs the deferred presentment installment transaction provider in writing or in person by noon of the business day before a scheduled payment. The bill clarifies that "by noon" means 12:00 p.m. of the same time zone in which the deferred presentment agreement was entered into. The grace period postpones the due date of an installment until after the last scheduled installment payment, at an interval that is no less than the intervals between the originally scheduled payments. Thus, for a deferred presentment installment transaction in which payments are due once every 2 weeks, the grace period must be at least 2 weeks after the final installment payment is due.

The bill amends the notice that must be prominently posted by the provider and included in the deferred presentment agreement. The bill requires the notice to detail the availability of the single grace period for a deferred presentment installment transaction.

The bill authorizes the Financial Services Commission to impose a fee of up to $1 for each full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction.

Section 3 amends s. 560.405, F.S., to allow a deferred presentment provider to present a check before the end of a deferment transaction if the check is for a missed scheduled payment for a deferred presentment installment transaction. The bill also makes a technical change to clarify that the drawer may redeem the check used in the deferred presentment transaction by paying the outstanding transaction balance and earned fees.

Section 4 reenacts s. 560.111, F.S., for the purpose of incorporating the amendments made by the bill to ss. 560.404 and 560.405, F.S. Section 560.111, F.S., makes willful violations of those sections a third degree felony.

[22] The bill subjects these checks to the limitations in subsection 560.404(5), F.S., of the bill, which provides that neither the face value of a check nor the outstanding transaction balance may exceed $1,000, exclusive of the fees.

Section 5 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill allows the Office of Financial Regulation (OFR) to increase the deferred presentment transaction database fee to vary with the term of the loan, thus increasing the total possible database fee from $1 to $3.

B. Private Sector Impact:

The impact to the private sector is indeterminate.

Many payday lenders assert that the Bureau of Consumer Financial Protection (CFPB) rule imposes additional costs and administrative burdens that will result in reducing the availability of deferred presentment transactions. Some consumer advocates assert that the CFPB rule provides necessary safeguards to prevent consumers from being caught in debt traps.

There are many circumstances where a new loan under this bill would result in lower fees than a current payday loan. For instance, below is an example using the standard payoff

average of 14 days[23] under current law for a $500 loan and a $500 deferred presentment installment loan under the bill that an individual pays off early (the same standard payoff average of 14 days).

Loan Comparison	Current Loan	CS/CS/SB 920 Loan
Loan Amount	$500.00	$500.00
Fees (interest and $5 Verification fee)	$55.00	$45.00
Payoff Period (days)	14	14
Payments	1	1
Payment Amount	$555.00	$545.00
Fees per day	$3.93	$3.21
APR	286.79%[24]	234.64%[25]

Below is a comparison between how a payday loan works under the bill for $500 with 60-day and 90-day terms with a current maximum $500 payday loan transaction with the maximum payoff period of 31 days. The examples below assume a payday lender collects the maximum allowable verification fee of $5.

Loan Comparison	Current Law Loans	60-day Loan under CS/CS/SB 920	90-day Loan under CS/CS/SB 920
Loan Amount	$500.00	$500.00	$500.00
Fees (interest and $5 Verification fee)	$55.00	$122.21	$175.56
Term (days)	31	60	90
Payments	1	4	6
Payment Amount	$555.00	$155.55	$112.59
Total Payment	555.00	$622.21	$675.56
Fees per day	$1.77	$2.04	$1.95
APR	129.52%[26]	148.69%[27]	142.40%[28]

C. Government Sector Impact:

Office of Financial Regulation[29]

The Office of Financial Regulation (OFR) assesses each deferred presentment provider a $1 transaction fee for each deferred presentment transaction to maintain an Internet

[23] Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2018) (On file with the Senate Committee on Banking and Insurance).
[24] $55 / $500 x 365 days / 14 days x 100 = 286.79%
[25] $45 / $500 x 365 days / 14 days x 100 = 234.64%
[26] $55 / $500 x 365 days / 31 days x 100 = 129.52%
[27] $122.21 / $500 x 365 days / 60 days x 100 = 148.69%
[28] $175.56 / $500 x 365 days / 90 days x 100 = 142.40%
[29] Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2017) (On file with the Senate Committee on Banking and Insurance).

database that records all deferred presentment transactions in the state. Deferred presentment providers and the OFR use the database to verify whether any deferred presentment transactions are outstanding for a particular person. The database is required by s. 560.404(23), F.S. The impact of the bill on the number of transactions is unknown and the impact of the bill on these revenues is indeterminate. The OFR received $7,657,486 in revenue related to the $1 transaction fee during Fiscal Year 2016-2017, which could be reduced with the longer transaction terms. If the OFR imposes a $2 fee for deferred presentment installment transactions with a 60-day term and a $3 fee for transactions with a 90-day term as permitted in this bill, the reduction in revenue may be offset.

The OFR contracts with a third-party vendor that maintains a database that records all deferred presentment transactions in the state, the cost of which is directly related to the number of deferred presentment transactions and database fees collected. For Fiscal Year 2016-2017, the OFR paid its third-party vendor $2,656,269 for hosting, maintaining, and operating the database. The bill may increase or decrease this cost if the statutory authorization of deferred presentment installment transactions increases or decreases the number of deferred presentment transactions.

The bill would require modifications to the database, which the OFR would obtain through a procurement requiring a legislative budget appropriation and between 18 to 24 months to implement. The actual cost would not be known until bids are received from vendors pursuant to the procurement process.

The OFR believes that the provisions of the bill would require the OFR, through the Financial Services Commission, to amend a number of administrative rules. The cost incurred by the OFR for the rulemaking filings can be absorbed within the current budget of the Division of Consumer Finance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 560.402, 560.404, 560.405 and 560.111.

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/CS by Rules on March 1, 2018:
The CS:

- Removes the provision that allows an assignee of a consumer debt to immediately begin the process of collecting on a debt.

CS/CS by Appropriations on February 15, 2018:
The committee substitute:

- Allows the assignees of a consumer debt to immediately begin the process of collecting on a debt; and
- Retains the 30 day waiting period after notice of the assignment is given before any legal actions can be taken to collect on the debt.

CS by Commerce and Tourism on January 29, 2018:
The bill is amended to:

- Define "outstanding transaction balance" as the amount received by the drawer from the deferred presentment provider that is due and owing in a deferred presentment transaction, exclusive of allowable fees;
- Provide that the deferred presentment provider for a deferred presentment installment transaction may accept additional checks bearing the date that the check was given to the provider if the deferred presentment agreement includes the deferment period applicable to each check;
- Require the deferred presentment provider to access the current database until the OFR is able to implement a database that includes deferred presentment installment contracts;
- Allow the drawer to inform the deferred presentment provider in writing or in person if the drawer cannot redeem or pay in full in cash;
- Clarify that the term "by noon" means 12:00 p.m. of the same time zone in which the deferred presentment installment transaction agreement was entered into;
- Provide that the Financial Services Commission may impose a fee of up to $1 per full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction, rather than $1 per transaction;
- Provide that the bill takes effect on July 1, 2019; and
- Make additional technical and conforming changes throughout the bill.

B. Amendments:

None.

951026

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 67 - 76.

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

An act relating to deferred presentment transactions;

By the Committees on Appropriations; and Commerce and Tourism; and Senators Bradley and Braynon

576-03292-18 2018920c2

A bill to be entitled

An act relating to consumer finance; amending s. 559.715, F.S.; revising a requirement for an assignee of the right to bill and collect a consumer debt to give the debtor written notice of the assignment; amending s. 560.402, F.S.; providing and revising definitions; amending s. 560.404, F.S.; specifying the maximum face amount of checks that may be taken for deferred presentment installment transactions, exclusive of fees; specifying the maximum rate and frequency of fees that deferred presentment providers or their affiliates may charge on deferred presentment installment transactions; specifying when fees are earned for certain deferred presentment transactions; specifying the calculation of fees earned for deferred presentment installment transactions; prohibiting prepayment penalties; specifying the minimum and maximum terms of a deferred presentment installment transaction; specifying dates that checks must bear; authorizing providers of deferred presentment installment transactions to accept additional checks subject to certain limitations; requiring the deferred presentment agreement to include the deferment period applicable to each check; correcting a reference to federal law; providing an exception to a prohibition against the acceptance or holding of undated checks or checks with certain dates by a deferred presentment provider or its affiliate; conforming a cross-reference; providing a verification process that may

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576-03292-18 2018920c2

be relied upon under certain conditions; revising a notice in deferred presentment agreements; authorizing a drawer to inform a provider in writing that the drawer cannot redeem or pay in full the amount due and owing to the provider; providing an exception to a prohibition, under certain circumstances, against a deferred presentment provider's deposit or presentment of a drawer's check; requiring a provider of a deferred presentment installment transaction to allow a drawer to defer one scheduled payment under certain circumstances; providing requirements for the deferred payment; specifying the frequency a certain fee may be imposed by Financial Services Commission rule for data on certain transactions submitted by deferred presentment providers to a certain database; providing an exception to a limitation on a deferred presentment provider's acceptance of a certain check or authorization; specifying requirements for amortization, installment repayments, and the calculation of charges for deferred presentment installment transactions; conforming provisions to changes made by the act; amending s. 560.405, F.S.; providing an exception to a prohibition against a deferred presentment provider's or its affiliate's presentment of a drawer's check before the end of the deferment period; revising a condition under which a deferred presentment provider may allow the check to be redeemed in lieu of presentment; revising a prohibition against requiring a drawer to redeem his

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or her check before the agreed-upon date; reenacting s. 560.111(5), F.S., relating to prohibited acts, to incorporate the amendments made to ss. 560.404 and 560.405, F.S., in references thereto; providing an effective date.

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

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before bringing any legal action to collect the debt. The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

Section 2. Present subsections (3) through (5) and (6) of section 560.402, Florida Statutes, are renumbered as subsections (4) through (6) and (8), respectively, present subsection (7) is amended, and new subsections (3) and (7) are added to that section, to read:

560.402 Definitions.—For the purposes of this part, the term:

(3) "Deferred presentment installment transaction" means a deferred presentment transaction that is repayable in installments.

(7) "Outstanding transaction balance" means the amount

received by the drawer from the deferred presentment provider that is due and owing, exclusive of the fees allowed under this part, in a deferred presentment transaction.

(9)~~(7)~~ "Termination of a deferred presentment agreement" means that all checks ~~the check~~ that are ~~is~~ the basis for the agreement are ~~is~~ redeemed by the drawer by payment in full in cash, or are ~~is~~ deposited and the deferred presentment provider has evidence that such checks have ~~check has~~ cleared. Verification of sufficient funds in the drawer's account by the deferred presentment provider is not sufficient evidence to deem that the deferred presentment ~~deposit~~ transaction is terminated.

Section 3. Subsections (5), (6), (8), (12), (13), (14), (19), (20), (21), and (22) and present subsections (23) and (24) of section 560.404, Florida Statutes, are amended, and new subsection (23) and subsection (26) are added to that section, to read:

560.404 Requirements for deferred presentment transactions.—

(5) The face amount of a check taken for deferred presentment transactions not repayable in installments may not exceed $500, exclusive of the fees allowed under this part. For a deferred presentment installment transaction, neither the face amount of a check nor the outstanding transaction balance may exceed $1,000, exclusive of the fees allowed under this part.

(6)(a) A deferred presentment provider or its affiliate may not charge fees that exceed 10 percent of the currency or payment instrument provided for a deferred presentment transaction not repayable in installments. A deferred presentment provider or its affiliate may not charge fees on any

deferred presentment installment transaction which exceed 8 percent of the outstanding transaction balance on a biweekly basis.

(b) Notwithstanding paragraph (a) ~~However~~, a verification fee may be charged as provided in s. 560.309(8). The fees in paragraph (a) ~~The 10-percent fee~~ may not be applied to the verification fee.

(c) Fees are earned at the time of origination for a deferred presentment transaction scheduled to be paid off in 31 days or less; however, fees for a deferred presentment installment transaction are earned using a simple interest calculation. A deferred presentment provider may charge only those fees specifically authorized in this section. Prepayment penalties are prohibited.

(8) A deferred presentment agreement may not be for a term longer than 31 days or fewer ~~less~~ than 7 days, except for a deferred presentment installment transaction, which may not be for a term longer than 90 days or fewer than 60 days.

(12) The deferred presentment agreement and the drawer's initial check must bear the same date, and the number of days of the deferment period must ~~shall~~ be calculated from that date. For deferred presentment installment transactions, the deferred presentment provider may accept additional checks, subject to the limitations in subsection (5), each bearing the date that the check was given to the provider, and the deferred presentment agreement must include the deferment period applicable to each check. The deferred presentment provider and the drawer may not alter or delete the date on any written agreement or check held by the deferred presentment provider.

(13) For each deferred presentment transaction, the deferred presentment provider must comply with the disclosure requirements of 12 C.F.R. part 226, relating to the federal Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer Financial Protection ~~Board of Governors of the Federal Reserve Board~~. A copy of the disclosure must be provided to the drawer at the time the deferred presentment transaction is initiated.

(14) A deferred presentment provider or its affiliate may not accept or hold an undated check or a check dated on a date other than the date on which the deferred presentment provider agreed to hold the check and signed the deferred presentment transaction agreement, except when a customer provides a new payment instrument reflecting the new outstanding transaction balance and anticipated fees upon making a payment on a deferred presentment installment transaction.

(19) A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with that provider or with any other deferred presentment provider, or with a person whose previous deferred presentment transaction with that provider or with any other provider has been terminated for less than 24 hours. The deferred presentment provider must verify such information as follows:

(a) The deferred presentment provider must ~~shall~~ maintain a common database and ~~shall~~ verify whether the provider or an affiliate has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. If a provider has not established a database, the provider may rely upon the written

verification of the drawer as provided in subsection (20).

(b) The deferred presentment provider must ~~shall~~ access the office's database established pursuant to subsection (24) ~~(23)~~ and ~~shall~~ verify whether any other deferred presentment provider has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. Before the office has implemented a database to include deferred presentment installment transactions ~~If a provider has not established a database~~, the deferred presentment provider must access the office's current database pursuant to this paragraph and may rely upon the written verification of the drawer as provided in subsection (20).

(20) A deferred presentment provider must ~~shall~~ provide the following notice in a prominent place on each deferred presentment agreement in at least 14-point type in substantially the following form and ~~must~~ obtain the signature of the drawer where indicated:

NOTICE

1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

YOU MUST SIGN THE FOLLOWING STATEMENT:

I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT THIS TIME. I HAVE NOT TERMINATED A DEFERRED PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

(Signature of Drawer)

2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE PURSUED AGAINST YOU.

3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT.

4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT REPAYABLE IN INSTALLMENTS: IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER MUST ~~SHALL~~ REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE

GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.

5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS: IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.

(21) The deferred presentment provider may not deposit or present the drawer's check if the drawer informs the provider in writing or in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider, unless the drawer fails to comply with subsection (22) or subsection (23), as applicable. No additional fees or

penalties may be imposed on the drawer by virtue of any misrepresentation made by the drawer as to the sufficiency of funds in the drawer's account. Additional fees may not be added to the amounts due and owing to the deferred presentment provider.

(22) For deferred presentment transactions not repayable in installments, if, by the end of the deferment period, the drawer informs the deferred presentment provider in writing or in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider, the deferred presentment provider must ~~shall~~ provide a grace period extending the term of the agreement for an additional 60 days after the original termination date, without any additional charge.

(a) The provider must ~~shall~~ require, ~~that~~ as a condition of providing a grace period, that the drawer make an appointment with a consumer credit counseling agency within 7 days after the end of the deferment period and complete the counseling by the end of the grace period. The drawer may agree to, comply with, and adhere to a repayment plan approved by the counseling agency. If the drawer agrees to comply with and adhere to a repayment plan approved by the counseling agency, the provider must also comply with and adhere to that repayment plan. The deferred presentment provider may not deposit or present the drawer's check for payment before the end of the 60-day grace period unless the drawer fails to comply with such conditions or the drawer fails to notify the provider of such compliance. Before each deferred presentment transaction, the provider may verbally advise the drawer of the availability of the grace

period consistent with the written notice in subsection (20), and may not discourage the drawer from using the grace period.

(b) At the commencement of the grace period, the deferred presentment provider must ~~shall~~ provide the drawer:

1. Verbal notice of the availability of the grace period consistent with the written notice in subsection (20).

2. A list of approved consumer credit counseling agencies prepared by the office. The office list must ~~shall~~ include nonprofit consumer credit counseling agencies affiliated with the National Foundation for Credit Counseling which provide credit counseling services to state residents in person, by telephone, or through the Internet. The office list must include phone numbers for the agencies, the counties served by the agencies, and indicate the agencies that provide telephone counseling and those that provide Internet counseling. The office must ~~shall~~ update the list at least once each year.

3. The following notice in at least 14-point type in substantially the following form:

AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE

MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT.

(c) If a drawer completes an approved payment plan, the deferred presentment provider must ~~shall~~ pay one-half of the drawer's fee for the deferred presentment agreement to the consumer credit counseling agency.

(23) For deferred presentment installment transactions, if a drawer informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment amount due and owing the provider, the deferred presentment provider must provide the drawer the opportunity to defer the scheduled payment, at no additional fee or charge, until after the last scheduled payment. The phrase "by noon" means 12:00 p.m. of the same time zone in which the deferred presentment agreement was entered into. Only one deferred payment is permitted for each deferred presentment installment transaction. The deferred payment must be due at an interval after the last scheduled payment which is no shorter than the intervals between the originally scheduled payments.

(24)(a)~~(23)~~ The office must ~~shall~~ implement a common database with real-time access through an Internet connection for deferred presentment providers, as provided in this subsection. The database must be accessible to the office and the deferred presentment providers in order to verify whether any deferred presentment transactions are outstanding for a particular person. Deferred presentment providers must ~~shall~~ submit such data before entering into each deferred presentment transaction in such format as required by rule, including the drawer's name, social security number or employment authorization alien number, address, driver license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by rule.

(b) For data that must be submitted by a deferred presentment provider, the commission may by rule impose a fee of up to $1 per transaction for deferred presentment transactions not repayable in installments, and the commission may impose a fee of up to $1 for each full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction ~~for data that must be submitted by a deferred presentment provider~~.

(c) A deferred presentment provider may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability due to relying on inaccurate information contained in the database.

(d) A deferred presentment provider must notify the office, in a manner as prescribed by rule, within 15 business days after ceasing operations or no longer holding a license under part II

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or part III of this chapter. Such notification must include a reconciliation of all open transactions. If the provider fails to provide notice, the office must ~~shall~~ take action to administratively release all open and pending transactions in the database after the office becomes aware of the closure.

(e) This section does not affect the rights of the provider to enforce the contractual provisions of the deferred presentment agreements through any civil action allowed by law.

(f) The commission may adopt rules to administer this subsection and to ensure that the database is used by deferred presentment providers in accordance with this section.

(25)~~(24)~~ A deferred presentment provider may not accept more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred presentment transaction for a single deferred presentment transaction, except for deferred presentment installment transactions in which such checks or authorizations represent multiple scheduled payments.

(26) A deferred presentment installment transaction must be fully amortizing and repayable in consecutive installments as nearly equal as mathematically practicable according to a payment schedule agreed upon by the parties with no fewer than 13 days and not more than 1 calendar month between payments, except that the first installment may be longer than the remaining installments by not more than 15 days, and the first installment payment may be larger than the remaining installment payments by the amount of charges applicable to the extra days. In calculating charges under this subsection, when the first installment is longer than the remaining installments, the

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amount of the charges applicable to the extra days may not exceed those that would accrue under a simple interest calculation based on the rate allowed under subsection (6).

Section 4. Subsections (1), (3), and (4) of section 560.405, Florida Statutes, are amended to read:

560.405 Deposit; redemption.—

(1) The deferred presentment provider or its affiliate may not present the drawer's check before the end of the deferment period, except for a missed scheduled payment for a deferred presentment installment transaction that has not been otherwise deferred pursuant to s. 560.404(23), as reflected and described in the deferred presentment transaction agreement.

(3) Notwithstanding subsection (1), in lieu of presentment, a deferred presentment provider may allow the check to be redeemed at any time upon payment of the outstanding transaction balance and earned fees ~~face amount of the drawer's check~~. However, payment may not be made in the form of a personal check. Upon redemption, the deferred presentment provider must ~~shall~~ return the drawer's check and provide a signed, dated receipt showing that the drawer's check has been redeemed.

(4) A drawer may not be required to redeem his or her check in full before the agreed-upon date; however, the drawer may choose to redeem the check before the agreed-upon presentment date.

Section 5. For the purpose of incorporating the amendments made by this act to sections 560.404 and 560.405, Florida Statutes, in references thereto, subsection (5) of section 560.111, Florida Statutes, is reenacted to read:

560.111 Prohibited acts.—

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Florida Senate - 2018 CS for CS for SB 920

576-03292-18 2018920c2

(5) Any person who willfully violates any provision of s. 560.403, s. 560.404, or s. 560.405 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. This act shall take effect July 1, 2019.

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 20, 2018

I respectfully request that **Senate Bill # 920**, relating to Consumer Finance, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 5

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1
Meeting Date

920
Bill Number (if applicable)

Topic Deferred Presentment Transactions

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Ave
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-1-18
Meeting Date

920
Bill Number (if applicable)

Topic Predatory Lending

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title MS

Address 625 E Brevard St
Street

Phone 251-9380

Email barbaradevane7@yahoo.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Alliance for Retired Americans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-1-18
Meeting Date

SB 920
Bill Number (if applicable)

Topic Payday Loans

Amendment Barcode (if applicable)

Name Sara Rice

Job Title Pastoral Counselor

Address 1120 Clark Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-728-7876

Email se-rice@comcast.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Cooperative Baptist Fellowship

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

920
Bill Number (if applicable)

Topic Consumer Finance

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street
Street

Phone 850.425-1344

Tallahassee FL 32301
City *State* *Zip*

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of NAACP Branches

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

920
Bill Number (if applicable)

Topic Deferred Presentment

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 850 556-3121

Email alicevickers@flacp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

920
Bill Number (if applicable)

Topic Consumer Finance

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/01/18
Meeting Date

SB 920
Bill Number (if applicable)

Topic Deferred Presentation

Amendment Barcode (if applicable)

Name Rev. Dr. Wayne E. Wilson

Job Title Pastor

Address 6791 Colony Dr. S.
Street

St Petersburg Fl 33705
City *State* *Zip*

Phone (727) 867-1022

Email waynewilson@hotmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing United Community Church

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)

3/0/19
Meeting Date

920
Bill Number (if applicable)

Topic Deferred Presentation

Amendment Barcode (if applicable)

Name CLETHEN U. SUTTON

Job Title PASTOR

Address 2001 N ALBANY AVENUE
Street

Phone 813-251-5756

TAMPA FL 33607
City *State* *Zip*

Email CUSUTTON67@Gmail.com

Speaking: For ☐ Against ☐ Information

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

Representing MIRACLE TEMPLE CHURCH OF GOD IN CHRIST

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)

3/01/18
Meeting Date

920
Bill Number (if applicable)

Topic Deferred PRESENTMENT

Amendment Barcode (if applicable)

Name Carol Stewart

Job Title SR. V.P. - Advance America

Address 135 N. Church St.
Street

Phone (803) 920-0621

Spartanburg SC 29306
City *State* *Zip*

Email CStewart@advanceamerica.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Advance America

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

CS/SB 920
Bill Number (if applicable)

Topic ~~Defer~~ Consumer Finance

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title ASD

Address 200 W. College Ave, Suite 304
Street

Phone 850-228-6387

Tall
City

FL
State

32301
Zip

Email dobarker@aarp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing AARP Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 922
INTRODUCER:	Senator Bean
SUBJECT:	Sale of Alcoholic Beverages
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Favorable**
2.	Price	Miller	TR	**Favorable**
3.	Oxamendi	Phelps	RC	**Favorable**

I. Summary:

SB 922 exempts liquor sold by an alcoholic beverage-licensed operator of *intrastate* railroads or sleeping cars from the limitation in current law that permits the licensee to only purchase and sell liquor in miniature bottles of not more than two ounces.

An alcoholic beverage license issued to an operator of railroads and sleeping cars is good throughout the state for the sale of beer, wine, liquor for consumption on any dining, club, parlor, buffet, or observation car of a passenger train operated by the licensee.

An operator of *interstate* railroads or sleeping cars remains subject to the limitation in current law that liquor may only be purchased and sold in miniature bottles of not more than two ounces.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division)[1] within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law,[2] which regulates the manufacture, distribution, and sale of wine, beer, and liquor.[3] The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

[1] Section 561.02, F.S. Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

[2] *See* s. 561.14, F.S.

[33] Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

Quota Licenses

The term "quota license" refers to the type of license authorized under s. 561.20, F.S., which limits the number of alcoholic beverage licenses that permit the sale of liquor along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the population of a county, or when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

Quota License Exceptions

Section 561.20(2), F.S., provides several exceptions to the number of licenses that permit the sale of beer, wine, and distilled spirits. The exceptions include restaurants, caterers, hotels and motels, specialty centers built on government-owned land, bowling establishments, and airports. Quota license exceptions are known as "special licenses."

Alcoholic Beverage Licenses for Railroad Transit Stations

The Beverage Law provides a limited exception to the quota license limitation to permit the division to issue an alcoholic beverage license (for the sale of beer, wine, and liquor) to an operator of railroads or sleeping cars and a vendor in railroad transit stations.

A "railroad transit station" is a platform or terminal facility where passenger trains operating on a guided rail system according to a fixed schedule between two or more cities regularly stop to load and unload passengers or goods. The term includes the passenger waiting lounge or dining, retail, entertainment, or recreational facilities within the premises owned or leased by the railroad operator or owner.[4]

Section 565.02(2), F.S., permits the division to issue a license for the sale of beer, wine, and liquor to:

- The operator of railroads or sleeping cars; and
- A vendor in a railroad transit station.[5]

The annual license tax for these licenses is $2,500. These licenses are an exception to the quota license limitation. A municipality or county may not require an additional license or levy a tax for the privilege of selling alcoholic beverages for consumption in such cars.[6]

The license issued to the operator of railroads and sleeping cars is good throughout the state for the sale of beer, wine, liquor for consumption on any dining, club, parlor, buffet, or observation car of a passenger train operated by the licensee. Alcoholic beverages can be sold only on cars in which certified copies of the licenses are posted. [7]

[4] *See* s. 561.01(22), F.S.
[5] Section 565.02(2), F.S.
[6] *Id.*
[7] Section 565.02(2)(a), F.S.

Operators of railroads and sleeping cars may only purchase and sell liquor in miniature bottles of not more than two ounces. However, alcoholic beverages sold within the licensed premises of a railroad transit station are not subject to the limitation on the size of the container.[8]

All Aboard Florida

All Aboard Florida is the operator of "Brightline," the under-construction, express passenger rail service between Miami and Orlando that uses the existing Florida East Coast Railway corridor between Miami and Cocoa. It is also building a new track along State Road 528 between Cocoa and Orlando. In 2018, the route is anticipated to open for service between Miami and West Palm Beach. A full-service route from Miami to Orlando will also open later that year. All Aboard Florida is constructing railroad stations in Miami, Fort Lauderdale, and West Palm Beach. The Orlando station is under construction at the Intermodal Transportation Center at Orlando International Airport.[9]

III. Effect of Proposed Changes:

The bill amends s. 565.02(a), F.S., to exempt liquor sold by the operator of *intrastate* railroads or sleeping cars from the limitation that liquor may only be purchased and sold in miniature bottles of not more than two ounces.

An operator of *interstate* railroads or sleeping cars would remain subject to the limitation that liquor may only be purchased and sold in miniature bottles of not more than two ounces.

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[8] *Id.*
[9] *See* All Aboard Florida at: http://www.allaboardflorida.com/ (Last visited January 16, 2018).

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 565.02 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Bean

4-01073-18 2018922__

A bill to be entitled

An act relating to the sale of alcoholic beverages; amending s. 565.02, F.S.; providing an exception to the miniature bottle requirement for operators of intrastate railroads and sleeper cars; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 565.02, Florida Statutes, is amended to read:

565.02 License fees; vendors; clubs; caterers; and others.—

(2) An operator of railroads or sleeping cars, or a vendor in a railroad transit station, in this state may obtain a license to keep for sale and to sell the beverages mentioned in the Beverage Law upon the payment of an annual license tax of $2,500 to the division. A municipality or county may not require an additional license or levy a tax for the privilege of selling such beverages.

(a) Operators of railroads or sleeping cars in this state are authorized to keep for sale and to sell all beverages mentioned in the Beverage Law for consumption upon any dining, club, parlor, buffet, or observation car of a passenger train in which certified copies of the licenses issued to the operators are posted. Certified copies of such licenses shall be issued by the division upon the payment of a $10 fee. A license for the sale of alcoholic beverages on a passenger train shall be good throughout the state. Except for alcoholic beverages sold within the licensed premises of a railroad transit station or by

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

Florida Senate - 2018 **SB 922**

4-01073-18 2018922__

operators of intrastate railroads or sleeping cars, it is unlawful for such licensees to purchase or sell any liquor on a passenger train except in miniature bottles of not more than 2 ounces.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 13, 2018

I respectfully request that **Senate Bill # 922**, relating to Sale of Alchoholic Beverages, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1042
INTRODUCER:	Governmental Oversight and Accountability Committee and Senators Brandes and Passidomo
SUBJECT:	Notaries Public
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	**Favorable**
2.	Peacock	Caldwell	GO	**Fav/CS**
3.	Tulloch	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1042 permits a notary public to register to provide online notarizations to people both in and out-of-state using audio/video technology. A notary public seeking to provide online notarizations must still qualify, be appointed and commissioned by the Governor, and be governed by the traditional provisions set forth in chapter 117, F.S. However, the bill divides chapter 117, F.S., into two parts and creates Part II, which sets forth the requirements for those notaries who also want to register with the Governor to provide online notarizations.

The bill requires that any notary public registered for and offering online notarizations carry a one million dollar insurance policy to protect against errors and omissions and a $25,000 bond. The bill also gives rule-making authority to the Department of State, in collaboration with the Agency for State Technology, to refine the types of "identity proofing" technology notaries public are required to use to verify a person's identity remotely. Additionally, notaries offering online services must take the upmost care in maintaining online security, particularly over their electronic journal, electronic signature, and electronic seal.

The bill takes effect on January 1, 2019.

II. Present Situation:

Notary Publics in Florida

A notary public is a public officer under the Florida Constitution,[1] and "and an impartial agent of the State."[2] "[I]n the performance of his or her duties, [a notary public] exercises a delegation of the State's sovereign power as in attesting the genuineness of any deeds or writings in order to render them available as evidence of the facts therein contained and in administering oaths and attesting to the authenticity of signatures."[3]

As a public officer, notaries public are constitutionally required to give a bond (as required by law) and swear or affirm to uphold the Constitutions of the United States and Florida.[4] Notaries public are appointed and commissioned by the Governor to four-year terms,[5] and are authorized under Florida law to perform six basic duties:[6]

- Administer oaths or affirmations;[7]
- Take acknowledgments;[8]
- Solemnize marriages;[9]
- Attest to photocopies;[10]
- Verify vehicle identification numbers (VINs);[11] and
- Certify the contents of a safe-deposit box.[12]

Importantly, a notary public may only exercise the foregoing duties within the physical boundaries of the State of Florida.[13] Generally, a notary public may not charge more than $10 per notarial act and may not charge a fee for notarizing a vote-by-mail ballot.[14]

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[1] FLA. CONST., Art. II, s. 5(c).
[2] 58 AM. JUR. 2D Notaries Public § 1.
[3] *Id.* (footnotes omitted). *See also* BLACK'S LAW DICTIONARY (10th ed. 2014) ("The notary public, or notary, is an official known in nearly all civilized countries. The office is of ancient origin. In Rome, during the republic, it existed, the title being *tabelliones forenses*, or *personae publicae*; and there are records of the appointment of notaries by the Frankish kings and the Popes as early as the ninth century. They were chiefly employed in drawing up legal documents; as scribes or scriveners they took minutes and made short drafts of writings, either of a public or a private nature. In modern times their more characteristic duty is to attest the genuineness of any deeds or writings, in order to render the same available as evidence of the facts therein contained.") (quoting Benjamin F. Rex, *The Notaries' Manual* § 1, at 1–2 (J.H. McMillan ed., 6th ed. 1913)).
[4] *See supra* note 1, *supra*. *See* s. 117.01(3) & (7), F.S. ((3) requiring that, as part of oath, the applicant must swear he or she has read ch. 117, and knows the duties, responsibilities, limitations, and powers of a notary; (7) requiring that notary give a bond in the amount of $7,500 in the event the notary breaches duties, both a physical and electronic copy of which is to be kept on file with the Department of State). Section 117.01(1), F.S., requires a notary to be able to read, write, and understand the English language.
[5] Section 117.01(1), F.S.
[6] Executive Office of the Governor, State of Florida, *Governor's Reference Manual for Notaries Public*, p. 13 (Dec. 13, 2016).
[7] Section 117.03, F.S.
[8] Section 117.04, F.S.
[9] Section 117.045, F.S.
[10] Section 117.05(12)(a), F.S.
[11] Section 319.23(3)(a)2., F.S.
[12] Section 655.94(1), F.S.
[13] *See supra* note 5.
[14] Section 117.05(2), F.S.

A notary public may provide an electronic signature that is unique, verifiable, under the notary public's sole control, and attached to a document in a way revealing any subsequent alteration.[15] When an electronic signature must be accompanied by a notary public seal, the requirement is met when the notary public includes his or her full name as provided in the notary public's application for commission, the words "Notary Public State of Florida," the expiration date of the notary public's commission, and the notary public's commission number.[16] The seal must also be applied to all notarized paper documents using a rubber stamp containing the foregoing information.[17] The rubber stamp seal must be affixed to the notarized paper document in photographically reproducible black ink. Every notary public must print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned.

Additionally, as a public officer, a notary public is held to high standards and is subject to discipline, including suspension by the Governor and removal by the Senate, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.[18] A notary public is also subject to criminal penalties for certain unlawful uses of the notary public commission (such as notarizing his or her own signature),[19] and liable to pay fees for certain civil infractions (such as notarizing a document when the signor is not in the notary public's presence).[20]

Becoming a Notary Public in Florida

In order to be eligible to become a notary public in Florida, a person must:
- Be at least 18 years of age;
- Be a Florida resident or permanent resident alien with a recorded declaration of domicile;
- Maintain Florida residence throughout the appointment; and
- Be able to read, write, and understand the English language.[21]

To apply to be a notary public in Florida, the application form provided by the Department of State must be completed, signed, sworn, and filed along with the appropriate applications fees.[22] Because the bond must be attached, the bonding agency usually submits the application in both a paper and electronic format.[23] The oath of office and notary public bond must accompany the notary public's application when filed with the Department of State.[24] Applicants must also provide the following as part of the application:
- Personal identification information;

[15] Section 117.021(2), F.S.
[16] Section 117.021(3), F.S.
[17] Section 117.05(3), F.S.
[18] FLA. CONST., Art. IV, s. 7.
[19] Section 117.05(1), F.S. (providing violation is a third degree felony). *See also* s. 117.05(3)(d), (7), and (8), F.S.; s. 117.105, F.S.; s. 117.107(9), F.S.
[20] Section 117.107(9), F.S. (providing violation is a civil infraction punishable by a fine of up to $5,000).
[21] *See supra* note 5.
[22] Section 117.01(2), F.S. (requiring $25 application fee, $10 commission fee, and $4 educational surcharge, except that the commission fee is waived for veterans with a 50 percent disability).
[23] *See supra* note 6 at p. 7.
[24] Section 117.01(2), F.S.

- Affidavit of good character from a reference who has known the applicant for at least one year and is not a relative;
- Ten-year history of any licenses and discipline;
- Statement regarding whether the applicant has ever been convicted of a felony or had his or her civil rights restored; and
- Any other information requested by the Governor's office to confirm eligibility.[25]

Notary's Duty to Confirm Identity and Physical Presence for Signing

One of the notary public's primary duties is to verify the identity of the person who is signing a document. If the person is personally known to the notary public or provides "satisfactory evidence" by producing valid identification or witnesses or both verifying that the person is who he or she claims to be, the notary public may notarize the document.[26]

Additionally, generally the person signing the document, as well as any witness, must be in the notary public's physical presence at the time of presenting identification and signing.[27] It is the physical presence requirement that the proposed bill seeks to redefine.

Online Notarization

Because of new audio/video technologies, such as FaceTime and Skype, two or more people may be able to both see and hear one another in real time using a computer or mobile device, even though they are in different states. This means a notary public can view a person's face, using audio/video technology, while simultaneously reviewing the person's identification and other credentials.

One article explains how online notarization works:

> The process is pretty straightforward: You upload a document to an app or website and get connected with a notary by video, on a split screen; you verify your identity by showing a government-issued photo ID, and the notary witnesses you signing your name on screen using your finger or mouse. Then, the notary adds their electronic signature and a digital version of a stamp or seal. The whole transaction is recorded and secured on the cloud in compliance with retention rules; both the signer and the notary can get copies.
>
> Right now, even though notarization apps and sites are accessible by everyone, the participating notaries themselves are certified and based only in Virginia and Texas. Nevada will also join those states; it enacted a remote notarization law on June 9.[28]

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[25] *Id.*
[26] Section 117.05(5), F.S.
[27] Section 117.05(4), F.S. *See also* Effect of the Bill, Part I, *infra*, amending multiple provisions in chapter 117, F.S., to clarify that "physical presence" can include an appearance by audio/video technology.
[28] Lauren Silverman, *Notaries are Starting to Put Down The Stamp and Pick Up a Webcam*, National Public Radio, All Tech Considered (June 12, 2017), available at https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-put-down-the-stamp-and-pick-up-a-webcam (last visited Jan. 29, 2018).

Virginia was the first to pass a remote notarization law in 2012.[29]

Commissioner of Deeds

Chapter 721, F.S., governs vacation and timeshare plans. Section 721.96, F.S., provides, in part, that the purpose of part IV, ch. 721, F.S., is to provide for the appointment of commissioners of deeds.

Section 721.97(1), F.S., provides that the Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states. The term of office is 4 years. Commissioners of deeds have authority to take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States. Such acknowledgments, proofs of execution, and oaths must be taken or made in the manner directed by the laws of this state, including but not limited to s. 117.05(4), (5)(a), and (6), F.S., and certified by a commissioner of deeds. The certification must be endorsed on or annexed to the instrument or writing aforesaid and has the same effect as if made or taken by a notary public licensed in this state.

A person seeking to be appointed as a commissioner of deeds must take an oath before a notary public in Florida or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of a commissioner of deeds.[30] The oath must be filed with the Department of State prior to the person being commissioned.[31]

Uniform Electronic Transaction Act

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act (act). The act applies to electronic records and signatures relating to a transaction.[32] The act does not apply to transactions to the extent they are governed by:[33]

- A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;

[29] *Id. See* Office of the Secretary of the Commonwealth of Virginia, Notary Commissions, *A Handbook For Virginia Notaries Publics*, available at https://commonwealth.virginia.gov/media/9760/2017-december-15-revised-handbook.pdf (last visited Feb. 5, 2018). *See also* https://notarize.com/, a Virginia-based online platform offering online notary services. The video on the homepage also explains how the process works. *Id.* (last visited January 29, 2018).
[30] Section 721.97(2), F.S. *Also see* International Society of Florida Commissioners of Deeds, *Reference Manual for Commissioners of Deeds For the State of Florida* (Aug. 2009), available at http://pawnotary.com/download/Manuals_and_Handbooks/Florida%20comissioner%20of%20deeds.pdf (last visited on Feb. 14, 2018).
[31] *Id*.
[32] Section 668.50(3)(a), F.S.
[33] Section 668.50(3)(b), F.S.

- The Uniform Commercial Code (UCC);[34] or
- The Uniform Computer Information Transaction Act.

III. Effect of Proposed Changes:

Section 1 divides ch. 117, F.S. into two parts: Part I entitled "General Provisions," and Part II entitled "Online Notarizations."

With the exception of the effective date,[35] the remaining sections of the bill can be grouped as follows: Sections 2 through 5; Sections 6 through 19; and Sections 18 through 27.

Sections 2 through 5 amend current provisions of ch. 117, F.S., which will now be Part I that contains the general provisions governing how to become a notary public and the duties and responsibilities of a notary public. The bill adds language to three of the existing provisions in Part I in order to set out some of the additional requirements a notary public must follow in order to register to do online notarizations.

The bill also provides that an online notary public must use a password or code protected electronic signature, and, presumably for security reasons, the online notary public cannot be required to use technology the online notary public has not selected (s. 117.021, F.S.). The bill requires the Department of State, in collaboration with the Agency for State Technology, to adopt rules establishing standards for tamper-evident technologies that will indicate any alteration or change to an electronic record after completion of an electronic notarial act and must publish a list of technologies that satisfy those standards and are approved for use in electronic notarizations, effective January 1, 2019. All electronic notarizations performed on or after January 1, 2019, must comply with the adopted standards and use an approved technology (s. 117.021, F.S.).

The bill provides that the notary public may supervise the making of a copy of a tangible or an electronic records or a printout of an electronic record, and attest to the trueness of the copy or of the printout, provided the document is neither a vital record in this state, another state, a territory of the U.S., or another country, nor a public record, if a copy can be made by the custodian of the public record.

The bill also sets out the criteria for a form certificate a notary public must use when notarizing a copy of a tangible or an electronic record or a printout of an electronic record (s. 117.05, F.S.), and provides that the prohibitions in s. 117.107, F.S., do not apply to electronic signatures and seals necessary to perform online notarizations.

Other changes to Part I primarily clarify that a signer of document may "personally appear" before a notary public either in person or by "audio-video communication technology," and that an online notary public must comply with Part II, *infra* (s. 117.05, F.S.). The bill also amends the various notarial form certificates in s. 117.05, F.S., to add an option for the notary public to

[34] Other than s. 671.107, F.S., and chapters 672 and 680, F.S. The UCC consists of chapters 670 - 680, F.S.
[35] *See* Section 26, *infra*.

select: "The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization[.]"

Sections 6 through 19 create Part II of ch. 117, F.S., specifically governing online notary services.

The bill provides definitions of the following terms (s. 117.201, F.S.):

- "Appear before," "before," "appear personally before," or "in the presence of" mean:
  - In the same physical location as another person and close enough to see, hear, communicate with, and exchange credentials with that person; or
  - In a different physical location from another person, but able to see, hear, and communicate with the person by means of audio-video communication technology;
- "Audio-video communication technology" means technology meeting the requirements of this part and of any of the rules adopted hereunder which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another;
- "Credential analysis" means a process or service meeting the requirements of this part and any rules adopted hereunder through which a third party confirms the validity of a government-issued identity credential or data thereon through review of public and proprietary data sources;
- "Error and omissions insurance" means a type of insurance that provides coverage for potential errors or omissions in or relating to the notarial act;
- "Government-issued identity credential" means any approved credential for verifying identity set forth in s. 117.05(5)(b)2, F.S.;
- "Identity proofing" means a process or service meeting the requirements of this part and of any rules adopted hereunder through which a third party confirms the identity of an individual through use of public or proprietary data sources, which may include by means of knowledge-based authentication or biometric verification;
- "Knowledge-based authentication" means a form of identity proofing based on a set of questions formulated from public and proprietary data sources for which the principal has not provided a previous answer;
- "Online notarization" means the performance of an electronic notarization by means of audio-video communication technology and which meets standards provided in this chapter and of any rules adopted hereunder;
- "Online notary public" means a notary public who has registered with the Governor's office to perform online notarizations under this part, a civil-law notary appointed under chapter 118, F.S., or a commissioner of deeds appointed under part IV of ch. 721, F.S.;
- "Principal" means an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation from the online notary public; and
- "Remote presentation" means transmission of an image of a government-issued identity credential that is of sufficient quality to enable the online notary public to identify the individual seeking the notary's services and to perform credential analysis through audio-video communication technology.

Except where the context requires otherwise, any term defined in the Uniform Electronic Transaction Act[36] has the same meaning when used in this part of the bill (s. 117.201, F.S.).

The bill clarifies in ss. 117.209, 117.225, 117.235, and 117.265, F.S., that an online notary public: must satisfy all the traditional notary public requirements of Part I; is still subject to Part I; and may perform any of the notarial acts listed in Part I online *except* online marriage rites. An online notary public may also charge a fee not to exceed $25 *in addition to* the fees authorized by Part I (s. 117.275, F.S.). The online notary public must be physically located in Florida while performing the online notarization (s. 117.209, F.S.).

Additionally, s. 117.225, F.S., sets out the registration requirements for online notaries public. Online notaries public must:

- Satisfy qualification requirements of Part I or the qualifications for appointment as a commissioner of deeds under part IV of ch. 721, F.S.;
- Complete a live or online course covering the duties, obligations, and technology requirements for serving as an online notary public;
- Pay the online notarization application fee of $25;
- Provide proof of bond payable to any individual harmed as a result of a breach of duty by the online notary public acting in his or her official capacity in the minimum amount of $25,000 as specified by Department of State rule. Such bond must be approved and filed with the Department of State and executed by a surety company authorized to transact business in Florida. Compliance with this requirement satisfies the requirement of obtaining a bond under s. 117.01(7), F.S.;
- Provide proof of errors and omissions insurance policy from an insurer authorized to do business in Florida in the minimum amount of $1 million on such terms as specified by Department of State rule as reasonably necessary to protect the public;
- Submit a signed and sworn registration to the Governor's office; and
- Identify the audio/video communication technology and identity proofing methods to be used online, which must:
    - Comply with the standards promulgated by the Department of State and the Agency for State Technology; or
    - Be consistent with the requirements of s. 117.295(2), F.S., if the Department of State and the Agency for State Technology have not yet established standards.

Section 117.215, F.S., provides that if a provision of law requires a notary public or other authorized official of this state to notarize a signature or a statement, to take an acknowledgment of an instrument, or to administer an oath or affirmation so that a document may be sworn, made under oath, or subject to penalty or perjury, an online notarization performed in accordance with the provisions of this part and any rules adopted hereunder satisfies such requirement. If a provision of law requires a signature or an act to be witnessed, compliance with the online electronic witnessing standards prescribed in s. 117.285, F.S., and any rules adopted thereunder satisfies that requirement.

The bill requires an online notary public to keep extensive records of each online notarization in a secure electronic journal, which must include all of the following (s. 117.245, F.S.):

[36] Section 668.50, F.S.

- The date and time of the notarization;
- The type of notarial act;
- The type, the title, or a description of the electronic record or proceeding;
- The printed name and address of each principal involved in the transaction or proceeding;
- Evidence of identity of each principal involved in the transaction or proceeding in the form of:
  - A statement that the person is personally known to the online notary public;
  - A notation of the type of identification document provided to the online notary public;
  - A copy of the government-issued identity credential provided; and
  - A copy of any other identity credential or information provided;
- An indication that the principal satisfactorily passed the identity proofing;
- An indication that the government-issued identity credential satisfied the credential analysis; and
- A recording of the audio-video communication that includes:
  - The principal and any witnesses who appeared before the notary public.
  - Confirmation of the identity of each.
  - Electronic records signed by the principal and any witnesses.
  - The notarial act was performed.
- The fee, if any, charged for the notarization.

The online notary public must take reasonable steps to (s. 117.245, F.S.):
- Ensure the integrity, security, and authenticity of online notarizations;
- Maintain a backup record of the electronic journal; and
- Protect the electronic journal, the backup record, and any other records received by the online notary public from unauthorized access or use.

The electronic journal must be maintained by the online notary public or a custodian acting on his or her behalf, for at least 10 years after the date of the notarial act. (s. 117.245, F.S.). An omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or of the electronic record notarized, but may be introduced as evidence to establish violations of this chapter; as an indication of possible fraud, forgery, or impersonation; or for other evidentiary purposes.

For use of electronic journal, signature, and seal, the bill requires an online notary public to (s. 117.255, F.S.):
- Take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.
- Keep his or her electronic journal, electronic signature, and electronic seal secure and under his or her sole control, which includes control in the form of access protection using passwords or codes under control of the online notary public. The online notary public may not allow another person to use or access his or her electronic journal, electronic signature, or electronic seal.
- Use his or her electronic signature only for performing online notarization.
- Attach or logically associate the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic record in a manner that is capable of

independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident.
- Immediately notify an appropriate law enforcement agency and the Governor's office of theft or vandalism of his or her electronic journal, electronic signature, or electronic seal. An online notary public shall immediately notify the Governor's office of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.
- Make electronic copies, upon request, of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings to the parties to the electronic records notarized, the title agent, settlement agent, or title insurer who engaged the online notary public with regard to a real estate transaction. The online notary public may charge a reasonable fee for making and delivering electronic copies of a given series of related electronic records. The online notary public shall disclose the amount of such fee to the requester before making the electronic copies.

Procedurally, the bill provides that an online notary public may notarize documents online for people in Florida and in other states so long as the online notary public confirms the identities of the principle signer and witnesses at the time of signing by using audio-video communication technology and processes that meet the requirements of this part and any of the rules adopted thereunder and records the entire two-way audio-video conference session; and, if out-of-state, confirms that the principle signer consents to a Florida-based notary public and consents to be governed by applicable Florida law (s. 117.265, F.S.). A principal may not act in the capacity of a witness for his or her own signature in an online notarization. An online notary public may verify identification of a principle signer or a witness as follows (s. 117.265, F.S.):
- The online notary public's personal knowledge of the person;
- The remote presentation of a government-issued identity credential by each individual;
- Credential analysis of each government-issued identity credential; and
- "Identity proofing" of each individual which meets the requirements of this part and of any rules adopted hereunder.

If the online notary public is not satisfied that a person's identity has been verified or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary public is not authorized to perform the online notarization (s. 117.265, F.S.).

The online notary public must take reasonable steps to ensure the audio-video communication technology used in the online notarization is secure from unauthorized interception (s. 117.265, F.S.).

The electronic notarial certificate must include a notation that the notarization is an online notarization. Any failure to comply with procedures set forth in s. 117.265, F.S., does not impair the validity of the notarial act or the electronic record that was notarized, but may be introduced as evidence to establish violations of ch. 117, F.S.; as an indication of possible fraud, forgery, or impersonation; or for other evidentiary purposes (s. 117.265, F.S.). This subsection may not be construed to alter the duty of an online notary public to comply with ch. 117, F.S., and any rules adopted hereunder.

The bill allows for the witnessing of an online notarization (s. 117.285, F.S.). An online notary public may supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization, as follows:

- The identity of each witness must be verified in the same manner as the identity of the principal;
- A witness may physically be present with the principal or remote from the principal provided the witness and principal are using audio-video communication technology; and
- The witness is present in either physical proximity to the principal or through audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement to the effect that the principal has signed the electronic record.

Additionally, the bill provides that the Department of State, in collaboration with the Agency for State Technology may adopt rules and standards necessary to implement the requirements of ch. 117, F.S., and such other rules and standards as may be required to facilitate the integrity, security, and reliability of online notarization, including the minimum amounts of and required terms of bonds and errors and omissions insurance to be held by an online notary public; education requirements for online notaries public; standards regarding identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology, and may publish lists of technologies that satisfy the standards and are approved for use in online notarizations (s. 117.295, F.S.).

Until the Department of State adopts applicable rules, identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology are governed by the following minimum standards (s. 117.295, F.S.):

- Identity proofing by means of knowledge-based authentication is required to have, at a minimum, the following security characteristics:
  - The principal must be presented with five or more questions with a minimum of five possible answer choices per question.
  - Each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal's social security number or other identification information, or the principal's identity and historical events records.
  - Responses to all questions must be made within a 2-minute time constraint.
  - The principal must answer a minimum of 80 percent of the questions correctly.
  - The principal may be offered one additional attempt in the event of a failed attempt.
  - During the second attempt, the principal may not be presented with questions from the prior attempt.
- Credential analysis must confirm that the credential is valid and matches the signer's claimed identity using one or more automated processes which scan the credential, including its format features, data, barcodes, or other security features.
- Tamper-evident technology requirements are deemed satisfied by use of technology that renders any subsequent change or modification to the electronic record evident
- Audio-video communication technology used in completing online notarizations must meet the following requirements:
  - The signal transmission must be secure from interception, access, or viewing by anyone other than the participants communicating.

- The technology must provide sufficient audio clarity and video resolution to enable the notary public to communicate with the principal and to confirm the identity of the principal using identification methods described in s. 117.265, F.S.

The bill provides that an online notary public is not responsible for the security of the systems used by the principal or others to access the online notarization session.

Section 117.305, F.S., provides that Part II supersedes 15 U.S.C. s. 7002, the federal Electronic Signatures in Global and National Commerce Act. This is expressly permitted by 15 U.S.C. s. 7002 when a state has adopted the Uniform Electronic Transactions Act,[37] which Florida did in 2000.[38] Section 117.305, F.S., also provides that the requirements in 15 U.S.C. s. 7001(c) concerning consumer disclosures, and the requirement of 15 U.S.C. s. 7003(b) concerning the delivery of certain legal documents are not superseded or limited.

Sections 18 through 27 make conforming or necessary collateral changes to several provisions outside of chapter 117, F.S.

Section 18 amends s. 28.222, F.S., requiring that a clerk of a circuit court to record copies of any instrument originally created and executed using an electronic signature and is certified as a true and correct paper printout by a notary public in accordance with ch. 117, F.S., if the county is not prepared to accept electronic documents for recording electronically.

Section 19 amends s. 95.231, F.S., concerning acknowledgment relating to limitations for deed or will on record for conveyance of real property.

Section 20 amends s. 689.01, F.S., related to how real estate is conveyed. The bill provides that any requirement that an instrument be signed in the presence of two subscribing witnesses is satisfied by witnesses being present and electronically signing by means of audio-video communication technology and under standards applicable to online notarization pursuant to ch. 117, F.S., and any rules adopted thereunder.

The bill provides that the act of witnessing an electronic signature is satisfied if a witness is present either in physical proximity to the principal or by audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement acknowledging that the principal has signed the electronic record. All witnesses made or taken pursuant to this subsection are validated and, upon recording, may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with these requirements, as currently or previously in effect, or the laws governing notarization of instruments, including online notarization, in this state.

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[37] *See* Uniform Law Commission, Acts, *Why States Should Adopt UETA*, http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UETA (last visited Jan. 29, 2018) ("The **Uniform Electronic Transactions Act (UETA)** allows the use of electronic records and electronic signatures in any transaction, except transactions subject to the Uniform Commercial Code. The fundamental purpose of this act is to remove perceived barriers to electronic commerce. The UETA is a procedural statute. It does not mandate either electronic signatures or records, but provides a means to effectuate transactions when they are used. The primary objective is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.").

[38] Section 668.50, F.S.

Section 21 amends s. 694.08, F.S., to add failure of, or absence of the acknowledgment or the certificate of acknowledgment language relating to certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgment, etc.

Section 22 amends s. 695.03, F.S., relating to acknowledgements and proof, validation of certain acknowledgments, and legalization of authentication before foreign officials in the recording of real estate conveyances. For acknowledgment or a proof of a person within the state, the bill provides that the affixing of the official seal, or the electronic equivalent authorized under s. 117.021, F.S., or any other state law, conclusively establishes that the acknowledgement was made in compliance with the laws of Florida .

Section 23 amends s. 695.04, F.S., relating to a certificate legalizing or authenticating the signature of a person executing an instrument concerning real property to allow acknowledgment via means of audio-video communication technology as set forth in s. 117.05, F.S.

Section 24 amends s. 695.05, F.S., relating to certain defects cured as to acknowledgments and witnesses in real estate conveyances. The bill makes conforming change concerning acknowledgment.

Section 25 amends s. 695.28, F.S., relating to validity of recorded electronic documents. Under s. 695.28, F.S., a document that is submitted to the clerk of court or county recorder is deemed validly recorded and acts as notice to persons for certain purposes. The bill provides that submission to the clerk of court or county recorder provides notice to all persons that the document was signed, witnessed, or notarized electronically or that witnessing or notarization may have been done outside the physical presence of the notary public or principal. Alternatively, it acts as notice that the document recorded was a certified printout of a document which one or more electronic signatures have been affixed.

The bill states that s. 695.28, F.S., does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, undue influence, minority, illegality, unconscionability, or any other basis.

Section 26: The bill has an effective date of January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Notaries who wish to provide online services must pay an additional $25 registration fee.

B. Private Sector Impact:

The availability of online notarial services may be more convenient for those who need the services. Fees for notary services are capped by the statute.

C. Government Sector Impact:

The bill will likely add to the regulatory and record-keeping responsibilities of the Department of State and the Office of the Governor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 9 of the bill provides an additional satisfying qualifications requirement for online notaries public to include the qualifications for appointment as a commissioner of deeds under part IV of ch. 721, F.S. Section 721.97, F.S., regarding timeshare commissioner of deeds, does not, however, provide any qualifications for this appointment by the Governor, other than taking an oath to faithfully execute and perform the duties of commissioner of deeds.

Also, some of the definitions ("audio-video communication technology," "credential analysis," "identity proofing," and "online notarization") contained in section 6 of the bill reference rules to be adopted regarding these specified definitions; this may lead to a lack of clarity and create uncertainty.

VIII. Statutes Affected:

This bill substantially amends sections 117.01, 117.021, 117.05, 117.107, 28.222, 95.231, 689.01, 694.08, 695.03, 695.04, 695.05, and 695.28 of the Florida Statutes.

This bill creates sections 117.201, 117.209, 117.215, 117.225, 117.235, 117.245, 117.255, 117.265, 117.275, 117.285, 117.295, and 117.305 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 February 13, 2018:
The Committee substitute:

- Requires the Department of State, instead of the Governor's Office, to collaborate with the Agency for State Technology:
  - To adopt rules establishing standards for tamper-evident technologies that will indicate any alteration to an electronic record after completion of an electronic notarization; and
  - To publish a list of technologies that satisfy those standards and are approved for use in electronic notarizations, effective January 1, 2019. All electronic notarizations performed on or after January 1, 2019, must comply with the adopted standards and use an approved technology.
- Deletes the requirement that a person applying for a notary public commission must submit a proof of identity to the Governor's office rather than the Secretary of State's office;
- Authorizes a notary public to supervise the making of a copy of a tangible or an electronic records or a printout of an electronic record, and attest to the trueness of the copy or of the printout, with certain exceptions;
- Makes changes to the certificate a notary public must use in notarizing a copy of a tangible or an electronic record or a printout of an electronic record;
- Revises various definitions contained in s. 117.201, F.S.;
- Creates definitions of the terms "errors and omissions insurance" and "online notary public" in s. 117.201, F.S.;
- Adds an additional satisfying qualifications requirement for online notaries public to include the qualifications for appointment as a commissioner of deeds under part IV of ch. 721, F.S.;
- Adds a registration requirement for online notaries public to complete a live or online course covering the duties, obligations, and technology requirements for serving as an online notary public;
- Requires online notaries public to obtain bond in the minimum amount of $25,000;
- Revises insurance requirements for online notaries public to carry error and omissions policy, instead of liability insurance, in the minimum amount of $1 million;
- Requires the audio-video communication recording contained in the electronic journal of online notarizations to include electronic records signed by the principal and any witnesses;
- Requires the online notary public to protect the electronic journal and any other records received by the online notary public from unauthorized access or use;
- Requires electronic journal to be maintained for 10 years by either the online notary public or a custodian acting on behalf of the notary public;
- Requires an online notary public to make electronic copies, upon request, of entries in electronic journal and provide access to audio-video communication technology recordings to specified persons, including the parties to the electronic records notarized;

- Provides that a principal may not act in the capacity of a witness for his or her own signature in an online notarization;
- Requires identity proofing of each individual by the online notary public to meet the requirements of online notarization and of any rules adopted thereunder;
- Adds a provision that online notarization procedures contained in s. 117.265, F.S., may not be construed to alter the duty of an online notary public to comply with ch. 117, F.S., and any rules adopted thereunder;
- Deletes provision in s. 117.285, F.S., allowing an official of another state authorized under the laws of that state to perform online notarization of documents to supervise the witnessing of electronic records;
- Provides that the Department of State, in collaboration with the Agency for State Technology, may adopt rules on additional topics, including the minimum amounts of and required terms of bonds and errors and omissions insurance to be held by an online notary public and education requirements for online notaries public;
- Provides that until the Department of State adopts applicable rules, specified minimum standards govern identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology;
- Revises the minimum standards requirements for credential analysis;
- Deletes certification by title agency, authorized intermediary, or other approved party in proposed revision to s. 28.222, F.S.;
- Deletes proposed revisions to s. 92.50, F.S., relating to oaths, affidavits, and acknowledgments;
- Deletes provisions in the proposed revision to s. 669.01, F.S., relating to conformance/compliance with laws of other states that authorize online notarization of instruments;
- Deletes provisions in proposed revisions to s. 695.03, F.S., regarding:
  - The definition of the term "before"; and
  - Compliance with other state laws that govern the notarization of instruments;
- Amends s. 695.03, F.S., to provide criteria for acknowledgement of a person within the state;
- Deletes proposed revisions to s. 695.28, F.S., regarding online notarization or witnessing of notarization in accordance with the laws of another state;
- Deletes proposed revisions to s. 695.09, F.S., relating to the identity of a grantor in real estate conveyances;
- Makes numerous technical changes; and
- Changes the effective date of the bill from July 1, 2018, to January 1, 2019.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability; and Senators Brandes and Passidomo

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A bill to be entitled

An act relating to notaries public; providing directives to the Division of Law Revision and Information; amending s. 117.01, F.S.; revising provisions relating to use of the office of notary public; amending s. 117.021, F.S.; requiring electronic signatures to include access protection; prohibiting a person from requiring a notary public to perform a notarial act with certain technology; requiring the Department of State, in collaboration with the Agency for State Technology, to adopt rules for certain purposes; amending s. 117.05, F.S.; revising limitations on notary fees to conform to changes made by the act; providing for inclusion of certain information in a jurat or notarial certificate; providing for compliance with online notarization requirements; providing for notarial certification of a printed electronic record; revising statutory forms for jurats and notarial certifications; amending s. 117.107, F.S.; providing applicability; revising prohibited acts; creating s. 117.201, F.S.; providing definitions; creating s. 117.209, F.S.; authorizing online notarizations; providing an exception; creating s. 117.215, F.S.; specifying the application of other laws in relation to online notarizations; creating s. 117.225, F.S.; specifying registration and qualification requirements for online notaries public; creating s. 117.235, F.S.; authorizing the performance of certain notarial acts;

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creating s. 117.245, F.S.; requiring a notary public to keep an electronic journal of online notarizations; specifying the information that must be included for each online notarization; requiring an online notary public to take certain steps regarding the maintenance and security of the electronic journal; creating s. 117.255, F.S.; specifying requirements for the use of electronic journals, signatures, and seals; requiring a notary public to provide notification of the theft, vandalism, or loss of an electronic journal, signature, or seal; authorizing an online notary public to make copies of electronic journal entries and to provide access to related recordings under certain circumstances; authorizing an online notary public to charge a fee for making and delivering such copies; creating s. 117.265, F.S.; prescribing online notarization procedures; specifying the manner by which an online notary public must verify the identity of a principal or a witness; requiring an online notary public to take certain measures as to the security of technology used; specifying that an electronic notarial certificate must identify the performance of an online notarization; specifying that noncompliance does not impair the validity of a notarial act or the notarized electronic record; providing construction; creating s. 117.275, F.S.; providing fees for online notarizations; creating s. 117.285, F.S.; specifying the manner by which an online notary public may supervise the witnessing of

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electronic records of online notarizations; creating s. 117.295, F.S.; providing standards for electronic and online notarizations; authorizing the Department of State, in collaboration with the Agency for State Technology, to adopt certain rules; creating s. 117.305, F.S.; superseding certain provisions of federal law regulating electronic signatures; amending s. 28.222, F.S.; requiring the clerk of the circuit court to record certain instruments; amending s. 95.231, F.S.; providing a limitation period for certain recorded instruments; amending s. 689.01, F.S.; providing for witnessing of documents in connection with real estate conveyances; providing for validation of certain recorded documents; amending s. 694.08, F.S.; providing for validation of certain recorded documents; amending s. 695.03, F.S.; providing and revising requirements for making acknowledgments, proofs, and other documents; amending ss. 695.04 and 695.05, F.S.; conforming provisions to changes made by the act; amending s. 695.28, F.S.; providing for validity of recorded documents; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. The Division of Law Revision and Information is directed to:

(1) Create part I of chapter 117, Florida Statutes,

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consisting of ss. 117.01-117.108, Florida Statutes, to be entitled "General Provisions."

(2) Create part II of chapter 117, Florida Statutes, consisting of ss. 117.201-117.305, Florida Statutes, to be entitled "Online Notarizations."

Section 2. Subsection (1) of section 117.01, Florida Statutes, is amended to read:

117.01 Appointment, application, suspension, revocation, application fee, bond, and oath.—

(1) The Governor may appoint as many notaries public as he or she deems necessary, each of whom must ~~shall~~ be at least 18 years of age and a legal resident of this ~~the~~ state. A permanent resident alien may apply and be appointed and shall file with his or her application a recorded Declaration of Domicile. The residence required for appointment must be maintained throughout the term of appointment. A notary public ~~Notaries public~~ shall be appointed for 4 years and may only ~~shall~~ use and exercise the office of notary public if he or she is within the boundaries of this state. An applicant must be able to read, write, and understand the English language.

Section 3. Present subsections (4) and (5) of section 117.021, Florida Statutes, are renumbered as subsections (5) and (6), respectively, a new subsection (4) and subsection (7) are added to that section, and subsection (2) and present subsection (5) of that section are amended, to read:

117.021 Electronic notarization.—

(2) In performing an electronic notarial act, a notary public shall use an electronic signature that is:

(a) Unique to the notary public;

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(b) Capable of independent verification;

(c) Retained under the notary public's sole control and includes access protection through the use of passwords or codes under control of the notary public; and

(d) Attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of the alteration.

(4) A person may not require a notary public to perform a notarial act with respect to an electronic record with a form of technology that the notary public has not selected to use.

(6)~~(5)~~ The Department of State, in collaboration with the Agency for State Technology, may adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized in this section.

(7) The Department of State, in collaboration with the Agency for State Technology, shall adopt rules establishing standards for tamper-evident technologies that will indicate any alteration or change to an electronic record after completion of an electronic notarial act and shall publish a list of technologies that satisfy those standards and are approved for use in electronic notarizations, effective January 1, 2019. All electronic notarizations performed on or after January 1, 2019, must comply with the adopted standards and use an approved technology.

Section 4. Subsection (1), paragraph (a) of subsection (2), subsections (4) and (5), paragraph (a) of subsection (12), and subsections (13) and (14) of section 117.05, Florida Statutes, are amended, and paragraph (c) is added to subsection (12) of that section, to read:

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(1) A ~~No~~ person may not ~~shall~~ obtain or use a notary public commission in other than his or her legal name, and it is unlawful for a notary public to notarize his or her own signature. Any person applying for a notary public commission must submit proof of identity to the Department of State if so requested. Any person who violates ~~the provisions of~~ this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) The fee of a notary public may not exceed $10 for any one notarial act, except as provided in s. 117.045 or s. 117.275.

(4) When notarizing a signature, a notary public shall complete a jurat or notarial certificate in substantially the same form as those found in subsection (13). The jurat or certificate of acknowledgment shall contain the following elements:

(a) The venue stating the location of the notary public at the time of the notarization in the format, "State of Florida, County of ....."

(b) The type of notarial act performed, an oath or an acknowledgment, evidenced by the words "sworn" or "acknowledged."

(c) That the signer personally appeared before the notary public at the time of the notarization either by physical presence or by means of audio-video communication technology as authorized under part II of this chapter.

(d) The exact date of the notarial act.

(e) The name of the person whose signature is being notarized. It is presumed, absent such specific notation by the notary public, that notarization is to all signatures.

(f) The specific type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence specified in subsection (5).

(g) The notary's official signature.

(h) The notary's name, typed, printed, or stamped below the signature.

(i) The notary's official seal affixed below or to either side of the notary's signature.

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying. In the case of an online notarization, the online notary public shall comply with the requirements set forth in part II of this chapter.

(a) For purposes of this subsection, the term "personally knows" means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty.

(b) For the purposes of this subsection, the term "satisfactory evidence" means the absence of any information,

evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be and any one of the following:

1. The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

a. That the person whose signature is to be notarized is the person named in the document;

b. That the person whose signature is to be notarized is personally known to the witnesses;

c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;

d. That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 2.; and

e. That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or

2. Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:

a. A Florida identification card or driver license issued

by the public agency authorized to issue driver licenses;

b. A passport issued by the Department of State of the United States;

c. A passport issued by a foreign government if the document is stamped by the United States Bureau of Citizenship and Immigration Services;

d. A driver license or an identification card issued by a public agency authorized to issue driver licenses in a state other than Florida, a territory of the United States, or Canada or Mexico;

e. An identification card issued by any branch of the armed forces of the United States;

f. A veteran health identification card issued by the United States Department of Veterans Affairs;

g. An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;

h. An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;

i. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or

j. An identification card issued by the United States Bureau of Citizenship and Immigration Services.

(12)(a) A notary public may supervise the making of a copy of a tangible or an electronic record or a printout of an

electronic record, ~~photocopy of an original document~~ and attest to the trueness of the copy or of the printout, provided the document is neither a vital record in this state, another state, a territory of the United States, or another country, nor a public record, if a copy can be made by the custodian of the public record.

(c) A notary public must use a certificate in substantially the following form in notarizing a copy of a tangible or an electronic record or a printout of an electronic record:

STATE OF FLORIDA
COUNTY OF .....

On this .... day of ....., ...(year)..., I attest that the preceding or attached document is a true, exact, complete, and unaltered ...(copy of a tangible or an electronic record presented to me by the document's custodian)... or a ...(printout made by me from an electronic record presented to me by the document's custodian).... At the time of printing, no security features, if any, present on the electronic record, indicated that the record had been altered since execution.

...(Signature of Notary Public — State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...

(13) The following notarial certificates are sufficient for the purposes indicated, if completed with the information required by this chapter. The specification of forms under this subsection does not preclude the use of other forms.

(a) For an oath or affirmation:

STATE OF FLORIDA
COUNTY OF ....

Sworn to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization, this .... day of ...., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known .... OR Produced Identification ....
Type of Identification Produced.....

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA
COUNTY OF ....

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this .... day of ...., ...(year)..., by ...(name of person acknowledging)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA
COUNTY OF ....

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this .... day of ...., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known .... OR Produced Identification ....
Type of Identification Produced.....

(14) A notary public must make reasonable accommodations to provide notarial services to persons with disabilities.

(a) A notary public may notarize the signature of a person who is blind after the notary public has read the entire instrument to that person.

(b) A notary public may notarize the signature of a person who signs with a mark if:

1. The document signing is witnessed by two disinterested persons;

2. The notary public prints the person's first name at the

beginning of the designated signature line and the person's last name at the end of the designated signature line; and

3. The notary public prints the words "his (or her) mark" below the person's signature mark.

(c) The following notarial certificates are sufficient for the purpose of notarizing for a person who signs with a mark:

1. For an oath or affirmation:

...(First Name)... ...(Last Name)...
...His (or Her) Mark...

STATE OF FLORIDA
COUNTY OF .....

Sworn to and subscribed before me by means of [] physical presence or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person making statement)..., who signed with a mark in the presence of these witnesses:

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known ..... OR Produced Identification .....
Type of Identification Produced.....

2. For an acknowledgment in an individual capacity:

...(First Name)... ...(Last Name)...
...His (or Her) Mark...

STATE OF FLORIDA
COUNTY OF .....

The foregoing instrument was acknowledged before me by means of [] physical appearance or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person acknowledging)..., who signed with a mark in the presence of these witnesses:

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known ..... OR Produced Identification .....
Type of Identification Produced.....

(d) A notary public may sign the name of a person whose signature is to be notarized when that person is physically unable to sign or make a signature mark on a document if:

1. The person with a disability directs the notary public to sign in his or her presence;

2. The document signing is witnessed by two disinterested persons;

3. The notary public writes below the signature the following statement: "Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes," and states the circumstances of the signing in the notarial certificate.

(e) The following notarial certificates are sufficient for the purpose of notarizing for a person with a disability who

directs the notary public to sign his or her name:

1. For an oath or affirmation:

STATE OF FLORIDA
COUNTY OF ....

Sworn to (or affirmed) before me by means of [] physical presence or [] online notarization, this .... day of ...., ...(year)..., by ...(name of person making statement)..., and subscribed by ...(name of notary)... at the direction of ~~and in the presence of~~ ...(name of person making statement)..., and in the presence of these witnesses:

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known .... OR Produced Identification ....
Type of Identification Produced.....

2. For an acknowledgment in an individual capacity:

STATE OF FLORIDA
COUNTY OF ....

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this .... day of ...., ...(year)..., by ...(name of person acknowledging)... and subscribed by ...(name of notary)... at the direction of ~~and in the presence of~~ ...(name of person acknowledging)..., and in

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the presence of these witnesses:

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known .... OR Produced Identification ....
Type of Identification Produced.....

Section 5. Subsections (2) and (9) of section 117.107, Florida Statutes, are amended to read:

117.107 Prohibited acts.—

(2) A notary public may not sign notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp. This subsection does not apply to or prohibit the use of an electronic signature and seal by a notary public performing an electronic or online notarization in accordance with this chapter.

(9) A notary public may not notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or by means of audio-video communication technology as authorized under part II of this chapter ~~is not in the presence of the notary public~~ at the time the signature is notarized. Any notary public who violates this subsection is guilty of a civil infraction, punishable by penalty not exceeding $5,000, and such violation constitutes malfeasance and misfeasance in the conduct

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of official duties. It is no defense to the civil infraction specified in this subsection that the notary public acted without intent to defraud. A notary public who violates this subsection with the intent to defraud is guilty of violating s. 117.105.

Section 6. Section 117.201, Florida Statutes, is created to read:

117.201 Definitions.—As used in this part, the term:

(1) "Appear before," "before," "appear personally before," or "in the presence of" mean:

(a) In the same physical location as another person and close enough to see, hear, communicate with, and exchange credentials with that person; or

(b) In a different physical location from another person, but able to see, hear, and communicate with the person by means of audio-video communication technology.

(2) "Audio-video communication technology" means technology meeting the requirements of this part and of any rules adopted hereunder which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another.

(3) "Credential analysis" means a process or service meeting the requirements of this part and of any rules adopted hereunder through which a third party affirms the validity of a government-issued identity credential or data thereon through review of public or proprietary data sources.

(4) "Errors and omissions insurance" means a type of insurance that provides coverage for potential errors or omissions in or relating to the notarial act.

(5) "Government-issued identity credential" means any approved credential for verifying identity under s. 117.05(5)(b)2.

(6) "Identity proofing" means a process or service meeting the requirements of this part and of any rules adopted hereunder through which a third party affirms the identity of an individual through use of public or proprietary data sources, which may include by means of knowledge-based authentication or biometric verification.

(7) "Knowledge-based authentication" means a form of identity proofing based on a set of questions formulated from public and proprietary data sources for which the principal has not provided a previous answer.

(8) "Online notarization" means the performance of an electronic notarization by means of audio-video communication technology and which meets the requirements of this chapter and of any rules adopted hereunder.

(9) "Online notary public" means a notary public who has registered with the Executive Office of the Governor to perform online notarizations under this part, a civil-law notary appointed under chapter 118, or a commissioner of deeds appointed under part IV of chapter 721.

(10) "Principal" means an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation from the online notary public.

(11) "Remote presentation" means transmission of an image of a government-issued identity credential that is of sufficient quality to enable the online notary public to identify the

individual seeking the notary's services and to perform credential analysis through audio-video communication technology.

Except where the context otherwise requires, any term defined in s. 668.50 has the same meaning when used in this part.

Section 7. Section 117.209, Florida Statutes, is created to read:

117.209 Authority to perform online notarizations.—

(1) An online notary public may perform any of the functions authorized under part I of this chapter as an online notarization, excluding solemnizing the rites of matrimony.

(2) If a notarial act requires a principal to appear before or in the presence of the online notary public, the principal may appear before the online notary public by means of audio-video communication technology that meets the requirements of this chapter and any rules adopted by the Executive Office of the Governor under s. 117.295.

(3) An online notary public may perform a notarial act as an online notarization as authorized under this chapter, regardless of the physical location of the principal at the time of the notarial act, provided the notary public is physically located in this state while performing the online notarization.

(4) The validity of an online notarization performed by an online notary public appointed in this state shall be determined by applicable laws of this state regardless of the physical location of the principal at the time of the notarial act.

Section 8. Section 117.215, Florida Statutes, is created to read:

117.215 Relation to other laws.—

(1) If a provision of law requires a notary public or other authorized official of this state to notarize a signature or a statement, to take an acknowledgement of an instrument, or to administer an oath or affirmation so that a document may be sworn, made under oath, or subject to penalty of perjury, an online notarization performed in accordance with the provisions of this part and any rules adopted hereunder satisfies such requirement.

(2) If a provision of law requires a signature or an act to be witnessed, compliance with the online electronic witnessing standards prescribed in s. 117.285 and any rules adopted thereunder satisfies that requirement.

Section 9. Section 117.225, Florida Statutes, is created to read:

117.225 Registration; qualifications.—A notary public may apply to be registered as an online notary public with the Executive Office of the Governor by:

(1) Satisfying the qualification requirements for appointment as a notary public under part I of this chapter or the qualifications for appointment as a commissioner of deeds under part IV of chapter 721.

(2) Certifying that the notary public has completed a live or online course covering the duties, obligations, and technology requirements for serving as an online notary public.

(3) Paying an online notary public application fee in the amount of $25.

(4) Submitting a registration as an online notary public to the Executive Office of the Governor, signed and sworn to by the

applicant.

(5) Identifying the audio-video communication technology and identity proofing methods that the online notary public intends to use in performing online notarizations. If the Department of State and the Agency for State Technology have established standards for approval of technology pursuant to this part, the technology and methods selected by the online notary must be in conformance with such standards. If a form of technology conforms to the standards, the Department of State and the Agency for State Technology must approve the use of the technology. If the Department of State and the Agency for State Technology have not yet established such standards, the online notary public must identify technologies that are consistent with the requirements of s. 117.295(2).

(6) Providing evidence satisfactory to the Executive Office of the Governor that the notary public has obtained a bond, payable to any individual harmed as a result of a breach of duty by the online notary public acting in his or her official capacity, conditioned for the due discharge of the office, in the minimum amount of $25,000 and on such terms as are specified by rule by the Department of State as reasonably necessary to protect the public. The bond shall be approved and filed with the Department of State and executed by a surety company duly authorized to transact business in this state. Compliance by the notary public with this requirement shall satisfy the requirement of obtaining a bond under s. 117.01(7).

(7) Providing evidence satisfactory to the Executive Office of the Governor that the notary public is covered by an errors and omissions insurance policy from an insurer authorized to

transact business in this state, in the minimum amount of $1 million and on such terms as are specified by rule by the Department of State as reasonably necessary to protect the public.

Section 10. Section 117.235, Florida Statutes, is created to read:

117.235 Performance of notarial acts.—

(1) An online notary public is subject to part I to the same extent as a notary public appointed and commissioned only under that part, including the provisions of s. 117.021 relating to electronic notarizations.

(2) An online notary public may perform notarial acts as provided by part I in addition to performing online notarizations as authorized and pursuant to the provisions of this part.

Section 11. Section 117.245, Florida Statutes, is created to read:

117.245 Electronic journal of online notarizations.—

(1) An online notary public shall keep a secure electronic journal of electronic records notarized by the online notary public. For each online notarization, the electronic journal entry must contain all of the following:

(a) The date and time of the notarization.

(b) The type of notarial act.

(c) The type, the title, or a description of the electronic record or proceeding.

(d) The printed name and address of each principal involved in the transaction or proceeding.

(e) Evidence of identity of each principal involved in the

transaction or proceeding in the form of:

1. A statement that the person is personally known to the online notary public;

2. A notation of the type of government-issued identity credential provided to the online notary public;

3. A copy of the government-issued identity credential provided; and

4. A copy of any other identity credential or information provided.

(f) An indication that the principal satisfactorily passed the identity proofing.

(g) An indication that the government-issued identity credential satisfied the credential analysis.

(h) A recording of the audio-video communication in which:

1. The principal and any witnesses appeared before the notary public.

2. The identity of each was confirmed.

3. Electronic records were signed by the principal and any witnesses.

4. The notarial act was performed.

(i) The fee, if any, charged for the notarization.

(2) The online notary public shall take reasonable steps to:

(a) Ensure the integrity, security, and authenticity of online notarizations.

(b) Maintain a backup record of the electronic journal required by subsection (1).

(c) Protect the electronic journal, the backup record, and any other records received by the online notary public from

unauthorized access or use.

(3) The electronic journal required by subsection (1) shall be maintained by the online notary public, or a custodian acting on his or her behalf, for at least 10 years after the date of the notarial act.

(4) An omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or of the electronic record notarized, but may be introduced as evidence to establish violations of this chapter; as an indication of possible fraud, forgery, or impersonation; or for other evidentiary purposes.

Section 12. Section 117.255, Florida Statutes, is created to read:

117.255 Use of electronic journal, signature, and seal.—An online notary public shall:

(1) Take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.

(2) Keep his or her electronic journal, electronic signature, and electronic seal secure and under his or her sole control, which includes control in the form of access protection using passwords or codes under control of the online notary public. The online notary public may not allow another person to use or access his or her electronic journal, electronic signature, or electronic seal.

(3) Only use an electronic signature for performing online notarization.

(4) Attach or logically associate the online notary

public's electronic signature and seal to the electronic notarial certificate of an electronic record in a manner that is capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident.

(5) Immediately notify an appropriate law enforcement agency and the Executive Office of the Governor of theft or vandalism of his or her electronic journal, electronic signature, or electronic seal. An online notary public shall immediately notify the Executive Office of the Governor of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.

(6) Make electronic copies, upon request, of the pertinent entries in the electronic journal and provide access to the related audio-video communication technology recordings to the parties to the electronic records notarized, and to the title agent, settlement agent, or title insurer who engaged the online notary with regard to a real estate transaction. The online notary public may charge a reasonable fee for making and delivering electronic copies of a given series of related electronic records. The online notary public shall disclose the amount of such fee to the requester before making the electronic copies.

Section 13. Section 117.265, Florida Statutes, is created to read:

117.265 Online notarization procedures.—

(1) An online notary public physically located in this state may perform an online notarization that meets the requirements of this part regardless of whether the principal or

any witnesses are physically located in this state at the time of the online notarization. An online notarial act performed in accordance with this part is deemed to have been performed within this state and is governed by the applicable laws of this state.

(2) In performing an online notarization, an online notary public shall confirm the identity of a principal at the time that the signature is taken by using audio-video communication technology and processes that meet the requirements of this part and of any rules adopted hereunder and record the entire two-way audio-video conference session between the notary public and the principal and any witnesses. A principal may not act in the capacity of a witness for his or her own signature in an online notarization.

(3) In performing an online notarization of a principal not located within this state, an online notary public must confirm that the principal desires for the notarial act to be performed by a Florida notary public and governed by the applicable laws of this state.

(4) An online notary public shall confirm the identity of the principal or any witness by:

(a) The online notary public's personal knowledge of each such individual; or

(b) All of the following, as the same may be refined or supplemented in rules adopted pursuant to s. 117.295:

1. Remote presentation of a government-issued identity credential by each individual;

2. Credential analysis of each government-issued identity credential; and

3. Identity proofing of each individual which meets the requirements of this part and of any rules adopted hereunder.

If the online notary public is unable to satisfy subparagraphs (b)1.-3., or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary public may not perform the online notarization.

(5) The online notary public shall take reasonable steps to ensure that the audio-video communication technology used in an online notarization is secure from unauthorized interception.

(6) The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization.

(7) Except as expressly modified in this part, the requirements of part I of this chapter apply to an online notarization and an online notary public.

(8) Any failure to comply with the procedures set forth in this section does not impair the validity of the notarial act or the electronic record that was notarized, but may be introduced as evidence to establish violations of this chapter; as an indication of possible fraud, forgery, or impersonation; or for other evidentiary purposes. This subsection may not be construed to alter the duty of an online notary public to comply with this chapter and any rules adopted hereunder.

Section 14. Section 117.275, Florida Statutes, is created to read:

117.275 Fees for online notarization.—An online notary public or the online notary public's employer may charge a fee, not to exceed $25, for performing an online notarization in

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addition to any other fees authorized under part I of this chapter. Fees for services other than the provision of notarial acts are not governed by this section.

Section 15. Section 117.285, Florida Statutes, is created to read:

117.285 Witnessing of online notarization.—An online notary public may supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization, as follows:

(1) The identity of each witness must be verified in the same manner as the identity of the principal.

(2) The witness may physically be present with the principal or remote from the principal provided the witness and principal are using audio-video communication technology.

(3) The witness is present in either physical proximity to the principal or through audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement to the effect that the principal has signed the electronic record.

Section 16. Section 117.295, Florida Statutes, is created to read:

117.295 Standards for electronic and online notarization; rulemaking authority.—

(1) The Legislature intends that the standards applicable to electronic notarization under s. 117.021 and for online notarization under this part reflect future improvements in technology and methods of assuring the identity of principals and the security of an electronic record. The Department of State, in collaboration with the Agency for State Technology,

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may adopt rules and standards necessary to implement the requirements of this chapter and such other rules and standards as may be required to facilitate the integrity, security, and reliability of online notarization, including the minimum amounts of and required terms of bonds and errors and omissions insurance to be held by an online notary public; education requirements for online notaries public; standards regarding identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology; and may publish lists of technologies that satisfy the standards and are approved for use in online notarizations.

(2) Until the Department of State adopts applicable rules, identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology shall be governed by the following minimum standards:

(a) Identity proofing by means of knowledge-based authentication shall have, at a minimum, the following security characteristics:

1. The principal must be presented with five or more questions with a minimum of five possible answer choices per question.

2. Each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal's social security number or other identification information, or the principal's identity and historical events records.

3. Responses to all questions must be made within a 2-

minute time constraint.

4. The principal must answer a minimum of 80 percent of the questions correctly.

5. The principal may be offered one additional attempt in the event of a failed attempt.

6. During the second attempt, the principal may not be presented with more than three questions from the prior attempt.

(b) Credential analysis must confirm that the credential is valid and matches the signer's claimed identity using one or more automated processes which scan the credential, including its format features, data, barcodes, or other security features.

(c) Tamper-evident technology requirements are deemed satisfied by use of technology that renders any subsequent change or modification to the electronic record evident.

(d) Audio-video communication technology used in completing online notarizations must meet the following requirements:

1. The signal transmission must be secure from interception, access, or viewing by anyone other than the participants communicating.

2. The technology must provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and to confirm the identity of the principal using identification methods described in s. 117.265.

An online notary public is not responsible for the security of the systems used by the principal or others to access the online notarization session.

Section 17. Section 117.305, Florida Statutes, is created to read:

117.305 Relation to federal law.—This part supersedes the Electronic Signatures in Global and National Commerce Act as authorized under 15 U.S.C. s. 7002, but does not modify, limit, or supersede the requirements set forth in 15 U.S.C. s. 7001(c) or authorize the electronic delivery of any order, notice, or document described in 15 U.S.C. s. 7003(b).

Section 18. Present paragraph (h) of subsection (3) of section 28.222, Florida Statutes, is redesignated as paragraph (i), and a new paragraph (h) is added to that subsection, to read:

28.222 Clerk to be county recorder.—

(3) The clerk of the circuit court shall record the following kinds of instruments presented to him or her for recording, upon payment of the service charges prescribed by law:

(h) Copies of any instruments originally created and executed using an electronic signature, as defined in s. 695.27, and certified to be a true and correct paper printout by a notary public in accordance with chapter 117, if the county recorder is not prepared to accept electronic documents for recording electronically.

Section 19. Subsection (1) of section 95.231, Florida Statutes, is amended to read:

95.231 Limitations where deed or will on record.—

(1) Five years after the recording of an instrument required to be executed in accordance with s. 689.01; 5 years after the recording of a power of attorney accompanying and used for an instrument required to be executed in accordance with s. 689.01; or 5 years after the probate of a will purporting to

convey real property, from which it appears that the person owning the property attempted to convey, affect, or devise it, the instrument, power of attorney, or will shall be held to have its purported effect to convey, affect, or devise, the title to the real property of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in, failure of, or absence of acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The instrument is admissible in evidence. A power of attorney validated under this subsection shall be valid only for the purpose of effectuating the instrument with which it was recorded.

Section 20. Section 689.01, Florida Statutes, is amended to read:

689.01 How real estate conveyed.—

(1) No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by the party's lawfully authorized agent, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to, or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of

two subscribing witnesses by the party so assigning or surrendering, or by the party's lawfully authorized agent, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may execute any and all conveyances in accordance with the provisions of this section or ss. 692.01 and 692.02.

(2) For purposes of this chapter:

(a) Any requirement that an instrument be signed in the presence of two subscribing witnesses may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology that meets the requirements of part II of chapter 117 and any rules adopted thereunder.

(b) The act of witnessing an electronic signature is satisfied if a witness is present either in physical proximity to the principal or by audio-video communication technology at the time the principal affixes his or her electronic signature and hears the principal make a statement acknowledging that the principal has signed the electronic record.

(3) All acts of witnessing heretofore made or taken pursuant to subsection (2) are validated and, upon recording, may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with this section, as currently or previously in effect, or the laws governing notarization of instruments, including online notarization, in this state.

Section 21. Section 694.08, Florida Statutes, is amended to read:

694.08 Certain instruments validated, notwithstanding lack

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of seals or witnesses, or defect in acknowledgment~~, etc~~.—

(1) Whenever any power of attorney has been executed and delivered, or any conveyance has been executed and delivered to any grantee by the person owning the land therein described, or conveying the same in an official or representative capacity, and has, for a period of 7 years or more been spread upon the records of the county wherein the land therein described has been or was at the time situated, and one or more subsequent conveyances of said land or parts thereof have been made, executed, delivered and recorded by parties claiming under such instrument or instruments, and such power of attorney or conveyance, or the public record thereof, shows upon its face a clear purpose and intent of the person executing the same to authorize the conveyance of said land or to convey the said land, the same shall be taken and held by all the courts of this state, in the absence of any showing of fraud, adverse possession, or pending litigation, to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the person signing such instruments, or the person in behalf of whom the same was conveyed by a person in an official or representative capacity, to the land therein described as effectively as if there had been no defect in, failure of, or absence of the acknowledgment or the certificate of acknowledgment, if acknowledged, or the relinquishment of dower, and as if there had been no lack of the word "as" preceding the title of the person conveying in an official or representative capacity, of any seal or seals, or of any witness or witnesses, and shall likewise be taken and held by all the courts of this state to have been duly recorded so as to be

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admissible in evidence;

(2) Provided, however, that this section shall not apply to any conveyance the validity of which shall be contested or have been contested by suit commenced heretofore or within 1 year of the effective date of this law.

Section 22. Section 695.03, Florida Statutes, is amended to read:

695.03 Acknowledgment and proof; validation of certain acknowledgments; legalization or authentication before foreign officials.—To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, or legalized or authenticated by a civil-law notary or notary public who affixes her or his official seal, before the officers and in the following form and manner ~~following~~:

(1) WITHIN THIS STATE.—An acknowledgment or a proof of a person located ~~made within~~ this state may be made before a judge, clerk, or deputy clerk of any court; a United States commissioner or magistrate; or a notary public or civil-law notary of this state, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. The affixing of the official seal, or the electronic equivalent authorized under s. 117.021 or any other state law, conclusively establishes that the acknowledgment or proof was made in full compliance with the laws of this state. ~~All affidavits and acknowledgments heretofore made or taken in this manner are hereby validated.~~

(2) OUT OF ~~WITHOUT THIS~~ STATE BUT WITHIN THE UNITED STATES.—An acknowledgment or a proof of a person located outside

~~made out~~ of this state but within the United States may be made before an online notary public, a civil-law notary, ~~of this state~~ or by a commissioner of deeds appointed by the Governor of this state; a judge or clerk of any court of the United States or of any state, territory, or district; a United States commissioner or magistrate; or a notary public, justice of the peace, master in chancery, or registrar or recorder of deeds of any state, territory, or district having a seal, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. If the acknowledgment or proof is made before a notary public who does not affix a seal, it is sufficient for the notary public to type, print, or write by hand on the instrument, "I am a Notary Public of the State of ...(state)..., and my commission expires on ...(date)...."

(3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN COUNTRIES.—An ~~If the~~ acknowledgment, an affidavit, an oath, a legalization, an authentication, or a proof of a person located outside the United States or ~~is made~~ in a foreign country~~, it~~ may be made before a commissioner of deeds appointed by the Governor of this state to act in such country; before a notary public of such foreign country, an online notary public, or a civil-law notary of this state or of such foreign country who has an official seal; before an ambassador, envoy extraordinary, minister plenipotentiary, minister, commissioner, charge d'affaires, consul general, consul, vice consul, consular agent, or other diplomatic or consular officer of the United States appointed to reside in such country; or before a military or naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or~~

~~Articles of War of the United States~~ to perform the duties of notary public, and the certificate of acknowledgment, legalization, authentication, or proof must be under the seal of the officer. A certificate legalizing or authenticating the signature of a person executing an instrument concerning real property and to which a civil-law notary or notary public of that country has affixed her or his official seal is sufficient as an acknowledgment. For the purposes of this section, the term "civil-law notary" means a civil-law notary as defined in chapter 118 or an official of a foreign country who has an official seal and who is authorized to make legal or lawful the execution of any document in that jurisdiction, in which jurisdiction the affixing of her or his official seal is deemed proof of the execution of the document or deed in full compliance with the laws of that jurisdiction.

(4) VALIDATION.—All affidavits, oaths, acknowledgments, legalizations, authentications, or proofs made or taken in any manner as set forth in subsections (1)-(3) are validated and upon recording may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with this section, as currently or previously in effect, or the laws governing notarization of instruments.

~~All affidavits, legalizations, authentications, and acknowledgments heretofore made or taken in the manner set forth above are hereby validated.~~

Section 23. Section 695.04, Florida Statutes, is amended to read:

695.04 Requirements of certificate.—The certificate of the

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officer before whom the acknowledgment or proof is taken, except for a certificate legalizing or authenticating the signature of a person executing an instrument concerning real property pursuant to s. 695.03(3), shall contain and set forth substantially the matter required to be done or proved to make such acknowledgment or proof effectual as set forth in s. 117.05.

Section 24. Section 695.05, Florida Statutes, is amended to read:

695.05 Certain defects cured as to acknowledgments and witnesses.—All deeds, conveyances, bills of sale, mortgages or other transfers of real or personal property within the limits of this state, heretofore or hereafter made and received bona fide and upon good consideration by any corporation, and acknowledged for record by ~~before~~ some officer, stockholder or other person interested in the corporation, grantee, or mortgagee as a notary public or other officer authorized to take acknowledgments of instruments for record within this state, shall be held, deemed and taken as valid as if acknowledged by the proper notary public or other officer authorized to take acknowledgments of instruments for record in this state not so interested in said corporation, grantee or mortgagee; and said instrument whenever recorded shall be deemed notice to all persons; provided, however, that this section shall not apply to any instrument heretofore made, the validity of which shall be contested by suit commenced within 1 year of the effective date of this law.

Section 25. Section 695.28, Florida Statutes, is amended to read:

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695.28 Validity of recorded electronic documents.—

(1) A document that is otherwise entitled to be recorded and that was or is submitted to the clerk of the court or county recorder by electronic or other means and accepted for recordation is deemed validly recorded and provides notice to all persons notwithstanding:

(a) That the document was received and accepted for recordation before the Department of State adopted standards implementing s. 695.27; ~~or~~

(b) Any defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure relating to electronic signatures, electronic witnesses, electronic notarization, or online notarization, or for submitting or recording ~~to submit or record~~ an electronic document in effect at the time the electronic document was executed or was submitted for recording;

(c) That the document was signed, witnessed, or notarized electronically or that witnessing or notarization may have been done outside the physical presence of the notary public or principal; or

(d) That the document recorded was a certified printout of a document to which one or more electronic signatures have been affixed.

(2) This section does not alter the duty of the clerk or recorder to comply with s. 28.222, s. 695.27, or any rules adopted pursuant to those sections ~~that section~~.

(3) This section does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, undue

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influence, minority, illegality, unconscionability, or any other basis not in the nature of those matters described in subsection (1).

Section 26. This act shall take effect January 1, 2019.

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: February 13, 2018

I respectfully request that **Senate Bill #1042**, relating to **Notaries Public**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/01/2018
Meeting Date

1042
Bill Number (if applicable)

Topic Notaries Public

Amendment Barcode (if applicable)

Name Warren Husband

Job Title

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee FL 32302
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Attorneys' Title Fund Services, LLC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1044
INTRODUCER:	Senator Book
SUBJECT:	Victims of Human Trafficking
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Fav/CS**
2.	Delia	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1044 creates an additional civil cause of action for victims of human trafficking. The bill allows victims who prevail in any such action to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. It requires the court impose civil penalties, the proceeds of which are to be distributed to the Trust Fund for Victims of Human Trafficking and Prevention, created in SB 1046, and to local law enforcement agencies involved in the apprehension of defendants in related criminal matters.

The bill also specifies that the standard of proof for this civil action is by the preponderance of the evidence, and provides an affirmative defense for operators of public lodging establishments.

The bill will likely have an indeterminate impact both on hotels in the state and on the state court system.

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

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in

the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.[1]

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.[2]

Civil Cause of Action

Victims of human trafficking have a civil cause of action against a person who:

- With criminal intent, has:
  - Received any proceeds derived, directly or indirectly, from a pattern of criminal activity; or
  - Through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, has acquired or maintained, directly or indirectly, any interest in or control of any enterprise or real property.
- Was employed by or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- Has conspired or endeavored to violate any of the actions listed above.[3]

The civil cause of action allows for threefold the actual damages sustained. The victim is entitled to minimum damages of $200 and reasonable attorney's fees and court costs. Section 772.104(3), F.S., prohibits punitive damages from being awarded. The standard of proof for the civil cause of action is clear and convincing evidence.[4]

The statute of limitations for the civil cause of action is 5 years after the conduct constituting a violation of one of the above stated provisions. The statute of limitations is suspended during prosecution for the criminal activity or criminal conduct, which is the basis for the civil action and for two years after its conclusion.[5]

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[1] U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts,* (December 2011) available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited February 8, 2018). Polaris, *Human Trafficking: The Facts*, 2016, available at https://polarisproject.org/facts (last visited February 8, 2018).
[2] *See* ss. 787.06(3) and (4), F.S.
[3] Section 772.103, F.S.
[4] Section 772.104, F.S.
[5] Section 772.17, F.S.

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the "Civil Action for Victims of Human Trafficking and Prevention of Human Trafficking Act."

Section 2 creates s. 787.061, F.S., which provides an additional civil cause of action for victims of human trafficking to bring against the trafficker or facilitator of human trafficking who victimized them and allows the victims to recover damages. The Legislature finds that, to achieve the state's goals relating to human trafficking set forth in s. 787.06(1)(d), F.S., it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages.

The bill defines the following terms:

- "Facilitator" means a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking. The term does not include a person who facilitates human trafficking as a result of force, threat, or coercion.
- "Human trafficking" has the same meaning as provided in s. 787.06, F.S.
- "Trafficker" means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.
- "Trust fund" refers to the Trust Fund for Victims of Human Trafficking and Prevention proposed in SB 1046.
- "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.
- "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, F.S., for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.
- "Willful blindness" occurs when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

The bill allows a victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim. An action may be brought in any court of competent jurisdiction and the standard of proof is preponderance of the evidence. The court has specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. The bill requires the noneconomic damages be calculated as in a tort action.

The bill specifies that economic damages for services or labor coerced from the victim of human trafficking include:

- Past and future medical and mental health expenses;
- Repatriation expenses, when a victim elects repatriation; and
- All other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

The bill specifies that if the victim's parent or legal guardian knowingly, or through willful blindness, participated in the human trafficking, he or she is not entitled to damages or distributions from any successful suit under this section. The bill also states that remedies under this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking.

If a victim prevails in an action, the bill imposes a civil penalty against the defendant of $50,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

The bill also imposes a civil penalty against the defendant in favor of the law enforcement agencies for $50,000, if one or more law enforcement agencies rescued the victim or located the property upon which the abuse or exploitation occurred. The bill specifies that the award of the penalty to the law enforcement agencies is to fund future efforts to combat human trafficking. The court must equitably distribute the civil penalty among the law enforcement agencies.

The bill requires that any punitive damages awarded be equally divided between the victim and the trust fund.

The bill provides a statute of limitations as defined in ss. 95.11(7) and 95.11(9) and as described in Section 4.

The bill also creates an affirmative defense to an owner or operator of a public lodging establishment when an action is brought against them based on a claim of vicarious liability[6]. In actions alleging a violation against the owner or operator of a public lodging establishment based on vicarious liability, the owner or operator may avoid liability by proving, by a preponderance of the evidence, it:

- Required management employees and employees of the establishment reasonably expected to routinely interact with guests to complete an educational program designed to effectively train such employees in the identification, prevention, and reporting of suspected human trafficking within 30 days of hiring or by July 1, 2019, whichever occurs later.
- Had in place an employee protocol or code of conduct to detect and report suspected human trafficking; and
- Ensured that any employees alleged in the action to have been facilitators of, or otherwise participants in, human trafficking, complied with the recommendations and practices suggested or required in the training, protocols, or policies.

[6] According to Black's Law Dictionary, 11th Edition, "vicarious liability" is "the imposition of liability on one person for the actionable conduct of another, based solely on the relationship between the two persons; indirect or imputed legal responsibility for the acts of another; for example, the liability of an employer for the acts of an employee, or, a principal for the torts or [actions] of an agent."

Section 3 amends s. 772.104, F.S., by adding subsection (4), which states that s. 772.104, the section of the Florida Statutes that currently provides a civil cause of action for human trafficking victims, does not apply to a cause of action that may be brought under the newly created s. 787.061, F.S. The effect of this change is to prevent recovery for the same cause of action under both statutes.

Section 4 amends s. 95.11, F.S., to add civil suits involving human trafficking to a list of other civil actions that have either a 7 or 4 year statute of limitations, depending on the circumstances of the victim. The bill also requires that civil actions brought under the newly created s. 786.061 involving a victim under 16 years of age have no statute of limitations.

Section 5 provides and effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will likely be a negative, indeterminate impact on hotels and restaurants who need to develop an educational program and provide training to employees on recognizing and combating human trafficking. The bill could result in additional lawsuits and damages paid by hotels and restaurants.

C. Government Sector Impact:

There may be an indeterminate impact on the state court system from the creation of a new civil cause of action.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term 'willful blindness' as used and defined in the newly created s. 787.061, F.S., is not a traditional legal term and is vague to a degree which may require extensive litigation to resolve.

The two potential $50,000 civil penalties may give a disproportionate amount of leverage to force a potential defendant with little to no culpability into settlements.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 772.104, 95.11.
This bill creates section 787.061 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 Children, Families, and Elder Affairs on February 12, 2018:

- Provides a statute of limitations in actions alleging sexual abuse of 7 years from the date the victim reaches age 18.
- Provides an alternative statute of limitations of 4 years after the victim leaves the dependency of the alleged abuser or 4 years from the time the victim discovers both the injury and the causal relationship between injury and the abuse, whichever occurs later.
- Provides an indefinite statute of limitations in cases alleging sexual abuse of a victim under 16 years old.
- Revises the amount of a mandatory civil penalty levied against a defendant from $100,000 down to $50,000.
- Requires that the method for calculating economic damages awarded to a successful plaintiff be equal to all reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the trafficking.
- Eliminates the use of the fair market value of services or labor performed by the victim as a method for calculating economic damages.
- Modifies an employee training program, which serves as the basis for an affirmative defense for hotel operators, to require employee training in prevention of human trafficking.
- Eliminates the requirement that hotel operators prove they took reasonable steps to ensure any employees alleged to have been facilitators in trafficking complied with training or protocols to prevent human trafficking.

- Provides a new effective date of October 1, 2018.

B. Amendments:

None.

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

654858

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Rules (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Civil Cause of Action for Victims of Human Trafficking Act."

Section 2. Section 787.061, Florida Statutes, is created to read:

787.061 Civil actions by victims of human trafficking.—

(1) FINDINGS.-The Legislature finds that, to achieve the intent of the Legislature relating to human trafficking

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expressed in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages, attorney fees, and costs.

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

(a) "Facilitator" means a person who knowingly, or in willful blindness, assists or provides resources, goods, or services to a trafficker which assist or enable the trafficker to carry out human trafficking. The term does not include a person who facilitates human trafficking as a result of force, threat, or coercion.

(b) "Human trafficking" has the same meaning as provided in s. 787.06.

(c) "Trafficker" means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

(d) "Trust fund" means the Trust Fund for Victims of Human Trafficking and Prevention created in s. 787.0611.

(e) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(f) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, for the purpose of being used in human trafficking; a child under 18 years of age subjected to human trafficking; or an individual subjected to human trafficking as defined by federal law.

(g) "Willful blindness" exists when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining

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confirmation of or acting on the information because he or she wants to remain in ignorance, such that knowledge of the facts avoided can reasonably and fairly be imputed to the person who avoided confirming it.

(3) CIVIL CAUSE OF ACTION.—

(a) A victim of human trafficking has a civil cause of action against the trafficker or facilitator who victimized her or him and may recover damages as provided in this section.

(b) The action may be brought in any court of competent jurisdiction, and the standard of proof is the greater weight of the evidence, but the standard of proof for punitive damages under this section is clear and convincing evidence.

(c) A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs.

1. Economic damages include, but are not limited to, past and future medical and mental health expenses; repatriation expenses, when a victim elects repatriation; and all other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

2. Noneconomic damages include pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses.

(d) The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking, except that a victim

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may not recover under both this section and s. 772.104(2). If a parent or legal guardian knowingly or through willful blindness trafficked the victim, facilitated such trafficking, or otherwise participated in the human trafficking of the victim, such parent or legal guardian is not entitled to damages or distributions under this section.

(e) If a victim prevails in an action under this section, in addition to any other award imposed, the court shall assess a civil penalty against the defendant in the amount of $50,000. This penalty is in addition to and not in lieu of any other damage award. The civil penalty must be assessed by the court and may not be disclosed to the jury. The entire $50,000 civil penalty shall be deposited into the trust fund unless the proceeds become subject to equitable distribution under paragraph (g).

(f) If a victim prevails in an action under this section, and if one or more law enforcement agencies rescued the victim or stopped the abuse or exploitation of a victim on the property where it occurred, the court shall assess a civil penalty against the defendant in the amount of $50,000 and award the penalty to such law enforcement agencies to fund future efforts to combat human trafficking. This penalty is in addition to, and not in lieu of, any other damage award or civil penalty. The court shall equitably distribute this civil penalty among the law enforcement agencies. The entire $50,000 civil penalty shall be distributed to the law enforcement agencies unless the proceeds become subject to equitable distribution under paragraph (g).

(g) If an action brought under this section is either

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settled before a jury verdict or the victim is unable to recover the full amount of the compensatory damages caused by the human trafficking, the court must determine the percentage of the victim's damages that were recovered, after deducting the victim's reasonable and necessary out-of-pocket expenses, but before deducting attorney fees, and that same percentage of $50,000 shall be paid from the recovery to the trust fund. If one or more law enforcement agencies are entitled to a civil penalty under paragraph (f), that same percentage of $50,000 shall be paid from the recovery to the law enforcement agencies to fund future efforts to combat human trafficking.

(h) The court shall have specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

(i) Notwithstanding any other law to the contrary, the amount of punitive damages awarded under this section shall be equally divided between the victim and the trust fund.

(j) Moneys collected from penalties, damages, or other costs imposed by this section which are to be deposited into the trust fund shall be remitted to the Department of Revenue for deposit into the Department of Law Enforcement Trust Fund for Victims of Human Trafficking and Prevention.

(4) STATUTE OF LIMITATIONS.—The statutes of limitations as specified in s. 95.11(7) and (9) are applicable to actions brought under this section.

(5) AFFIRMATIVE DEFENSE.—

(a) In any action brought under this section against the owner or operator of a public food service or lodging establishment based on a claim of vicarious liability for an

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employee's conduct, it is an affirmative defense to punitive damages recoverable under such claim if the owner or operator proves by the greater weight of evidence that:

1. Its personnel have been trained to identify and report suspected human trafficking activity in accordance with s. 509.210 and rules adopted thereunder.

2. The owner or operator had in place an employee protocol or employee code of conduct to detect and report suspected human trafficking activity to appropriate law enforcement authorities, which may include the National Human Trafficking Hotline, the United States Department of Justice Hotline, the Florida Abuse Hotline, or local law enforcement authorities.

3. If the victim of human trafficking was a minor at the time of the trafficking, the owner or operator exercised reasonable care and diligence, screening, training, overseeing, and supervising the employee, and exercised reasonable care and diligence in its compliance with the anti-human-trafficking protocols and training required by this section.

(b) If the victim of human trafficking was an adult at the time of the trafficking, the affirmative defense provided in this subsection may be overcome with proof by clear and convincing evidence that the officers, directors, or managers of the owner or operator of the public food service or lodging establishment knowingly, or in willful blindness, condoned, ratified, permitted, caused, or consented to the conduct constituting human trafficking or the facilitation of such trafficking or failed to use reasonable care and diligence in its compliance with the anti-human-trafficking protocols and training required by this section.

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Section 3. Subsection (4) is added to section 772.104, Florida Statutes, to read:

772.104 Civil cause of action.—

(4) This section does not apply to a cause of action that may be brought under s. 787.061.

Section 4. Section 509.210, Florida Statutes, is created to read:

509.210 Training of public food service and lodging establishment personnel regarding human trafficking.—

(1) In consultation with the Attorney General, human trafficking victim advocacy organizations, and state and national restaurant and lodging associations, the division shall adopt by rule one or more educational programs designed to train employees of public food service and lodging establishments in the identification and reporting of suspected human trafficking activity. The owner or operator of a public food service or lodging establishment may also adopt its own educational program for this purpose, which must be submitted to the division and approved by it for the owner's or operator's use. The division shall approve such a program for the use by the owner or operator and its affiliated establishments if it is determined to be at least as comprehensive and effective as the other programs adopted by the division by rule. The rule must require the owner or operator of each public food service or lodging establishment to train those classes of employee reasonably expected to routinely interact with guests, using an approved educational program, within a reasonable time after hiring, and at appropriate intervals thereafter, and to maintain documentation of such training for routine inspection. If the

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owner or operator fails to comply with the rule's requirements, the division shall impose administrative sanctions pursuant to s. 509.261.

(2) All public food service and lodging establishments shall provide the division with proof of employee training upon request, including, but not limited to, at the time of any division inspection of the establishment. Proof of training for each employee shall include the name, date of birth, and job title of the trained employee, the date the training occurred, and the approved educational program used.

Section 5. The Division of Hotels and Restaurants of the Department of Business and Professional Regulation may adopt emergency rules pursuant to s. 120.54, Florida Statutes, to implement s. 509.210, Florida Statutes, as created by this act. The Legislature finds emergency rulemaking power necessary for the preservation of the rights and welfare of the people of Florida and to address the scourge of human trafficking in our state. The adoption of emergency rules pursuant to this section is exempt from s. 120.54(4)(a), Florida Statutes.

Section 6. Subsections (7) and (9) of section 95.11, Florida Statutes, are 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:

(7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action founded on alleged abuse, as defined in s. 39.01, s. 415.102, or s. 984.03, ~~or~~ incest, as defined in s. 826.04, or human trafficking, as defined in s. 787.06, may be commenced at any time within 7 years after the age of majority, or within 4 years

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after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

(9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An action related to an act constituting a violation of s. 794.011 or brought pursuant to s. 787.061 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.

Section 7. This act shall take effect October 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to victims of human trafficking; providing a short title; creating s. 787.061, F.S.; providing legislative findings; defining terms; providing a civil cause of action for victims of human trafficking against a trafficker or facilitator; providing procedures and requirements for bringing a claim; providing for damages, penalties, punitive damages, attorney fees, expenses, and costs; requiring a court to impose civil penalties in certain circumstances; providing for the deposit or distribution of civil penalties; requiring the equal distribution of punitive damages between victims and a



specified trust fund; requiring the remittance of certain collected moneys to the Department of Revenue for deposit into a certain trust fund; providing that such actions are subject to specified statutes of limitations; providing an affirmative defense for owners or operators of public lodging establishments under certain circumstances; amending s. 772.104, F.S.; specifying that certain provisions concerning civil actions for criminal practices do not apply to actions that may be brought under s. 787.061, F.S.; creating s. 509.210, F.S.; requiring educational programs for employees of public food service and lodging establishments regarding human trafficking; specifying proof of compliance requirements for establishments; requiring rulemaking; providing emergency rulemaking authority and an exemption from specified provisions for the Division of Hotels and Restaurants; amending s. 95.11, F.S.; conforming provisions to changes made by the act; providing an effective date.

By the Committee on Children, Families, and Elder Affairs; and Senators Book and Campbell

586-03130-18 20181044c1

A bill to be entitled

An act relating to victims of human trafficking; providing a short title; creating s. 787.061, F.S.; providing legislative findings; defining terms; providing a civil cause of action for victims of human trafficking against a trafficker or facilitator; providing procedures and requirements for bringing a claim; providing for damages, penalties, punitive damages, attorney fees, expenses, and costs; requiring a court to impose civil penalties in certain circumstances; providing for the deposit or distribution of civil penalties; requiring the equal distribution of punitive damages between victims and the trust fund; providing that such actions are subject to specified statute of limitations; providing an affirmative defense for owners or operators of public lodging establishments under certain circumstances; amending s. 772.104, F.S.; specifying that certain provisions concerning civil actions for criminal practices do not apply to actions that may be brought under s. 787.061, F.S.; amending s. 95.11, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. This act may be cited as the "Civil Cause of Action for Victims of Human Trafficking Act."

Section 2. Section 787.061, Florida Statutes, is created to

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

586-03130-18 20181044c1

read:

787.061 Civil actions by victims of human trafficking.—

(1) FINDINGS.-The Legislature finds that, to achieve the intent of the Legislature relating to human trafficking expressed in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages and costs.

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

(a) "Facilitator" means a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker which assist or enable the trafficker to carry out human trafficking. The term does not include a person who facilitates human trafficking as a result of force, threat, or coercion.

(b) "Human trafficking" has the same meaning as provided in s. 787.06.

(c) "Trafficker" means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

(d) "Trust fund" means the Trust Fund for Victims of Human Trafficking and Prevention created in s. 787.0611.

(e) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(f) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, or by any other means, for the purpose of being used in human trafficking; a child under 18 years of age subjected to human trafficking; or an individual

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

subjected to human trafficking as defined by federal law.

(g) "Willful blindness" exists when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance, such that knowledge of the facts avoided can reasonably and fairly be imputed to the person who avoided confirming it.

(3) CIVIL CAUSE OF ACTION.—

(a) A victim of human trafficking has a civil cause of action against the trafficker or facilitator who victimized her or him and may recover damages as provided in this section.

(b) The action may be brought in any court of competent jurisdiction, and the standard of proof is a preponderance of the evidence.

(c) A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs.

1. Economic damages include, but are not limited to, past and future medical and mental health expenses; repatriation expenses, when a victim elects repatriation; and all other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

2. Noneconomic damages are nonfinancial losses that would not have occurred but for the victimization, and include pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life,

and other nonfinancial losses.

(d) The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking, except that a victim may not recover under both this section and s. 772.104(2). If a parent or legal guardian knowingly or through willful blindness trafficked the victim, facilitated such trafficking, or otherwise participated in the human trafficking of the victim, such parent or legal guardian is not entitled to damages or distributions under this section.

(e) If a victim prevails in an action under this section, in addition to any other award imposed, the court shall assess a civil penalty against the defendant in the amount of $50,000. This penalty is in addition to and not in lieu of any other damage award. The civil penalty must be assessed by the court and may not be disclosed to the jury. Proceeds from this civil penalty shall be deposited into the trust fund.

(f) If one or more law enforcement agencies rescued the victim or located the property where the abuse or exploitation of a victim or victims occurred, the court must impose a civil penalty against the defendant in the amount of $50,000 and award the penalty to the law enforcement agencies to fund future efforts to combat human trafficking. The court must equitably distribute this civil penalty among the law enforcement agencies.

(g) The court shall have specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

(h) Notwithstanding any other law to the contrary, the

amount of punitive damages awarded under this section shall be equally divided between the victim and the trust fund.

(4) STATUTE OF LIMITATIONS.—The statute of limitations as specified in ss. 95.11(7) and 95.11(9) is applicable to actions brought under this section.

(5) AFFIRMATIVE DEFENSE.—In any action brought under this section against the owner or operator of a public lodging establishment based on a claim of vicarious liability, it is an affirmative defense to damages recoverable under such claim if the owner or operator proves by the preponderance of evidence that:

(a) It required management employees and employees of the establishment reasonably expected to routinely interact with guests to complete an educational program designed to effectively train such employees in the identification, prevention, and reporting of suspected human trafficking within 30 days after hiring or by January 1, 2019, whichever occurs later;

(b) It had in place an effective employee protocol or employee code of conduct to prevent, detect, and report suspected human trafficking; and

(c) Any employee alleged in the action to have been facilitators of, or otherwise participants in, human trafficking, complied with the recommendations and practices suggested or required in the training, protocols, or policies required in this subsection.

Section 3. Subsection (4) is added to section 772.104, Florida Statutes, to read:

772.104 Civil cause of action.—

(4) This section does not apply to a cause of action that may be brought under s. 787.061.

Section 4. Subsections (7) and (9) of section 95.11, Florida Statutes, are 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:

(7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action founded on alleged abuse, as defined in s. 39.01, s. 415.102, or s. 984.03, ~~or~~ incest, as defined in s. 826.04, or human trafficking, as defined in s. 787.06, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

(9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An action related to an act constituting a violation of s. 794.011 or brought pursuant to s. 787.061 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on the Environment and Natural Resources, *Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Environmental Preservation and Conservation
Health Policy
Rules

SENATOR LAUREN BOOK
Democratic Leader Pro Tempore
32nd District

February 13, 2018

Chair Lizbeth Benacquisto
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto,

I respectfully request that you place CS/SB 1044, relating to Victims of Human Trafficking, on the agenda of the Committee on Rules at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Lauren Book

Senator Lauren Book
Senate District 32

cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1094
INTRODUCER:	Senator Simmons
SUBJECT:	Trespass on Airport Property
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Favorable**
2.	Cochran	Yeatman	CA	**Favorable**
3.	Erickson	Phelps	RC	**Favorable**

I. Summary:

SB 1094 provides that it is a third degree felony to trespass with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area, and the property trespassed upon is the operational area of an airport that is legally posted and identified as specified in the bill. The bill defines the term "operational area of an airport."

II. Present Situation:

Trespass upon the Operational Area of an Airport

Four incidents reported in the media provide examples of trespassing upon the operational area of an airport. In 2014, a man reportedly breached a fence at the Orlando International Airport and tried to crawl into the wheel well of a parked airplane.[1] That same year, a man reportedly scaled a fence at Tampa International Airport and went onto an active runway.[2] In March of 2015, a woman reportedly scaled a fence on the perimeter of the Miami-Dade International Airport.[3] In June of 2017, a man reportedly entered an airfield owned by the City of Lakeland and jumped onto the wing of an airplane that was preparing to taxi down the runway.[4]

[1] "Arrest at Orlando International Airport" (September 18, 2014), cityoforlando.net, available at http://www.cityoforlando.net/police/arrest-at-orlando-international-airport/ (last visited on Feb. 15, 2018).
[2] Mike M. Ahlers, "Man Jumps Tampa airport fence, taken into custody" (May 19, 2014), CNN, available at http://www.cnn.com/2014/05/19/us/florida-airport-fence-jumper/index.html (last visited on Feb. 15, 2018).
[3] Peter D'Oench, "Police: Woman Arrested for Scaling Miami Airport Fence" (March 2, 2015), CBS Miami, available at http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/ (last viewed on Feb. 15, 2018).
[4] "Florida man steals van, tries to board airplane in Lakeland" (June 23, 2017), WFTS Tampa Bay, available at https://www.abcactionnews.com/news/region-polk/lakeland/florida-man-steals-van-tries-to-board-airplane-on-runway-in-lakeland (last visited on Feb. 15, 2018).

Florida Trespassing Law

Florida law does not specifically punish trespassing upon the operational area of an airport,[5] though such trespassing could be charged and punished under s. 810.09, F.S., relating to trespass on property other than a structure or conveyance. Further, s. 901.15(14), F.S., authorizes a law enforcement officer to make a warrantless arrest when there is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. An arrest under this subsection may be made on or off airport premises.

Section 810.09(1)(a) and (2)(a), F.S., provides that a person commits the offense of trespass on property other than a structure or conveyance, a first degree misdemeanor,[6] if the person, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation;[7] or
- If the property is the unenclosed curtilage[8] of a dwelling[9] and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Section 810.09(2)(b), F.S., provides that it is a first degree misdemeanor if a person defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance.

Generally, trespass on property other than a structure or conveyance is a misdemeanor. However, such trespass is a third degree felony[10] if a person is armed with a firearm or other dangerous weapon during the commission of such trespass[11] or if such trespass is upon specified types of property. For example, it is a third degree felony to trespass on a designated construction site,

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[5] Federal law prohibits a person from knowingly and willfully entering, in violation of specified federal security requirements, an aircraft or an airport area that serves an air carrier or foreign air carrier. 49 U.S.C. s. 46314(a). A violation is punishable by fine and imprisonment of not more than one year. 49 U.S.C. s. 46314(b)1. However, a person committing this violation with intent to evade security procedures or restrictions or with intent to commit, in the aircraft or airport area, a federal or state felony, is subject to a fine, imprisonment for not more than 10 years, or both. 42 U.S.C s. 46314(b)(2).

[6] A first degree misdemeanor is punishable by up to a year in jail, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S.

[7] "Cultivated land" means land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation. Section 810.011(6), F.S.

[8] "Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. Section 810.09(1)(b), F.S.

[9] "Dwelling" means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. Section 810.011(2), F.S.

[10] A third degree felony is punishable by up to five years in prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S.

[11] Section 810.09(2)(c), F.S.

commercial horticulture property, and agricultural chemical manufacturing facility.[12] The protected property must have a posted sign that contains specific language identifying the property and indicating that trespass on the property is a felony.[13]

III. Effect of Proposed Changes:

The bill amends s. 810.09, F.S., relating to trespass on property other than a structure or conveyance, to provide that it is a third degree felony[14] to trespass with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway,[15] taxiway,[16] ramp, or apron area,[17] and the property trespassed upon is the operational area of an airport that is legally posted and identified in substantially the following manner:

> THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.

The bill defines the term "operational area of an airport" as any portion of an airport to which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[12] Section 810.09(2)(d), (e), and (i), F.S.
[13] *Id*.
[14] *Supra*, n. 10.
[15] A "runway" is "[a] defined rectangular area on a land aerodrome prepared for the landing and take-off of aircraft." *Runway Safety Team Handbook*, Second Ed. (unedited version) (June 2015), p. 5, International Civil Aviation Organization, available at https://www.icao.int/safety/RunwaySafety/Documents%20and%20Toolkits/ICAO%20RST%20Handbook%202nd%20Edition%202015%20REV2.pdf (last visited on Feb. 15, 2018).
[16] A "taxiway" is "any surface area of an airport used for taxiing airplanes to and from a runway, parking apron, terminal, etc." Definition of "taxiway," Dictionary.com, available at http://www.dictionary.com/browse/taxiway (last visited on Feb. 15, 2018).
[17] An "apron" or "ramp" is "[a] defined area on an airport intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking, and maintenance." Advisory Circular, No: 120-57A (Dec. 19, 1996), p. 2, Federal Aviation Administration, available at: https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-57A.pdf (last visited on Feb. 15, 2018).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may financially benefit airports if it reduces instances of trespassing on airport property and if there are currently costs to airports associated with responding to such trespassing.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).[18]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 810.09 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[18] Email from staff of the Legislature's Office of Economic and Demographic Research, dated Feb. 6, 2018 (on file with the Senate Committee on Criminal Justice).

By Senator Simmons

9-00857-18 20181094__

A bill to be entitled

An act relating to trespass on airport property; amending s. 810.09, F.S.; providing enhanced criminal penalties for a trespass upon the operational area of an airport with specified intent if specified signage is posted; defining the term "operational area of an airport"; providing an effective date.

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

Section 1. Paragraph (j) is added to subsection (2) of section 810.09, Florida Statutes, and paragraph (a) of subsection (1) of that section is republished, to read:

810.09 Trespass on property other than structure or conveyance.—

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

(2)

(j)1. The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the offender trespasses with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area, and the property trespassed upon is the operational area of an airport that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

2. For purposes of this paragraph, the term "operational area of an airport" means any portion of an airport to which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

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

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

Florida Senate - 2018 **SB 1094**

9-00857-18 20181094__

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: February 21, 2018

I respectfully request that **Senate Bill 1094**, relating to Trespass on Airport Property, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 1134
INTRODUCER:	Rules Committee; Appropriations Committee; Health Policy Committee; and Senator Rouson and others
SUBJECT:	Department of Health Responsibilities Related to the Medical Use of Marijuana
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Loe	Hansen	AP	**Fav/CS**
3.	Looke	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1134 amends the Department of Health's (DOH) responsibilities under s. 381.986, F.S., relating to the medical use of marijuana. The bill:

- Eliminates the requirement that an applicant be a member of the Black Farmers and Agriculturists Association – Florida Chapter (BFAA-FC) for the one Medical Marijuana Treatment Center (MMTC) license designated to be issued to a recognized class member of Pigford v. Glickman[1] or In Re Black Farmers Litigation.[2]
- Requires all applicants for the one Recognized Class Member License be registered to do business in Florida for five consecutive years before applying for the license.
- Strikes an obsolete date by which such license was to be issued.

The bill has no impact on state revenues or expenditures.

The bill is effective upon becoming law.

[1] 185 F.R.D. 82 (D.D.C. 1999).
[2] 856 F. Supp. 2d 1 (D.D.C. 2011).

II. Present Situation:

On November 4, 2016, Amendment 2 was voted into law and established Article X, s. 29 of the State Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- MMTCs, their agents, and employees for actions or conduct under the amendment and in compliance with DOH rules.

Medical Marijuana Treatment Centers

The law requires the DOH to license a number of MMTCs including:

- All dispensing organizations that were licensed under the Compassionate Medical Cannabis Act.[3]
- Ten additional MMTCs, as follows:
  - By August 1, 2017, any denied dispensing organization applicant whose application was scored by DOH and had one or more administrative or legal challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking applicant in its region, and proves to the DOH that it has the infrastructure and ability to begin cultivating marijuana within 30 days after registration as an MMTC;
  - By October 3, 2017, one license to an applicant that is a recognized class member of Pigford v. Glickman or In Re Black Farmers Litigation, and a member of the BFAA-FC. These applicants are exempt from the requirement to be a registered business in Florida for five consecutive years prior to applying and the requirement to possess a valid certificate of registration as a nursery issued by the Department of Agriculture and Consumer Services; and
  - By October 3, 2017, all remaining ten licenses.
- Four additional licenses each time the total number of patients registered by the medical marijuana use registry increases by 100,000 patients.[4]

On September 22, 2017, Columbus Smith (Smith) filed a lawsuit challenging the requirement that a Recognized Class Member License applicant be a member of the BFAA-FC. Smith is a recognized class member of Pigford v. Glickman, or In Re Black Farmers Litigation, but is not a member of the Florida Black Farmers and Agriculturalists Association. According to Smith, he was denied membership in the BFAA-FC. Smith also sought an injunction to enjoin DOH from awarding a Recognized Class Member License, which the court granted on January 9, 2018,

[3] The Compassionate Medical Cannabis Act (Act) was the precursor to the full-strength medical marijuana program established by Amendment 2 and ch. 2017-232, L.O.F. The Act allowed the use of low-THC cannabis to treat cancer and epilepsy disorders and the use of full-strength medical cannabis for the treatment of terminal patients. The Act required the DOH to license five dispensing organizations to grow, process, and dispense low-THC and medical cannabis and three additional dispensing organizations upon the registration of 250,000 active qualified patients in the compassionate use registry. The Act required one of the three additional dispensing organizations to be owned and operated by a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association. See s. 381.986(5)(c), F.S. (2016).
[4] Section 381.986(8)(a), F.S.

preventing the DOH from issuing the Recognized Class Member License. The DOH has delayed issuing any of the additional MMTC licenses that it was required to grant by October 3, 2017, due to this lawsuit.[5, 6]

III. Effect of Proposed Changes:

Section 1 amends the DOH's responsibilities under s. 381.986, F.S. The bill:

- Eliminates the requirement that an applicant be a member of the Black Farmers and Agriculturists Association – Florida Chapter (BFAA-FC) for the one MMTC license designated to be issued to a recognized class member of Pigford v. Glickman[7] or In Re Black Farmers Litigation.[8]
- Requires all applicants for the Recognized Class Member License be registered to do business in Florida for five consecutive years before applying for the license by eliminating the exemption from this requirement. This change will ensure that any applicant for this license is a Florida-based applicant despite the elimination of the requirement that the applicant be a member of the BFAA-FC.
- Strikes an obsolete date by which such license was to be issued.

Section 2 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[5] Smith v. Florida Department of Health, case number 17-CA-1972, in the Circuit Court for the Second Judicial Circuit of Florida.
[6] Letter from Christian Bax to Chair Dana Young, (September 29, 2017) (on file with the Senate Committee on Health Policy).
[7] 185 F.R.D. 82 (D.D.C. 1999).
[8] 856 F. Supp. 2d 1 (D.D.C. 2011).

B. Private Sector Impact:

CS/CS/SB 1134 may have an indeterminate positive fiscal impact on an applicant for licensure as an MMTC that is a recognized class member of Pigford v. Glickman or In Re Black Farmers Litigation, but that is not a member of the BFAA-FC, if the applicant is chosen to receive a license to operate as an MMTC.

The bill may have an indeterminate negative fiscal impact on an applicant for licensure as an MMTC that is a recognized class member of Pigford v. Glickman or In Re Black Farmers Litigation, and a member of the BFAA-FC, if such applicant would have been chosen to receive the Recognized Class Member License to operate as an MMTC under current law but is not chosen to receive such license due to changes made by the bill.

The bill may have an indeterminate negative fiscal impact on Recognized Class Member License applicants that have not been registered businesses in Florida for the past five consecutive years and that, consequently, no longer qualify as an MMTC applicant due to changes made by the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.986 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on March 1, 2018:
The CS removes the provision requiring the DOH to adopt rules that allow qualified patients to change qualified physicians while remaining registered with the Medical Marijuana Use Registry.

CS/CS by Appropriations on January 31, 2018:
The CS provides that the bill takes effect upon becoming law.

CS by Health Policy on January 16, 2018:
The CS:

- Requires the DOH to adopt rules that allow qualified patients to change qualified physicians while remaining registered with the Medical Marijuana Use Registry. The process may not allow a qualified patient to exceed statutory limits on the supply of marijuana.
- Requires all applicants for the Recognized Class Member License to be registered to do business in Florida for five consecutive years before applying for the license.

B. Amendments:

None.

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

439506

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Rouson) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 20 - 31.

====== 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 16 - 17
and insert:
Section 1. Paragraph (a) of subsection (8) of section 381.986, Florida Statutes, is

439506

12 ================= T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete lines 4 - 6
15 and insert:
16 marijuana; amending s. 381.986, F.S.; deleting an
17 obsolete

By the Committees on Appropriations; and Health Policy; and Senators Rouson, Bradley, and Young

576-02686-18 20181134c2

A bill to be entitled

An act relating to Department of Health responsibilities related to the medical use of marijuana; amending s. 381.986, F.S.; requiring the department to adopt rules to allow qualified patients to change qualified physicians; deleting an obsolete date; revising a requirement that the department license one applicant who is a member of a certain class to exclude a requirement that the applicant also be a member of the Black Farmers and Agriculturalist Association-Florida Chapter; providing an effective date.

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

Section 1. Paragraph (h) of subsection (4) and paragraph (a) of subsection (8) of section 381.986, Florida Statutes, are amended to read:

381.986 Medical use of marijuana.—

(4) PHYSICIAN CERTIFICATION.—

(h) The department, the Board of Medicine, and the Board of Osteopathic Medicine may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection. Rules adopted pursuant to this subsection must include a process by which a qualified patient may change qualified physicians while retaining an active registration on the medical marijuana use registry. This process must include safeguards to ensure that any new physician certification issued to the patient after he or she changes physicians does not combine with any existing patient

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576-02686-18 20181134c2

certification to allow the patient to possess more than the 70-day supply limits.

(8) MEDICAL MARIJUANA TREATMENT CENTERS.—

(a) The department shall license medical marijuana treatment centers to ensure reasonable statewide accessibility and availability as necessary for qualified patients registered in the medical marijuana use registry and who are issued a physician certification under this section.

1. As soon as practicable, but no later than July 3, 2017, the department shall license as a medical marijuana treatment center any entity that holds an active, unrestricted license to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices, under former s. 381.986, Florida Statutes 2016, before July 1, 2017, and which meets the requirements of this section. In addition to the authority granted under this section, these entities are authorized to dispense low-THC cannabis, medical cannabis, and cannabis delivery devices ordered pursuant to former s. 381.986, Florida Statutes 2016, which were entered into the compassionate use registry before July 1, 2017, and are authorized to begin dispensing marijuana under this section on July 3, 2017. The department may grant variances from the representations made in such an entity's original application for approval under former s. 381.986, Florida Statutes 2014, pursuant to paragraph (e).

2. The department shall license as medical marijuana treatment centers 10 applicants that meet the requirements of this section, under the following parameters:

a. As soon as practicable, but no later than August 1, 2017, the department shall license any applicant whose

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application was reviewed, evaluated, and scored by the department and which was denied a dispensing organization license by the department under former s. 381.986, Florida Statutes 2014; which had one or more administrative or judicial challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking in its region under former s. 381.986, Florida Statutes 2014; which meets the requirements of this section; and which provides documentation to the department that it has the existing infrastructure and technical and technological ability to begin cultivating marijuana within 30 days after registration as a medical marijuana treatment center.

b. As soon as practicable, ~~but no later than October 3, 2017,~~ the department shall license one applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011) ~~and is a member of the Black Farmers and Agriculturalists Association-Florida Chapter~~. An applicant licensed under this sub-subparagraph is exempt from the requirement of subparagraph (b)2 ~~requirements of subparagraphs (b)1. and 2~~.

c. As soon as practicable, but no later than October 3, 2017, the department shall license applicants that meet the requirements of this section in sufficient numbers to result in 10 total licenses issued under this subparagraph, while accounting for the number of licenses issued under sub-subparagraphs a. and b.

3. For up to two of the licenses issued under subparagraph 2., the department shall give preference to applicants that

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demonstrate in their applications that they own one or more facilities that are, or were, used for the canning, concentrating, or otherwise processing of citrus fruit or citrus molasses and will use or convert the facility or facilities for the processing of marijuana.

4. Within 6 months after the registration of 100,000 active qualified patients in the medical marijuana use registry, the department shall license four additional medical marijuana treatment centers that meet the requirements of this section. Thereafter, the department shall license four medical marijuana treatment centers within 6 months after the registration of each additional 100,000 active qualified patients in the medical marijuana use registry that meet the requirements of this section.

5. Dispensing facilities are subject to the following requirements:

a. A medical marijuana treatment center may not establish or operate more than a statewide maximum of 25 dispensing facilities, unless the medical marijuana use registry reaches a total of 100,000 active registered qualified patients. When the medical marijuana use registry reaches 100,000 active registered qualified patients, and then upon each further instance of the total active registered qualified patients increasing by 100,000, the statewide maximum number of dispensing facilities that each licensed medical marijuana treatment center may establish and operate increases by five.

b. A medical marijuana treatment center may not establish more than the maximum number of dispensing facilities allowed in each of the Northwest, Northeast, Central, Southwest, and

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Southeast Regions. The department shall determine a medical marijuana treatment center's maximum number of dispensing facilities allowed in each region by calculating the percentage of the total statewide population contained within that region and multiplying that percentage by the medical marijuana treatment center's statewide maximum number of dispensing facilities established under sub-subparagraph a., rounded to the nearest whole number. The department shall ensure that such rounding does not cause a medical marijuana treatment center's total number of statewide dispensing facilities to exceed its statewide maximum. The department shall initially calculate the maximum number of dispensing facilities allowed in each region for each medical marijuana treatment center using county population estimates from the Florida Estimates of Population 2016, as published by the Office of Economic and Demographic Research, and shall perform recalculations following the official release of county population data resulting from each United States Decennial Census. For the purposes of this subparagraph:

(I) The Northwest Region consists of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties.

(II) The Northeast Region consists of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns, Suwannee, and Union Counties.

(III) The Central Region consists of Brevard, Citrus, Hardee, Hernando, Indian River, Lake, Orange, Osceola, Pasco,

Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia Counties.

(IV) The Southwest Region consists of Charlotte, Collier, DeSoto, Glades, Hendry, Highlands, Hillsborough, Lee, Manatee, Okeechobee, and Sarasota Counties.

(V) The Southeast Region consists of Broward, Miami-Dade, Martin, Monroe, and Palm Beach Counties.

c. If a medical marijuana treatment center establishes a number of dispensing facilities within a region that is less than the number allowed for that region under sub-subparagraph b., the medical marijuana treatment center may sell one or more of its unused dispensing facility slots to other licensed medical marijuana treatment centers. For each dispensing facility slot that a medical marijuana treatment center sells, that medical marijuana treatment center's statewide maximum number of dispensing facilities, as determined under sub-subparagraph a., is reduced by one. The statewide maximum number of dispensing facilities for a medical marijuana treatment center that purchases an unused dispensing facility slot is increased by one per slot purchased. Additionally, the sale of a dispensing facility slot shall reduce the seller's regional maximum and increase the purchaser's regional maximum number of dispensing facilities, as determined in sub-subparagraph b., by one for that region. For any slot purchased under this sub-subparagraph, the regional restriction applied to that slot's location under sub-subparagraph b. before the purchase shall remain in effect following the purchase. A medical marijuana treatment center that sells or purchases a dispensing facility slot must notify the department within 3 days of sale.

d. This subparagraph shall expire on April 1, 2020.

If this subparagraph or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this subparagraph are severable.

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

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair

Committee on Rules

Subject: Committee Agenda Request

Date: January 31, 2018

I respectfully request that **Senate Bill #1134**, relating to Department of Health Responsibilities Related to the Medical Use of Marijuana, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/2018
Meeting Date

1134
Bill Number (if applicable)

Topic MJ

Amendment Barcode (if applicable)

Name Courtney D. Wilson

Job Title Board Member

Address 1622 SW 5th ST
Street

Phone 352-427-9181

Ocala FL 34471
City *State* *Zip*

Email CWils34478@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Black Farmers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-1-18
Meeting Date

1134
Bill Number (if applicable)

Topic Wetland Mitigation

Amendment Barcode (if applicable)

Name Dr. Latresa Wilson

Job Title VP

Address 3330 NW 22 ave
Street

Phone 352-861-6209

Ocala FL 34475
City *State* *Zip*

Email lawilson07@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Black Farmers & Agriculturalists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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 1220
INTRODUCER:	Judiciary Committee; Criminal Justice Committee; and Senator Brandes
SUBJECT:	Detention Facilities
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.	Cibula	Cibula	JU	**Fav/CS**
3.	Cellon	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1220 requires a law enforcement officer to electronically record the entirety of custodial interrogation if it:

- Takes place at a place of detention; and
- Relates to a covered offense.

A place of detention is defined to mean a police station, sheriff's office, correctional facility, prisoner holding facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

The covered offenses specified by the bill include arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, the unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, aggravated stalking, home invasion robbery, and carjacking.

Other provisions of the bill:

- Define terms;
- Provide exceptions to the recording requirement;
- Require a court to consider an officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a statement;

- Require a law enforcement officer to write a report explaining why he or she did not record the custodial interrogation;
- Require a law enforcement officer to write a report explaining why a custodial interrogation was conducted at a place *other than a place of detention*;
- Allow a defendant to request and receive a cautionary jury instruction when a non-recorded statement from a custodial interrogation is admitted into evidence;
- Make a law enforcement agency immune from civil liability for a violation of requirement to record an interrogation if the agency enforces rules that are reasonably designed to insure compliance with the requirement;
- Specify that the bill does not create a cause of action against a law enforcement officer;
- Add cellular telephones and portable communications devices to the list of articles that are declared to be contraband at a county detention facility; and
- Reduce the penalty for attempting to smuggle less serious types of contraband articles into or out of a county detention facility.

The bill is effective July 1, 2018.

II. Present Situation:

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

The Fifth Amendment of the United States Constitution states that "No person . . . shall be compelled in any criminal case to be a witness against himself."[1] Likewise, the Florida Constitution extends the same protection.[2] The voluntariness of a defendant's statement and the admissibility of the statement against him or her in court is a creature of both case law and statutory law in Florida.

Custodial Interrogation

Whether a person is in custody and under interrogation is the threshold question that determines the need for a law enforcement officer to advise the person of his or her *Miranda* rights.[3] In *Traylor v. State*, the Supreme Court of Florida found that "[T]o ensure the voluntariness of confessions, the Self–Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court . . . ."[4]

The test to determine if a person is in custody for the purposes of one's *Miranda* rights, is whether "a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest."[5]

[1] U.S. Const. amend. V.
[2] "No person shall be . . . compelled in any criminal matter to be a witness against himself." FLA. CONST. article I, s. 9.
[3] In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.
[4] 596 So. 2d 957, 965-966 (Fla. 1992).
[5] *Traylor*, 596 So.2d 957, 966 at n. 16.

An interrogation occurs "when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response."[6]

Waiver of the Right to Remain Silent

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.[7] The warning must include the right to remain silent as well as the explanation that anything a person says can be used against them in court. The warning includes both parts because it is important for a person to be aware of his or her right and the consequences of waving such a right.[8]

Admissibility of a Defendant's Statement as Evidence

The admissibility of a defendant's statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.[9] For a defendant's statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given where the statement was obtained by law enforcement officer during the custodial interrogation of the defendant. The court looks to the totality of the circumstances of the statement to determine if it was voluntarily given.[10]

The facts considered by the court come from testimony by the defendant and by the law enforcement officers involved, their reports, and any additional evidence such as audio or video recordings of the custodial interrogation.

As discussed above, the courts use a "reasonable person" standard in making the determination of whether the defendant was in custody at the time he or she made a statement.[11] The court considers, given the totality of the circumstances, whether a reasonable person in the defendant's position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.[12] Among the circumstances or factors the courts have considered are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt; and
- Whether the suspect is informed that he or she is free to leave the place of questioning.[13]

The court will also determine whether the defendant was made aware of his or her *Miranda* rights and whether he or she knowingly, voluntarily, and intelligently elected to waive those rights and give a statement.[14]

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[6] *Id.* at 966 at n. 17.
[7] *See Miranda v. Arizona,* 384 U.S. 436, 444 (1966).
[8] *Sliney v. State*, 699 So. 2d 662, 669 (Fla. 1997), *cert. denied,* 522 U.S. 1129 (1998).
[9] *Nickels v. State*, 90 Fla. 659, 668 (1925).
[10] *Supra* n. 8 at 667.
[11] *Supra* n. 5.
[12] *Voorhees v. State*, 699 So. 2d 602, 608 (Fla. 1997).
[13] *Ramirez v. State*, 739 So. 2d 568, 574 (Fla. 1999).
[14] *Supra* n. 8 at 668.

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that the statement was coerced in some way by a law enforcement officer.

Interrogation Recording in Florida

Law enforcement agencies in Florida are not currently required to record the custodial interrogation of a crime suspect, either by audio, video, or a combination of means. Fifty-seven agencies in Florida are reported to voluntarily record custodial interrogations, at least to some extent.[15]

Other States

Currently twenty-three states and the District of Columbia record custodial interrogations statewide.[16] These states have statutes, court rules, or court cases that require law enforcement officers to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.[17]

Contraband Articles at County Detention Facilities

Existing law declares that a number of items are contraband when a person smuggles or attempts to smuggle them into or out of a county detention facility.[18] These articles include: written or recorded communications, currency and coins, food and clothing, tobacco products, including cigarettes and cigars, intoxicating beverages, various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts. A person who smuggles or attempts to smuggle any article of contraband into or out of a county detention facility commits a third degree felony.[19]

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[15] *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 36-37, August 2016, National Association of Criminal Defense Lawyers, https://www.nacdl.org/electronicrecordingproject;. *see also Electronic Recording of Suspect Interrogations*, Interim Report 2004-123, Florida Senate Committee on Criminal Justice, http://archive.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-123cj.pdf.

[16] *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 7-8, August 2016, National Association of Criminal Defense Lawyers, https://www.nacdl.org/electronicrecordingproject.

[17] *See Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. Rule 4.7 (2012); Cal Pen Code s. 859.5 (2016) and Cal Wel & Inst Code s. 626.8 (2014); C.R.S. 16-3-601 (2016); CT Gen. Stat. s. 54-1*o* (2011); D.C. Code s. 5-116.01 (2005); Hawaii was verified by the four departments that govern law enforcement in the state; 705 ILCS 405/5-401.5 (2016), 725 ILCS 5/103-2.1 (2017); Ind. R. Evid. 617 (2014); 25 M.R.S. s. 2803-B(1)(K) (2015); Md. CRIMINAL PROCEDURE Code Ann. ss. 2-401 – 2-402 (2008); MCLS ss. 763.7 – 763.9 (2013)**;** *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. s. 590.700 (2017); MT Code Ann. ss. 46-4-406 – 46-4-411 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2006)*;* N.M. Stat. Ann. s. 29-1-16 (2006); N.C. Gen. Stat. s. 15A-211 (2011); OR Rev. Stat. s. 133.400 (2009); RIPAC, Accreditation Standards Manual, ch. 8, s. 8.10 (Rev. 2015); Utah R. Evid. Rule 616 (2016); 13 V.S.A. s. 5585 (2015); *State v. Jerrell C.J.*, 699 N.W.2d 110 (WI 2005); Wis. Stat. ss. 968.073 and 972.115 (2005); *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, August, 2016, National Association of Criminal Defense Lawyers, available at https://www.nacdl.org/electronicrecordingproject.

[18] Section 951.22, F.S.

[19] A person who commits a third degree felony may be imprisoned for up to 5 years and fined up to $5,000. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

III. Effect of Proposed Changes:

Custodial Interrogations

The bill creates a statutory requirement, and exceptions to the requirement, that a law enforcement officer conducting a custodial interrogation must record the interrogation in its entirety.

The bill provides definitions for terms used in the bill. These are:

- "Custodial interrogation" which means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;
- "Electronic recording" which means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- "Covered offense" which lists the following criminal offenses:
  - Arson.
  - Sexual battery.
  - Robbery.
  - Kidnapping.
  - Aggravated child abuse.
  - Aggravated abuse of an elderly person or disabled adult.
  - Aggravated assault with a deadly weapon.
  - Murder.
  - Manslaughter.
  - Aggravated manslaughter of an elderly person or disabled adult.
  - Aggravated manslaughter of a child.
  - The unlawful throwing, placing, or discharging of a destructive device or bomb.
  - Armed burglary.
  - Aggravated battery.
  - Aggravated stalking.
  - Home-invasion robbery.
  - Carjacking.
- "Place of detention" which means a police station, sheriff's office, correctional facility, prisoner holding facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and
- "Statement" which means a communication that is oral, written, electronic, nonverbal, or in sign language.

The bill requires that a custodial interrogation related to a covered offense and conducted at a place of detention must be electronically recorded in its entirety. The recording must include:

- The giving of a required warning;
- The advisement of rights; and
- The waiver of rights by the individual being questioned.

If the custodial interrogation at the place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for the noncompliance. Additionally, the report must summarize the custodial interrogation process and the individual's statements.

If a law enforcement officer conducts a custodial interrogation at a place other than a place of detention, the officer must prepare a written report as soon as practicable. The report must explain the officer's decision to conduct the interrogation in that place and the report must summarize the custodial interrogation process and the individual's statements made at that place.

The general recording requirement does not apply under the following circumstances:

- If there is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;
- If a suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- Due to equipment operator error;
- If the statement is made spontaneously and not in response to a custodial interrogation question;
- If a statement is made after questioning that is routinely asked during the processing of the arrest of a suspect;
- If the custodial interrogation occurs when no law enforcement officer participating in the interrogation has knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- If the law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- If the custodial interrogation is conducted outside of the state.

Unless a court finds that one or more of the enumerated exceptions applies, the court must consider the officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a defendant's statement made during the interrogation. If the court decides to admit the statement, the defendant may request and the court must give a cautionary jury instruction regarding the officer's failure to comply with the recording requirement.

Finally, if a law enforcement agency has enforced rules that are adopted pursuant to the bill and that are reasonably designed to comply with the bill's requirements, the agency is not subject to civil liability for damages arising from a violation of the bill's requirements. The bill does not create a cause of action against a law enforcement officer.

Contraband Articles at County Detention Facilities

Currently, a person who smuggles or attempts to smuggle any article of contraband into or out of a county detention facility commits a felony of the third degree. The amendment adds cellular phones and portable communications devices to the list of articles declared by statute to be contraband.

The amendment, however, reduces the penalty for smuggling or attempting to smuggle some of the less dangerous types of contraband articles to a first degree misdemeanor.[20] Accordingly, smuggling or attempts to smuggle the following articles is a first degree misdemeanor: written or recorded communications, currency and coins, food and clothing, tobacco products, including cigarettes and cigars, and intoxicating beverages.

Effective Date

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is possible that the requirements of the bill related to electronic recording could result in local fund expenditures for equipment, maintenance, and operation. However, because any such local funding resulting from the requirements of the bill will directly relate to the defense and prosecution of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although local law enforcement agencies may incur costs related to the electronic recording requirement in the bill, that cost is indeterminate.

The Criminal Justice Impact Conference met on January 29, 2018, and determined that the provisions of this bill, which were then included in SB 1886, relating to contraband

[20] A person who commits a first degree misdemeanor may be imprisoned for up to 1 year and fined up to $1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

will result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

The Florida Department of Law Enforcement anticipates no fiscal impact to the department resulting from the provisions of the bill relating to custodial interrogations.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 900.05, Florida Statutes.

This bill substantially amends section 951.22, Florida Statutes.

IX. Additional Information:

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

CS/CS by Judiciary on February 20, 2018
The committee substitute differs from the underlying bill in that it also addresses contraband in county detention facilities. The effective date of the bill is also delayed until July 1, 2019.

CS by Criminal Justice on January 16, 2018:
The Committee Substitute:

- Corrects a scrivener's error in the wording of "Home-invasion robbery" to be consistent with the way the offense is listed in s. 812.135(1), F.S.
- Changes the definition of "place of detention" by removing language about a "fixed location under the control of law enforcement" and listing the locations instead. It also eliminates the language about the definition excluding a police vehicle from the definition of "place of detention" since all places of detention are now specified.

B. Amendments:

None.

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

[21] Florida Department of Law Enforcement, *2018 Legislative Bill Analysis, SB 1220* (December 14, 2017) (on file with the Senate Committee on Judiciary).

By the Committees on Judiciary; and Criminal Justice; and
Senator Brandes

590-03480-18 20181220c2

A bill to be entitled

An act relating to detention facilities; creating s. 900.05, F.S.; defining terms and specifying covered offenses; requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; providing exceptions to the electronic recording requirement; requiring a court to consider a law enforcement officer's failure to comply with the electronic recording requirements in determining the admissibility of a statement unless an exception applies; requiring a court, upon the request of a defendant, to give cautionary instructions to a jury under certain circumstances; providing immunity from civil liability to law enforcement agencies that enforce certain rules; providing that no cause of action is created against a law enforcement officer; amending s. 951.22, F.S.; prohibiting introduction into or possession of, on the grounds of any county detention facility, any cellular telephone or other portable communication device; defining the term "portable communication device"; providing criminal penalties; amending s. 921.0022, F.S.; conforming a cross-reference; conforming a provision to changes made by the act; providing an effective date.

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

590-03480-18 20181220c2

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

Section 1. Section 900.05, Florida Statutes, is created to read:

900.05 Recording of custodial interrogations for certain offenses.—

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

(a) "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

(b) "Electronic recording" means an audio recording or an audio and video recording that accurately records a custodial interrogation.

(c) "Covered offense" includes:

1. Arson.

2. Sexual battery.

3. Robbery.

4. Kidnapping.

5. Aggravated child abuse.

6. Aggravated abuse of an elderly person or disabled adult.

7. Aggravated assault with a deadly weapon.

8. Murder.

9. Manslaughter.

10. Aggravated manslaughter of an elderly person or disabled adult.

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11. Aggravated manslaughter of a child.

12. The unlawful throwing, placing, or discharging of a destructive device or bomb.

13. Armed burglary.

14. Aggravated battery.

15. Aggravated stalking.

16. Home-invasion robbery.

17. Carjacking.

(d) "Place of detention" means a police station, sheriff's office, correctional facility, prisoner holding facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

(e) "Statement" means a communication that is oral, written, electronic, nonverbal, or in sign language.

(2)(a) A custodial interrogation at a place of detention, including the giving of a required warning, the advisement of the rights of the individual being questioned, and the waiver of any rights by the individual, must be electronically recorded in its entirety if the interrogation is related to a covered offense.

(b) If a law enforcement officer conducts a custodial interrogation at a place of detention without electronically recording the interrogation, the officer shall prepare a written report explaining the reason for his or her noncompliance with this section and summarizing the custodial interrogation process and the individual's statements.

(c) As soon as practicable, a law enforcement officer who conducts a custodial interrogation at a place other than a place

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of detention shall prepare a written report explaining the decision to interrogate at that place and summarizing the custodial interrogation process and the individual's statements made at that place.

(d) Paragraph (a) does not apply:

1. If an unforeseen equipment malfunction prevents recording the custodial interrogation in its entirety;

2. If a suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;

3. Due to equipment operator error;

4. If the statement is made spontaneously and not in response to a custodial interrogation question;

5. If a statement is made after questioning that is routinely asked during the processing of the arrest of a suspect;

6. If the custodial interrogation occurs when no law enforcement officer participating in the interrogation has knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;

7. If the law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, the individual being interrogated, or of others; or

8. If the custodial interrogation is conducted outside of the state.

(3) Unless a court finds that one or more of the circumstances specified in paragraph (2)(d) apply, the court

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must consider a law enforcement officer's failure to make an electronic recording of all or part of a custodial interrogation in determining whether a statement made during the interrogation is admissible. If the court admits into evidence a statement made during a custodial interrogation that was not electronically recorded as required under paragraph (2)(a), the court must, upon request of the defendant, give cautionary instructions to the jury regarding the law enforcement officer's failure to comply.

(4) A law enforcement agency in this state which has enforced rules adopted pursuant to this section which are reasonably designed to ensure compliance with the requirements of this section is not subject to civil liability for damages arising from a violation of this section. This section does not create a cause of action against a law enforcement officer.

Section 2. Section 951.22, Florida Statutes, is amended to read:

951.22 County detention facilities; contraband articles.—

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be contraband:

(a) ~~for the purposes of this act, to wit:~~ Any written or recorded communication.~~;~~

(b) Any currency or coin.~~;~~

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(c) Any article of food or clothing.~~;~~

(d) Any tobacco products as defined in s. 210.25(12).~~;~~

(e) Any cigarette as defined in s. 210.01(1).~~;~~

(f) Any cigar.~~;~~

(g) Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.~~;~~

(h) Any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(4).~~;~~

(i) Any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.~~; and~~

(j) Any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

(k) Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of a county detention facility without prior authorization or consent from the sheriff or officer in charge of such detention facility. As used in this paragraph, the term "portable communication device" means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, handheld radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDAs, laptop computers, or any components of these devices which are intended to be used to

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assemble such devices. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities which has been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting other official business.

(2) A person who ~~Whoever~~ violates paragraph (1)(a), (b), (c), (d), (e), (f), or (g) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates paragraph (1)(h), (i), (j), or (k) commits ~~subsection (1) shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.

400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.

784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.

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790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older

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		but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.

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812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.

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

827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

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914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22 (1)(h)-(k) ~~951.22(1)~~	3rd	Introduction of contraband into county detention facility ~~Intoxicating drug, firearm, or weapon introduced into county facility~~.

Section 4. This act shall take effect January 1, 2019.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3.1.18
Meeting Date

1220
Bill Number (if applicable)

Topic Detention Facilities

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street
Street

Phone 510-9922

Tallahassee FL 32301
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Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1220
Bill Number (if applicable)

Topic Recording Interrogations

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Executive Director, Innocence Project of Florida

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City *State* *Zip*

Email Smiller@floridainnocence.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Innocence Project of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1226
INTRODUCER:	Criminal Justice Committee; and Senators Book and Hutson
SUBJECT:	Sentencing for Sexual Offenders and Sexual Predators
DATE:	February 23, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1226 modifies definitions of the terms "permanent residence," "temporary residence," and "transient residence." These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3 days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The bill also requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws. The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

According to the Florida Department of Law Enforcement, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours. The Department of Corrections states that the impact on that department is indeterminate. See Section V. Fiscal Impact Statement.

II. Present Situation:

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.[1] The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes[2] and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;[3]
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.[4]

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.[5]

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.[6] Registration requirements may also

[1] Sections 775.21 and 943.0435, F.S.
[2] Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.
[3] Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).
[4] Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.
[5] Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."
[6] All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times

differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report certain information, including residence information, at registration and reregistration (see discussion, *infra*).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.[7] Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Reporting Residence Information During Registration and Reregistration

Section 775.21, F.S., defines terms relevant to the reporting of residence information by sexual predators and sexual offenders (registrant):

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.[8]
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.[9]
- "Transient residence" means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.[10]

Provided below is a description of the registration and reregistration processes and the reporting of residence information for sexual predators and sexual offenders who are not in custody or under supervision of the DOC, the DJJ, or another agency.[11]

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per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

[7] The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us* (updated October 1, 2016), Florida Department of Law Enforcement, available at http://offender.fdle.state.fl.us/offender/About.jsp (last visited on Feb. 1, 2018). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. *See* http://offender.fdle.state.fl.us/offender/Search.jsp (last visited on Feb. 1, 2018).

[8] Section 775.21(2)(k), F.S.

[9] Section 775.21(2)(n), F.S.

[10] Section 775.21(2)(o), F.S.

[11] Registration and reregistration and reporting requirements for persons in those statuses are addressed not only in ss. 775.21 and 934.0435, F.S., but also in ss. 944.606, 944.607, 985.481, and 985.4815, F.S.

Upon initial registration, a registrant who is a sexual offender must report in person at the sheriff's office:

- In the county in which the registrant establishes or maintains a residence within 48 hours after:
  - Establishing a residence in this state; or
  - Being released from the custody, control, or supervision of the DOC or from the custody of a private correctional facility; or
- In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration, if the offender is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility.[12]

A registrant who is a sexual predator must register in person:

- At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and
- At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.[13]

At this registration, the registrant must report specified information, including residence information.[14]

Generally, within 48 hours after this registration, a registrant must report in person at a driver license office of the DHSMV. At the driver license office, the registrant must, if otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The registrant must provide any of the information required to be provided at initial registration, if requested. Each time a registrant's driver license or identification card is subject to renewal, and, without regard to the status of the registrant's driver license or identification card, within 48 hours after any change in the offender's residence, the registrant must report in person to a driver license office, and is subject to the same reporting requirements. A registrant who is unable to secure or update a driver license or an identification card with the DHSMV must report any change in the registrant's residence within 48 hours after the change to the sheriff's office in the county where the registrant resides or is located and provide confirmation that he or she reported such information to the DHSMV, but this reporting requirement does not negate the requirement for a registrant to obtain a Florida driver license or an identification card.[15]

A registrant who vacates a residence and fails to establish or maintain another one must, within 48 hours after vacating the residence, report in person to the sheriff's office of the county in which he or she is located. The registrant must specify the date upon which he or she intends to or did vacate the residence, and provide or update all of the registration information required to be reported at initial registration. The registrant must provide an address for the residence or

[12] Section 943.0435(2)(a), F.S.
[13] Section 775.21(6)(e) F.S.
[14] Sections 775.21(6)(a) and (e) and 943.0435(2), F.S.
[15] Sections 775.21(6)(f) and (g)1. and 943.0435(3) and (4)(a), F.S.

other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.[16]

A registrant must report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The registrant must provide the addresses and locations where he or she maintains a transient residence. A registrant who remains at a residence after reporting his or her intent to vacate the residence must, within 48 hours after the date upon which the registrant said he or she would or did vacate such residence, report in person to the agency to which he or she reported vacating the residence. The failure of a registrant to make this report is a second degree felony.[17] The failure of a registrant who maintains a transient residence to report in person to the sheriff's office every 30 days (as previously described) is a third degree felony.[18]

A registrant who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than this state must report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The registrant must provide to the sheriff the address, municipality, county, state, and country of intended residence. The failure of a registrant to provide his or her intended place of residence is a third degree felony.[19]

A registrant who indicates his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country and later decides to remain in this state must, within 48 hours after the date upon which the registrant indicated he or she would leave this state, report in person to the sheriff to which the registrant reported the intended change of residence, and report his or her intent to remain in this state. A registrant who reports his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country but who remains in this state without reporting to the sheriff (as previously described) commits a second degree felony.[20]

A registrant must report in person to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. Reregistration includes reporting any changes to residence information. Any registrant who fails to report in person as required at the sheriff's office or fails to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence commits a third degree felony.[21]

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[16] Sections 775.21(6)(g)2.a. and 943.0435(4)(b)1., F.S.
[17] A second degree felony is punishable by a prison sentence not exceeding 15 years, a fine not exceeding $10,000, or both. Sections 775.082 and 775.083, F.S.
[18] Sections 775.21(6)(g)2.b., 3., and 4., and 943.0435(4)(b)2., (c), and (d), F.S. A third degree felony is punishable by a prison sentence not exceeding 5 years, a fine not exceeding $5,000, or both. Sections 775.082 and 775.083, F.S.
[19] Sections 775.21(6)(i) and 943.0435(7), F.S.
[20] Sections 775.21(6)(j) and 943.0435(8), F.S.
[21] Sections 775.21(8)(a) and (10)(a), and 943.0435(14), 944.607(12), and 985.4815(13). F.S.

General Penalties under Sections 775.21 and 943.0435, F.S.

Sections 775.21 and 943.0435, F.S., contain a general penalties provision. Section 775.21(10)(a), F.S., provides that it is a third degree felony for a sexual predator to:

- Fail to register;
- Fail, after registration, to maintain, acquire, or renew a driver license or an identification card;
- Fail to provide required location information;
- Fail to provide electronic mail addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name;
- Fail to provide all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information;
- Fail to make a required report in connection with vacating a permanent residence;
- Fail to reregister as required;
- Fail to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence;
- Knowingly provide false registration information by act or omission; or
- Otherwise fail, by act or omission, to comply with the requirements of s. 775.21, F.S., or s. 943.0435, F.S., as applicable.

Section 943.0435(9)(a), F.S., provides that a sexual offender who does not comply with the requirements of s. 943.0435, F.S., commits a third degree felony.

Community Control

Community control" is a form of intensive, supervised custody[22] in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.[23] "As with probation, violation of any community control condition may result in revocation by the court and imposition of any sentence which it might have imposed before placing the offender on community control supervision. Many of the offenders who are placed on community control are prison diversions."[24]

III. Effect of Proposed Changes:

The bill amends s. 775.21, F.S., to modify definitions of the terms "permanent residence," "temporary residence," and "transient residence." These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3

[22] The DOC describes it as "form of intensive supervised house arrest in the community[.]" *Community Supervision*, Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/annual/9798/stats/stat_cs.html (last visited on Feb. 1, 2018).
[23] Section 948.001(3), F.S.
[24] *Supra*, n. 22.

days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The definitions of these terms and corresponding changes to the definitions also apply to s. 943.435, F.S.[25]

The bill also amends the general penalties provisions in ss. 775.21 and 943.0435, F.S., to require mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of either of these statutes if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws (see "Present Situation" section of this analysis, *supra*). The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.[26]

Mandatory community control with electronic monitoring shall be imposed as follows:

- For a first offense committed on or after July 1, 2018, a mandatory minimum term of 6 months of community control with electronic monitoring;
- For a second offense committed on or after July 1, 2018, a mandatory minimum term of 1 year of community control with electronic monitoring; and
- For a third or subsequent offense committed on or after July 1, 2018, a mandatory minimum term of 2 years of community control with electronic monitoring.

Felony violations of ss. 775.21 and 943.0435, F.S., are ranked in Level 7 of the offense severity ranking chart of the Criminal Punishment Code.[27] A Level 7 offense scores sufficient sentence points to require a prison sentence,[28] which a sentencing court must impose absent mitigation of a prison sentence.[29] Therefore, if the court does not impose a prison sentence, and the mandatory community control provisions of the bill apply, this is because the court imposed a downward departure sentence.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[25] Section 943.0435(1)(f), F.S.
[26] *See* ss. 775.21(10)(g) and 943.0435(13), F.S. This prohibited act is not committed by a sexual predator or sexual offender. The act involves a person unlawfully facilitating the sexual predator's or sexual offender's noncompliance with registration requirements by the person withholding important information, providing false information, or harboring or concealing the noncompliant sexual predator or sexual offender.
[27] Section 921.0022(3)(g), F.S.
[28] A Level 7 offense scores 56 sentence points. Section 921.0024(1)(a), F.S. When total sentence points exceed 44 points, the lowest permissible sentence is a prison sentence. Section 921.0024(2), F.S.
[29] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the FDLE, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours.[30]

The DOC states that probation officers "who supervise sex offenders on community control with electronic monitoring have reduced caseloads due to the workload associated with this type of supervision and the monitoring required. Impact is indeterminate at this time as we are unable to estimate how many offenders will be sentenced under this requirement."[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill also reenacts the following sections of the Florida Statutes: 775.25, 944.606, 985.481, and 985.4815, F.S.

[30] 2018 FDLE Legislative Bill Analysis (SB 1226) (Dec. 15, 2017), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).
[31] 2018 Agency Legislative Bill Analysis (SB 1226) (Jan. 19, 2018), Department of Corrections (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

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

CS by Criminal Justice on February 6, 2018:
The committee substitute:

- Requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence.
- Excludes from mandatory community control offenses relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senators Book and Hutson

591-02892-18 20181226c1

A bill to be entitled

An act relating to sentencing for sexual offenders and sexual predators; amending s. 775.21, F.S.; redefining the terms "permanent residence," "temporary residence," and "transient residence" by decreasing the amount of days a person abides, lodges, or resides in a certain place to qualify for that type of residency category; revising existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations if the court does not impose a prison sentence; amending s. 943.0435, F.S.; revising existing criminal penalties for sexual offenders to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations if the court does not impose a prison sentence; reenacting s. 775.25, F.S., relating to prosecutions for certain acts or omissions, to incorporate the amendments made to ss. 775.21 and 943.0435, F.S., in references thereto; reenacting ss. 944.606(1)(d), 985.481(1)(d), and 985.4815(1)(f), F.S., relating to sexual offenders and required notifications upon release, sexual offenders adjudicated delinquent and required notifications upon release, and notification to the Department of Law Enforcement of information on juvenile sexual offenders, respectively, to incorporate the amendment made to s. 775.21, F.S., in

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references thereto; providing an effective date.

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

Section 1. Paragraphs (k), (n), and (o) of subsection (2) and subsection (10) of section 775.21, Florida Statutes, are amended, and paragraph (d) of subsection (5) and paragraphs (g) and (i) of subsection (6) of that section are republished, to read:

775.21 The Florida Sexual Predators Act.—

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

(k) "Permanent residence" means a place where the person abides, lodges, or resides for 3 ~~5~~ or more consecutive days.

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 ~~5~~ or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

(o) "Transient residence" means a county where a person lives, remains, or is located for a period of 3 ~~5~~ or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated

as a sexual predator as follows:

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard

to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this subparagraph do not negate the requirement for a sexual predator to obtain a Florida driver license or identification card as required by this section.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall,

within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this sub-subparagraph. Reporting to the sheriff's office as required by this sub-subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this sub-subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual

predator to the department.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. The failure of a sexual predator who maintains a transient residence to report in person to the sheriff's office every 30 days as required by sub-subparagraph 2.b. is punishable as provided in subsection (10).

5.a. A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to

the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

b. A sexual predator shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported in this sub-subparagraph shall be reported within 48 hours after the change.

c. The department shall establish an online system through which sexual predators may securely access, submit, and update all electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of

higher education information.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual predator 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure. The sexual predator shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's intended residence. The failure of a sexual predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver license or an

identification card; who fails to provide required location information; who fails to provide electronic mail addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name; who fails to provide all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; who knowingly provides false registration information by act or omission; or who otherwise fails, by act or omission, to comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

(c) For a felony violation of this section, excluding paragraph (10)(g), committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:

1. For a first offense, a mandatory minimum term of 6 months of community control with electronic monitoring.

2. For a second offense, a mandatory minimum term of 1 year of community control with electronic monitoring.

3. For a third or subsequent offense, a mandatory minimum term of 2 years of community control with electronic monitoring.

(d) ~~(c)~~ Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) ~~(d)~~ A sexual predator who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was

committed, in the county of the last registered address of the sexual predator, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator, in the county where the sexual predator was released from incarceration, or in the county of the intended address of the sexual predator as reported by the predator prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

(f) ~~(e)~~ An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

~~(f)~~ Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

(g) Any person who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this section:

1. Withholds information from, or does not notify, the law enforcement agency about the sexual predator's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual predator;

2. Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator;

3. Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator; or

4. Provides information to the law enforcement agency regarding the sexual predator which the person knows to be false information,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This paragraph does not apply if the sexual predator is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

Section 2. Subsection (9) of section 943.0435, Florida Statutes, is amended, and paragraph (f) of subsection (1), paragraph (d) of subsection (4), and subsection (7) of that

section are republished, to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(f) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

(4)

(d) The failure of a sexual offender who maintains a transient residence to report in person to the sheriff's office every 30 days as required in subparagraph (b)2. is punishable as provided in subsection (9).

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel.

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

The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(9)(a) Except as otherwise specifically provided, a sexual offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) For a felony violation of this section, excluding subsection (13), committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:

1. For a first offense, a mandatory minimum term of 6 months of community control with electronic monitoring.

2. For a second offense, a mandatory minimum term of 1 year of community control with electronic monitoring.

3. For a third or subsequent offense, a mandatory minimum term of 2 years of community control with electronic monitoring.

(c) ~~(b)~~ A sexual offender who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for

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

designating a person as a sexual offender, in the county where the sexual offender was released from incarceration, or in the county of the intended address of the sexual offender as reported by the offender prior to his or her release from incarceration.

(d) ~~(c)~~ An arrest on charges of failure to register when the offender has been provided and advised of his or her statutory obligations to register under subsection (2), the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

~~(d)~~ Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual offender of criminal liability for the failure to register.

Section 3. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, section 775.25, Florida Statutes, is reenacted to read:

775.25 Prosecutions for acts or omissions.—A sexual

predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or former s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual predator or sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender, in the county where the sexual predator or sexual offender was released from incarceration, or in the county of the intended address of the sexual predator or sexual offender as reported by the predator or offender prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

Section 4. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 944.606, Florida Statutes, is reenacted to read:

944.606 Sexual offenders; notification upon release.—

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

(d) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 5. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 985.481, Florida Statutes, is reenacted to read:

985.481 Sexual offenders adjudicated delinquent;

notification upon release.—

(1) As used in this section:

(d) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 6. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (f) of subsection (1) of section 985.4815, Florida Statutes, is reenacted to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

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

(f) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 7. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-1-18
Meeting Date

1226
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JESS McCARTY

Job Title ASSISTANT COUNTY ATTORNEY

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MIAMI FL 33128
City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1244
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Community Affairs Committee; and Senator Lee
SUBJECT:	Growth Management
DATE:	February 28 , 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Fav/CS**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Hansen	AP	**Fav/CS**
4.	Cochran	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1244 amends provisions related to existing development of regional impact (DRI) development orders. The DRI program ended in 2015, but existing development orders continue to exist. The bill repeals provisions related to the state land planning agency's (Department of Economic Opportunity) role in the process and shifts the remaining responsibilities to local governments. Specifically, the bill:

- Repeals obsolete language for the application and review of DRIs;
- Changes the process for existing DRIs to amend a development order;
- Retains current statewide guidelines and standards for determining when a development is subject to state coordinated review;
- Updates reporting requirements;
- Preserves certain unexpired letters, development orders, and agreements;
- Ends all DRI appeals to the Administration Commission except decisions by local governments under the DRI abandonment process;
- Repeals state land planning agency rules related to DRIs and Administration Commission rules related to aggregation of developments for the purpose of DRI review; and
- Repeals the Florida Quality Developments (FQD) program and requires FQD development orders to be replaced by local government development orders.

The bill adds a requirement for an independent special district to commence a municipal conversion – that the independent special district has a minimum population, depending on the population of the county in which the district is located.

- The Department of Economic Opportunity will incur less expenses related to the DRI process.

The bill is effective upon becoming law.

II. Present Situation:

Development of Regional Impact

A development of regional impact (DRI) is defined in s. 380.06, F.S., as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. The DRI program provided a lengthy and complicated review process for proposed projects that was largely duplicated by the successor comprehensive planning review process.

Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed law that brought truly modern planning requirements into force. In recognition of this fact, the Environmental Land Management Study Committee in 1992 recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) that is required to be included in local comprehensive plans.[1] After much controversy, this recommendation was not implemented, and the DRI program continued in its previous form.

In 2015, the Florida Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process. Instead, the Legislature directed that proposed developments only need to comply with the requirements of the State Coordinated Review Process for the review of local government comprehensive plan amendments.[2]

DRI Review

Before the program ended, all developments that met the DRI thresholds and standards provided by statute[3] and rules adopted by the Administration Commission[4] were required to undergo DRI review, unless the Legislature provided an exemption for that particular type of project or for the planning area in which the development was located (such as a sector plan or a rural land stewardship area) or unless the development was located within a "dense urban land area."[5] The

[1] *See* Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.
[2] Section 380.06(30), F.S. Chapter 2015-30, L.O.F.
[3] Section 380.0651, F.S.
[4] Chapter 28-24, F.A.C.
[5] The criteria for qualification as a dense urban land area are contained in s. 380.06(29), F.S. Currently, eight counties and 243 cities qualify as dense urban land areas that are exempt from the DRI program.

types of developments required to undergo DRI review upon meeting the specified thresholds and standards included attraction and recreation facilities, office developments, retail and service developments, mixed-use developments, residential developments, schools, and recreational vehicle developments.[6] Over the years, the Legislature enacted many exemptions and increased the thresholds that projects must have surpassed in order to trigger DRI review.

Florida's 11 regional planning councils (RPC) coordinated the multi-agency review of proposed DRIs. A DRI review began by a developer contacting the RPC with jurisdiction over a proposed development to arrange a pre-application conference.[7] The developer or the RPC could request other affected state and regional agencies participate in the conference to identify issues raised by the proposed project and the level of information that each agency would require in the application to assess those issues. At the pre-application conference, the RPC provided the developer with information about the DRI process and coordinated the identification of issues and the appropriate state and local agency requirements.

Upon completion of the pre-application conference with all parties, the developer filed an application for development approval with the local government, the RPC, and the state land planning agency (the Department of Economic Opportunity). The RPC reviewed the application for sufficiency and could request additional information (no more than twice, unless waived by the developer) if the application was deemed insufficient.[8]

When the RPC determined that the application was sufficient or the developer declined to provide additional information, the local government had to hold a public hearing on the application for development within 90 days.[9] Within 50 days after receiving notice of the public hearing, the RPC was required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.[10] The RPC was required to identify regional issues specifically examining the extent to which:

- The development would have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;
- The development would significantly impact adjacent jurisdictions; and
- While reviewing the first two issues, the development would favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[11]

If the proposed project would have impacts within the purview of other state agencies, those agencies would also prepare reports and recommendations on the issues raised by the project and within their statutorily-prescribed jurisdictions. These reports became part of the RPC's report, but the RPC could attach dissenting views.[12] When water management district (WMD) and Department of Environmental Protection (DEP) permits had been issued pursuant to ch. 373,

[6] Section 380.0651, F.S.
[7] Section 380.06(7), F.S.
[8] Section 380.06(10), F.S.
[9] Section 380.06(11), F.S.
[10] Section 380.06(12), F.S.
[11] Section 380.06(12)(a), F.S.
[12] Section 380.06(12)(c), F.S.

F.S., or ch. 403, F.S., the RPC could comment on the regional implications of the permits but could not offer conflicting recommendations.[13] Finally, the state land planning agency also reviewed DRIs for compliance with state laws, to identify regional and state impacts, and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[14]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI had to be heard as well. When considering whether the development must be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considered the extent to which:

- The development was consistent with the local government's comprehensive plan and land development regulations;
- The development was consistent with the report and recommendations of the RPC; and
- The development was consistent with the state comprehensive plan.[15]

Within 30 days of the public hearing on the application for development approval, the local government had to decide whether to issue a development order or not.[16] Within 45 days after a development order was or was not rendered, the owner or developer of the property or the state land planning agency could appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[17] An "aggrieved or adversely affected party" could appeal and challenge the consistency of a development order with the local comprehensive plan.[18]

Completion of this entire process could take one to two years and require the expenditure of significant resources, both on the part of private developers and state agencies.

Substantial Deviation[19]

After a development order was issued, any proposed change to a previously approved DRI development order that created a reasonable likelihood of additional regional impact or any type of regional impact created by the change not previously reviewed by the regional planning agency, constituted a "substantial deviation" and required such proposed change to be subject to further DRI review. The process to amend DRIs still applies to existing DRIs that received local government development orders prior to July 1, 2015, and that have not been abandoned or rescinded.[20] The statute sets forth criteria and situations to determine whether a proposed change requires further DRI review, including:

- Certain threshold criteria beyond which a change constitutes a substantial deviation;
- Certain changes in development that do not amount to a substantial deviation;
- Scenarios in which a substantial deviation is presumed; and

[13] *Id*.
[14] *See* Senate Interim Report 2012-114. *The Development of Regional Impact Process*. Sept. 2011.
[15] Section 380.06(13) and (14), F.S. DRIs located in areas of critical state concern must also comply with the land development regulations in s. 380.05, F.S.
[16] Section 380.06(15), F.S.
[17] Section 380.07(2), F.S.
[18] Section 163.3215, F.S.
[19] Section 380.06(19), F.S.
[20] Department of Economic Opportunity. *2018 Agency Legislative Bill Analysis: SB 1244*. January 12, 2018.

- Scenarios in which a change is presumed not to create a substantial deviation.

The DEO (state land planning agency) has adopted rules setting standard forms for submittal of proposed changes to a previously approved DRI development order. At a minimum, the form requires the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order. The developer must submit the form to the local government, the regional planning agency, and the DEO.

After the developer submits the form, the appropriate regional planning agency or the DEO reviews the proposed change. No later than 45 days after submittal of the form, the DEO advises the local government in writing whether the DEO objects to the proposed change, specifying the reasons for the objection if applicable, and provides a copy to the developer.

The local government schedules a public hearing with 15 days' notice to consider the change. This public hearing is held within 60 days after submittal of the proposed change, unless the developer requests to extend the time.

At the public hearing, the local government determines whether the proposed change requires further DRI review based on the thresholds and standards set out in law. The local government can deny the proposed change based on matters relating to local issues.

If the local government determines that the proposed change does not require further DRI review and is otherwise approved, the local government issues an amendment to the development order incorporating the approved change and conditions of approval relating to the change. If, however, the local government determines that proposed change requires further DRI review, the local government determines whether to approve, approve with conditions, or deny the proposed change as it related to the entire development.

DRI Exemptions

Over the years, the DRI program was amended to include a number of exemptions. The following list of exemptions is not exhaustive, but illustrates the number and variety of the exemptions from the DRI program that were enacted:[21]

- Certain projects that created at least 100 jobs that met certain qualifications – 1997;
- Certain expansions to port harbors, certain port transportation facilities, and certain intermodal transportation facilities – 1999;
- The thresholds used to identify projects subject to the program were increased by 150 percent for development in areas designated as rural areas of critical economic concern (now known as rural areas of opportunity) – 2001;
- Certain proposed facilities for the storage of any petroleum product or certain expansions of existing petroleum product storage facilities – 2002;
- Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use – 2002;
- Certain water port or marina developments – 2002; and

[21] Section 360.06(24), F.S.

- The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, F.S. – 2005.

In 2009, the Legislature enacted the most significant exemption from the DRI program: the exemption for Dense Urban Land Areas (DULAs).[22] In 2015, 8 counties and 243 cities qualified as DULAs. This meant that all projects within those counties and cities were exempted from the DRI program. The areas qualifying as DULAs accounted for more than half of Florida's population.[23]

Comprehensive Plans and the Comprehensive Plan Amendment Process

The Growth Management Act of 1985 required every city and county to create and implement a comprehensive plan to guide future development.[24] A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government first amends its comprehensive plan.

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[25] The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including the Department of Economic Opportunity (DEO) (as the state land planning agency), the relevant RPC, and adjacent local governments that request to participate in the review process.[26]

The state and regional agencies review the proposed amendment for impacts related to their statutory purviews. The RPC reviews the amendment specifically for "extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region" as well as adverse effects on regional resources or facilities.[27] The DEO compiles reports from the various involved agencies and issues an Objections, Recommendation, and Comments Report, which consolidates the reports received.[28] Upon receipt of the consolidated report, the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.[29] The DEO then has either 31 days or 45 days (depending on the review

[22] Chapter 2009-96, L.O.F.
[23] Department of Economic Opportunity. Community Planning, Development, and Services. Community Planning. *Community Planning Table of Contents: List of Local Governments Qualifying as Dense Urban Land Areas*. (June 11, 2015). Available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/list-of-local-governments-qualifying-as-dense-urban-land-areas (last visited February 3, 2018).
[24] Chapter 1985-55, L.O.F.
[25] Section 163.3174(4)(a), F.S.
[26] Section 163.3184, F.S.
[27] Section 163.3184(3)(b)3.a., F.S.
[28] Department of Economic Opportunity. Community Planning, Development, and Services. Community Planning. *Amendments that Must Follow the State Coordinated Review Process; Procedures and Timeframes*. Available at http://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/amendments-that-must-follow-the-state-coordinated-review-process-procedures-and-timeframes (last visited February 3, 2018).
[29] Section 163.3184(3)(c)4. and (4)(e)4., F.S.

process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.[30]

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.[31] Most plan amendments were placed into the Expedited State Review Process, while plan amendments related to large-scale developments were placed into the State Coordinated Review Process. The two processes operate in much the same way, however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.

Florida Quality Developments

Florida Quality Developments (FQDs) are DRI-sized projects that receive a Florida Quality Development designation if they meet certain statutory criteria.[32] The criteria is designed to enhance the a development, by, as example, protecting and preserving environmentally sensitive lands including wildlife habitat and wetlands; participating in a downtown reuse or redevelopment program to improve and rehabilitate a declining downtown area; providing for construction and maintenance of all onsite infrastructure necessary to support the project; or including open space, recreation areas, Florida-friendly landscaping, and energy conservation.[33] An application for a FQD is handled in much the same way as an application for a DRI was processed prior to the 2015 statutory change. The DRI impact application form is used and an additional section is added to consider the FQD-specific requirements. The "DEO and the appropriate local government determine if a development has met the Florida Quality Development requirements. A finding of no designation may be appealed. Unlike developments of regional impact, development orders for Florida Quality Developments are issued by DEO, not by the local government."[34] According to the DEO, there are 18 developments designated as FQDs, the last of which was designated on June 9, 1999, and the last FQD development order was requested and issued in 2002.[35]

III. Effect of Proposed Changes:

Independent Special Districts

Under current law, the electors of an independent special district can petition the governing body of the district to commence a municipal conversion if the independent special district meets all of the following criteria:

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[30] *Id*.
[31] Chapter 2011-14, L.O.F. *See* s. 163.3184(3) and (4), F.S.
[32] Section 380.061, F.S. *See also* Department of Economic Opportunity. *2018 Agency Legislative Bill Analysis: SB 1244*. January 12, 2018.
[33] Department of Economic Opportunity. *2018 Agency Legislative Bill Analysis: SB 1244*. January 12, 2018.
[34] Department of Economic Opportunity. Community Planning, Development, and Services. Community Planning. *General Information About Developments of Regional Impact and Florida Quality Developments*. Available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/general-information (last visited February 3, 2018).
[35] *Id*. Department of Economic Opportunity. *2018 Agency Legislative Bill Analysis: SB 1244*. January 12, 2018.

- It was created by special act of the Legislature.
- It is designated as an improvement district, created pursuant to chapter 298, F.S., or is designated as a stewardship district, created pursuant to s. 189.031, F.S.
- Its governing board is elected and agrees to the conversion.
- It provides at least four of the following municipal services: water, sewer, solid waste, drainage, roads, transportation, public works, fire and rescue, street lighting, parks and recreation, or library or cultural facilities.
- No portion of the district is located within the jurisdictional limits of a municipality.

Section 1 amends s. 165.0615, F.S., to add a criterion requiring the independent special district to have a minimum population. If the independent special district is in a county that has a population of less than 75,000 people, then population of the independent special district must be a minimum of 1,500 people. If the county has more than 75,000 people, then the independent special district must have a minimum population of 5,000 people.

DRIs and FQD Development Orders

The bill repeals the current DRI and FQD development order provisions and shifts the remaining responsibilities of reviewing amendments to DRIs and FQD development orders from the RPCs and the DEO to the local governments.

Section 2 amends s. 380.06, F.S., to repeal the DRI process. The bill retains statewide guidelines and standards and exemptions for DRIs in effective as of the effective date of the bill for local governments to use them to determine whether a development is subject to the review process. These guidelines will remain in effect unless repealed by statute.[36]

This section also:

- Repeals provisions that are obsolete with the repeal of the DRI program by this bill.
- Maintains the thresholds that determine whether a development will be subject to review.
- Preserves the following letters and agreements that are unexpired as of the effective date of the bill: binding letters, "essentially built out" agreements, "capital contribution front loading agreements" between a developer and local government, any agreements between a local government and a developer to reimburse the developer for voluntary contributions paid in excess of his or her fair share, agreements related to projects that include more than one DRI, and area-wide DRI development orders.
- Authorizes local governments to amend a binding letter of vested rights pursuant to the local government's comprehensive plan and land development regulations upon request of the developer.
- Prohibits a local government from changing to an earlier date, the date that the local government agreed that the development will not be subject to downsizing or other reduction based upon an amendment, unless the local government can demonstrate certain information.
- Specifies that selection of a contractor or design professional by the developer for work related to the construction or expansion of a public facility that is undertaken as a condition of the development order, is not subject to competitive bidding or negotiation.

[36] Effectively the guidelines and standards will not be amended in the future because the bill repeals provisions directing the Administration Commission to adopt the guidelines and standards.

- Limits a local government from changing any credit for a development order exaction or fee granted to the developer when an amendment to the development order is adopted, when the credit against impact fees, mobility fees, or exactions are based upon the developer's contribution of land or a public facility.
- Adds mobility fees to the types of fees a developer can petition a local government to give the developer a credit against for any contribution when such fees are imposes or increased after a development order is issued.
- Requires a developer to follow any reporting requirements set by the local government with jurisdiction over the development and permits the local government to set penalties for failure to file required reports.[37]
- Requires any proposed change to a previously approved DRI to be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and adopted local land development regulations, including but not limited to procedures for notice to the applicant and the public regarding issuance of development orders.[38] As under current law, a local government may approve any change that has the effect of *reducing* the originally approved height, density, or intensity of the development if the change is consistent with the comprehensive plan in effect when the development was originally approved. There must be at least one public hearing on the proposed change to the development order, and the local governing body must approve any change before it becomes effective. Development within a portion of the DRI that is not directly affected by a proposed change can continue during the review of the proposed change, and review is limited to impacts created by the proposed change. Changes to extend a phase date, buildout date, expiration date, or termination date may also extend any required mitigation (which is consistent with current law). These provisions do not alter or limit any extension previously granted by statute.
- Provides that abandonment of a DRI development order shall be deemed to have occurred when the required notice of abandonment is filed with the county clerk. Local governments must issue an abandonment order if requested by a developer if all development that exists at the time of abandonment has been mitigated or will be mitigated pursuant to an existing permit enforceable through an administrative or judicial proceeding.
- Requires proposed developments that exceed the statewide guidelines and standards and are not otherwise exempt to be approved by a local government following the statewide coordinated review process in s. 163.3184(4), F.S. This does not apply to any application for a development approval filed with a concurrent plan amendment application pending as of May 14, 2015, if the applicant elects to have the application reviewed pursuant to the provisions of s. 380.06, F.S., as it existed on May 14, 2015. The election must be in writing and filed with the local government, regional planning council, and the DEO before December 31, 2018.

[37] Current law requires a biennial report submitted by the developer in alternate years as specified by the development order and sets a penalty of a temporary suspension of the development order as the penalty for failing to report. s. 380.06(18), F.S.
[38] This new provision for review of a change is applicable over any provision to the contrary in an existing development order, agreement, local comprehensive plan, or local land development regulation. The bill also changes the term "substantial deviation" to "changes."

Section 3 amends s. 380.061, F.S., to repeal the FQD program. FQD development orders in place prior to the effective date of the bill must be replaced by local government development orders, which will be subject to the DRI provisions discussed above in **Section 2**.

Section 4 amends s. 380.0651, F.S., to maintain the guidelines and standards formerly used for developments required to undergo DRI review. The guidelines and standards are retained to determine whether developments are subject to the DRI provisions discussed above in **Section 2**. Additionally, the statutory exemptions, partial statutory exemptions, and exemptions for DULAs from the DRI program are transferred from current s. 380.06, F.S., to s. 380.0651, F.S., so that the exemptions continue apply.[39]

Section 5 amends s. 380.07, F.S., to remove DRIs from the Florida Land and Water Adjudicatory Commission's (the Administration Commission) rulemaking authority and repeal related provisions. Under the bill, the state land planning agency may only challenge a local order *abandoning* a DRI; and appeals of development orders based upon consistency of the order with local comprehensive plans may only be made for development orders in areas of critical state concern.

Section 6 amends s. 380.115, F.S., to allow a development that has received a DRI development order but is no longer required to undergo DRI review to elect to rescind the development order pursuant to certain procedures. The local government issuing the development order must monitor the development and enforce the development order. The local government may not issue any permits or approvals or provide any service if the developer fails to act in substantial compliance with the development order.

Section 8 amends s. 163.3245, F.S., to continue to require a development subject to a master plan to remain subject to the master plan, unless the development order is abandoned or rescinded.

Section 10 amends s. 189.08, F.S., to allow a special district that is building, improving, or expanding public facilities addressed by a DRI development order to use the most recent report required by s. 380.06, F.S., to the extent needed to submit the special district's own public facilities report required by the statute (special district public facilities report).

Sections 7, 9, 11 – 18, 20, and 21 amend ss. 125.68, 163.3246, 190.005, 190.012, 252.363, 369.303, 369.307, 373.236, 373.414, 378.601, 380.11, and 403.524, F.S., to correct cross references and make conforming changes.

Section 19 repeals s. 380.065, F.S., which governed the certification of local government review of development.

Section 22 repeals the rules adopted by the DEO governing DRIs that are codified in ch. 73C-40, Florida Administrative Code. It also repeals rules adopted by the Administration Commission related to when two or more developments that are represented by their owners or developers to be separate developments are to be aggregated and treated as a single development.

[39] The exemptions are discussed above in the Present Situation.

Section 23 directs the Division of Law Revision and Information to replace the phrase "the effective date of this act" with the date the act takes effect.

Section 24 provides that the bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Local governments currently have responsibilities related to reviewing and administering development orders.

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 DEO will have decreased responsibilities to review various processes for DRIs and FQDs. Many of these responsibilities have been transferred to local governments, which currently have responsibilities related to reviewing and administering development orders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 165.0615, 380.06, 380.061, 380.0651, 380.07, 380.115, 125.68, 163.3245, 163.3246, 189.08, 190.005, 190.012, 252.363, 369.303, 369.307, 373.236, 373.414, 378.601, 380.11, and 403.524.

This bill repeals section 380.065 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 27, 2018:
The committee substitute:

- Clarifies that a local government may not change to an earlier date, the date that the local government agreed that the development will not be subject to downsizing or other reduction based upon an amendment.
- Restores current law, which allows a local government to approve any change that has the effect of *reducing* the originally approved height, density, or intensity of the development if the change is consistent with the comprehensive plan in effect when the development was originally approved.
- Exempts certain proposed developments from being approved by a local government following the statewide coordinated review process in s. 163.3184(4), F.S. The exemption is for any application for a development approval filed with a concurrent plan amendment application pending as of May 14, 2015, if the applicant elects to have the application reviewed pursuant to the provisions of s. 380.06, F.S., as it existed on May 14, 2015. The election must be in writing and filed with the local government, regional planning council, and the DEO before December 31, 2018.

CS by Community Affairs on January 23, 2018:

- Reinserts language omitted in the moving of the DRI exemptions from one section to the other.
- Adds a minimum population standard as a criteria that must be met before qualified electors of an independent special district commence a certain municipal conversion proceeding.
- Makes technical wording changes.

B. Amendments:

None.

By the Committees on Appropriations; and Community Affairs; and Senator Lee

576-03808-18 20181244c2

A bill to be entitled

An act relating to growth management; amending s. 165.0615, F.S.; adding a minimum population standard as a criteria that must be met before qualified electors of an independent special district commence a certain municipal conversion proceeding; amending s. 380.06, F.S.; revising the statewide guidelines and standards for developments of regional impact; deleting criteria that the Administration Commission is required to consider in adopting its guidelines and standards; revising provisions relating to the application of guidelines and standards; revising provisions relating to variations and thresholds for such guidelines and standards; deleting provisions relating to the issuance of binding letters; specifying that previously issued letters remain valid unless previously expired; specifying the procedure for amending a binding letter of interpretation; specifying that previously issued clearance letters remain valid unless previously expired; deleting provisions relating to authorizations to develop, applications for approval of development, concurrent plan amendments, preapplication procedures, preliminary development agreements, conceptual agency review, application sufficiency, local notice, regional reports, and criteria for the approval of developments inside and outside areas of critical state concern; revising provisions relating to local government development orders; specifying that

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amendments to a development order for an approved development may not amend to an earlier date the date before when a development would be subject to downzoning, unit density reduction, or intensity reduction, except under certain conditions; removing a requirement that certain conditions of a development order meet specified criteria; specifying that construction of certain mitigation-of-impact facilities is not subject to competitive bidding or competitive negotiation for selection of a contractor or design professional; removing requirements relating to local government approval of developments of regional impact that do not meet certain requirements; removing a requirement that the Department of Economic Opportunity and other agencies cooperate in preparing certain ordinances; authorizing developers to record notice of certain rescinded development orders; specifying that certain agreements regarding developments that are essentially built out remain valid unless previously expired; deleting requirements for a local government to issue a permit for a development subsequent to the buildout date contained in the development order; specifying that amendments to development orders do not diminish or otherwise alter certain credits for a development order exaction or fee against impact fees, mobility fees, or exactions; deleting a provision relating to the determination of certain credits for impact fees or extractions; deleting a provision exempting a

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nongovernmental developer from being required to competitively bid or negotiate construction or design of certain facilities except under certain circumstances; specifying that certain capital contribution front-ending agreements remain valid unless previously expired; deleting a provision relating to local monitoring; revising requirements for developers regarding reporting to local governments and specifying that such reports are not required unless required by a local government with jurisdiction over a development; revising the requirements and procedure for proposed changes to a previously approved development of regional impact and deleting rulemaking requirements relating to such procedure; revising provisions relating to the approval of such changes; specifying that certain extensions previously granted by statute are still valid and not subject to review or modification; deleting provisions relating to determinations as to whether a proposed change is a substantial deviation; deleting provisions relating to comprehensive development-of-regional-impact applications and master plan development orders; specifying that certain agreements that include two or more developments of regional impact which were the subject of a comprehensive development-of-regional-impact application remain valid unless previously expired; deleting provisions relating to downtown development authorities; deleting provisions relating to adoption

of rules by the state land planning agency; deleting statutory exemptions from development-of-regional-impact review; specifying that an approval of an authorized developer for an areawide development of regional impact remains valid unless previously expired; deleting provisions relating to areawide developments of regional impact; deleting an authorization for the state land planning agency to adopt rules relating to abandonment of developments of regional impact; requiring local governments to file a notice of abandonment under certain conditions; deleting an authorization for the state land planning agency to adopt a procedure for filing such notice; requiring a development-of-regional-impact development order to be abandoned by a local government under certain conditions; deleting a provision relating to abandonment of developments of regional impact in certain high-hazard coastal areas; authorizing local governments to approve abandonment of development orders for an approved development under certain conditions; deleting a provision relating to rights, responsibilities, and obligations under a development order; deleting partial exemptions from development-of-regional-impact review; deleting exemptions for dense urban land areas; specifying that proposed developments that exceed the statewide guidelines and standards and that are not otherwise exempt be approved by local governments instead of through specified development-of-regional-impact proceedings;

providing an exception; amending s. 380.061, F.S.; specifying that the Florida Quality Developments program only applies to previously approved developments in the program before the effective date of the act; specifying a process for local governments to adopt a local development order to replace and supersede the development order adopted by the state land planning agency for the Florida Quality Developments; deleting program intent, eligibility requirements, rulemaking authorizations, and application and approval requirements and processes; deleting an appeals process and the Quality Developments Review Board; amending s. 380.0651, F.S.; deleting provisions relating to the superseding of guidelines and standards adopted by the Administration Commission and the publishing of guidelines and standards by the Administration Commission; conforming a provision to changes made by the act; specifying exemptions and partial exemptions from development-of-regional-impact review; deleting provisions relating to determining whether there is a unified plan of development; deleting provisions relating to the circumstances where developments should be aggregated; deleting a provision relating to prospective application of certain provisions; deleting a provision authorizing state land planning agencies to enter into agreements for the joint planning, sharing, or use of specified public infrastructure, facilities, or services by developers; deleting an authorization

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for the state land planning agency to adopt rules; amending s. 380.07, F.S.; deleting an authorization for the Florida Land and Water Adjudicatory Commission to adopt rules regarding the requirements for developments of regional impact; revising when a local government must transmit a development order to the state land planning agency, the regional planning agency, and the owner or developer of the property affected by such order; deleting a process for regional planning agencies to undertake appeals of development-of-regional-impact development orders; revising a process for appealing development orders for consistency with a local comprehensive plan to be available only for developments in areas of critical state concern; deleting a procedure regarding certain challenges to development orders relating to developments of regional impact; amending s. 380.115, F.S.; deleting a provision relating to changes in development-of-regional-impact guidelines and standards and the impact of such changes on vested rights, duties, and obligations pursuant to any development order or agreement; requiring local governments to monitor and enforce development orders and prohibiting local governments from issuing permits, approvals, or extensions of services if a developer does not act in substantial compliance with an order; deleting provisions relating to changes in development of regional impact guidelines and standards and their impact on the development approval

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process; amending s. 125.68, F.S.; conforming a cross-reference; amending s. 163.3245, F.S.; conforming cross-references; conforming provisions to changes made by the act; revising the circumstances in which applicants who apply for master development approval for an entire planning area must remain subject to a master development order; specifying an exception; deleting a provision relating to the level of review for applications for master development approval; amending s. 163.3246, F.S.; conforming provisions to changes made by the act; conforming cross-references; amending s. 189.08, F.S.; conforming a cross-reference; conforming a provision to changes made by the act; amending s. 190.005, F.S.; conforming cross-references; amending ss. 190.012 and 252.363, F.S.; conforming cross-references; amending s. 369.303, F.S.; conforming a provision to changes made by the act; amending ss. 369.307, 373.236, and 373.414, F.S.; conforming cross-references; amending s. 378.601, F.S.; conforming a provision to changes made by the act; repealing s. 380.065, F.S., relating to a process to allow local governments to request certification to review developments of regional impact that are located within their jurisdictions in lieu of the regional review requirements; amending ss. 380.11 and 403.524, F.S.; conforming cross-references; repealing specified rules regarding uniform review of developments of regional impact by the state land planning agency and regional planning agencies;

repealing the rules adopted by the Administration Commission regarding whether two or more developments, represented by their owners or developers to be separate developments, shall be aggregated; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Subsection (1) of section 165.0615, Florida Statutes, is amended to read:

165.0615 Municipal conversion of independent special districts upon elector-initiated and approved referendum.—

(1) The qualified electors of an independent special district may commence a municipal conversion proceeding by filing a petition with the governing body of the independent special district proposed to be converted if the district meets all of the following criteria:

(a) It was created by special act of the Legislature.

(b) It is designated as an improvement district and created pursuant to chapter 298 or is designated as a stewardship district and created pursuant to s. 189.031.

(c) Its governing board is elected.

(d) Its governing board agrees to the conversion.

(e) It provides at least four of the following municipal services: water, sewer, solid waste, drainage, roads, transportation, public works, fire and rescue, street lighting, parks and recreation, or library or cultural facilities.

(f) No portion of the district is located within the

jurisdictional limits of a municipality.

(g) It meets the minimum population standards specified in s. 165.061(1)(b).

Section 2. Section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(1) DEFINITION.—The term "development of regional impact," as used in this section, means any development that ~~which~~, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

(2) STATEWIDE GUIDELINES AND STANDARDS.—

~~(a)~~ The statewide guidelines and standards and the exemptions specified in s. 380.0651 and the statewide guidelines and standards adopted by the Administration Commission and codified in chapter 28-24, Florida Administrative Code, must be ~~state land planning agency shall recommend to the Administration Commission specific statewide guidelines and standards for adoption pursuant to this subsection. The Administration Commission shall by rule adopt statewide guidelines and standards to be~~ used in determining whether particular developments are subject to the requirements of subsection (12) ~~shall undergo development-of-regional-impact review~~. The statewide guidelines and standards previously adopted by the Administration Commission and approved by the Legislature shall remain in effect unless ~~revised pursuant to this section or~~ superseded or repealed by statute ~~by other provisions of law~~.

~~(b) In adopting its guidelines and standards, the Administration Commission shall consider and shall be guided by:~~

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~~1. The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise.~~

~~2. The amount of pedestrian or vehicular traffic likely to be generated.~~

~~3. The number of persons likely to be residents, employees, or otherwise present.~~

~~4. The size of the site to be occupied.~~

~~5. The likelihood that additional or subsidiary development will be generated.~~

~~6. The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments.~~

~~7. The unique qualities of particular areas of the state.~~

~~(c) With regard to the changes in the guidelines and standards authorized pursuant to this act, in determining whether a proposed development must comply with the review requirements of this section, the state land planning agency shall apply the guidelines and standards which were in effect when the developer received authorization to commence development from the local government. If a developer has not received authorization to commence development from the local government prior to the effective date of new or amended guidelines and standards, the new or amended guidelines and standards shall apply.~~

~~(d)~~ The statewide guidelines and standards shall be applied as follows:

(a)~~1. Fixed thresholds.~~

~~a.~~ A development that is below 100 percent of all numerical

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thresholds in the statewide guidelines and standards is not subject to subsection (12) ~~is not required to undergo development-of-regional-impact review~~.

(b)~~b.~~ A development that is at or above 100 ~~120~~ percent of any numerical threshold in the statewide guidelines and standards is subject to subsection (12) ~~shall be required to undergo development-of-regional-impact review~~.

~~c. Projects certified under s. 403.973 which create at least 100 jobs and meet the criteria of the Department of Economic Opportunity as to their impact on an area's economy, employment, and prevailing wage and skill levels that are at or below 100 percent of the numerical thresholds for industrial plants, industrial parks, distribution, warehousing or wholesaling facilities, office development or multiuse projects other than residential, as described in s. 380.0651(3)(c) and (f) are not required to undergo development-of-regional-impact review.~~

~~2. Rebuttable presumption.—It shall be presumed that a development that is at 100 percent or between 100 and 120 percent of a numerical threshold shall be required to undergo development-of-regional-impact review.~~

~~(c) With respect to residential, hotel, motel, office, and retail developments, the applicable guidelines and standards shall be increased by 50 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163. With respect to multiuse developments, the applicable individual use guidelines and standards for residential, hotel, motel, office, and retail developments and~~

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~~multiuse guidelines and standards shall be increased by 100 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163, if one land use of the multiuse development is residential and amounts to not less than 35 percent of the jurisdiction's applicable residential threshold. With respect to resort or convention hotel developments, the applicable guidelines and standards shall be increased by 150 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163 and where the increase is specifically for a proposed resort or convention hotel located in a county with a population greater than 500,000 and the local government specifically designates that the proposed resort or convention hotel development will serve an existing convention center of more than 250,000 gross square feet built before July 1, 1992. The applicable guidelines and standards shall be increased by 150 percent for development in any area designated by the Governor as a rural area of opportunity pursuant to s. 288.0656 during the effectiveness of the designation.~~

~~(3) VARIATION OF THRESHOLDS IN STATEWIDE GUIDELINES AND STANDARDS.—The state land planning agency, a regional planning agency, or a local government may petition the Administration Commission to increase or decrease the numerical thresholds of any statewide guideline and standard. The state land planning agency or the regional planning agency may petition for an increase or decrease for a particular local government's jurisdiction or a part of a particular jurisdiction. A local~~

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~~government may petition for an increase or decrease within its jurisdiction or a part of its jurisdiction. A number of requests may be combined in a single petition.~~

~~(a) When a petition is filed, the state land planning agency shall have no more than 180 days to prepare and submit to the Administration Commission a report and recommendations on the proposed variation. The report shall evaluate, and the Administration Commission shall consider, the following criteria:~~

~~1. Whether the local government has adopted and effectively implemented a comprehensive plan that reflects and implements the goals and objectives of an adopted state comprehensive plan.~~

~~2. Any applicable policies in an adopted strategic regional policy plan.~~

~~3. Whether the local government has adopted and effectively implemented both a comprehensive set of land development regulations, which regulations shall include a planned unit development ordinance, and a capital improvements plan that are consistent with the local government comprehensive plan.~~

~~4. Whether the local government has adopted and effectively implemented the authority and the fiscal mechanisms for requiring developers to meet development order conditions.~~

~~5. Whether the local government has adopted and effectively implemented and enforced satisfactory development review procedures.~~

~~(b) The affected regional planning agency, adjoining local governments, and the local government shall be given a reasonable opportunity to submit recommendations to the Administration Commission regarding any such proposed~~

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~~variations.~~

~~(c) The Administration Commission shall have authority to increase or decrease a threshold in the statewide guidelines and standards up to 50 percent above or below the statewide presumptive threshold. The commission may from time to time reconsider changed thresholds and make additional variations as it deems necessary.~~

~~(d) The Administration Commission shall adopt rules setting forth the procedures for submission and review of petitions filed pursuant to this subsection.~~

~~(e) Variations to guidelines and standards adopted by the Administration Commission under this subsection shall be transmitted on or before March 1 to the President of the Senate and the Speaker of the House of Representatives for presentation at the next regular session of the Legislature. Unless approved as submitted by general law, the revisions shall not become effective.~~

(3) ~~(4)~~ BINDING LETTER.—

(a) Any binding letter previously issued to a developer by the state land planning agency as to ~~If any developer is in doubt~~ whether his or her proposed development must undergo development-of-regional-impact review ~~under the guidelines and standards~~, whether his or her rights have vested pursuant to subsection (8) ~~(20)~~, or whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (8) ~~(20)~~ would divest such rights, remains valid unless it expired on or before the effective date of this act ~~the developer may request a determination from the state land planning agency~~. ~~The developer~~

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~~or the appropriate local government having jurisdiction may request that the state land planning agency determine whether the amount of development that remains to be built in an approved development of regional impact meets the criteria of subparagraph (15)(g)3.~~

(b) Upon a request by the developer, a binding letter of interpretation regarding which rights had previously vested in a development of regional impact may be amended by the local government of jurisdiction, based on standards and procedures in the adopted local comprehensive plan or the adopted local land development code, to reflect a change to the plan of development and modification of vested rights, provided that any such amendment to a binding letter of vested rights must be consistent with s. 163.3167(5). Review of a request for an amendment to a binding letter of vested rights may not include a review of the impacts created by previously vested portions of the development ~~Unless a developer waives the requirements of this paragraph by agreeing to undergo development-of-regional-impact review pursuant to this section, the state land planning agency or local government with jurisdiction over the land on which a development is proposed may require a developer to obtain a binding letter if the development is at a presumptive numerical threshold or up to 20 percent above a numerical threshold in the guidelines and standards~~.

~~(c) Any local government may petition the state land planning agency to require a developer of a development located in an adjacent jurisdiction to obtain a binding letter of interpretation. The petition shall contain facts to support a finding that the development as proposed is a development of~~

~~regional impact. This paragraph shall not be construed to grant standing to the petitioning local government to initiate an administrative or judicial proceeding pursuant to this chapter.~~

~~(d) A request for a binding letter of interpretation shall be in writing and in such form and content as prescribed by the state land planning agency. Within 15 days of receiving an application for a binding letter of interpretation or a supplement to a pending application, the state land planning agency shall determine and notify the applicant whether the information in the application is sufficient to enable the agency to issue a binding letter or shall request any additional information needed. The applicant shall either provide the additional information requested or shall notify the state land planning agency in writing that the information will not be supplied and the reasons therefor. If the applicant does not respond to the request for additional information within 120 days, the application for a binding letter of interpretation shall be deemed to be withdrawn. Within 35 days after acknowledging receipt of a sufficient application, or of receiving notification that the information will not be supplied, the state land planning agency shall issue a binding letter of interpretation with respect to the proposed development. A binding letter of interpretation issued by the state land planning agency shall bind all state, regional, and local agencies, as well as the developer.~~

~~(e) In determining whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would divest such rights, the state land planning agency shall review the proposed~~

~~change within the context of:~~

~~1. Criteria specified in paragraph (19)(b);~~

~~2. Its conformance with any adopted state comprehensive plan and any rules of the state land planning agency;~~

~~3. All rights and obligations arising out of the vested status of such development;~~

~~4. Permit conditions or requirements imposed by the Department of Environmental Protection or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency; and~~

~~5. Any regional impacts arising from the proposed change.~~

~~(f) If a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would result in reduced regional impacts, the change shall not divest rights to complete the development pursuant to subsection (20). Furthermore, where all or a portion of the development of regional impact for which rights had previously vested pursuant to subsection (20) is demolished and reconstructed within the same approximate footprint of buildings and parking lots, so that any change in the size of the development does not exceed the criteria of paragraph (19)(b), such demolition and reconstruction shall not divest the rights which had vested.~~

(c)~~(g)~~ Every binding letter determining that a proposed development is not a development of regional impact, but not including binding letters of vested rights or of modification of vested rights, shall expire and become void unless the plan of development has been substantially commenced within:

1. Three years from October 1, 1985, for binding letters

issued prior to the effective date of this act; or

2. Three years from the date of issuance of binding letters issued on or after October 1, 1985.

(d)~~(h)~~ The expiration date of a binding letter begins~~, established pursuant to paragraph (g), shall begin~~ to run after final disposition of all administrative and judicial appeals of the binding letter and may be extended by mutual agreement of the state land planning agency, the local government of jurisdiction, and the developer.

(e)~~(i) In response to an inquiry from a developer or the appropriate local government having jurisdiction, the state land planning agency may issue~~ An informal determination by the state land planning agency, in the form of a clearance letter as to whether a development is required to undergo development-of-regional-impact review or whether the amount of development that remains to be built in an approved development of regional impact, remains valid unless it expired on or before the effective date of this act ~~meets the criteria of subparagraph (15)(g)3. A clearance letter may be based solely on the information provided by the developer, and the state land planning agency is not required to conduct an investigation of that information. If any material information provided by the developer is incomplete or inaccurate, the clearance letter is not binding upon the state land planning agency. A clearance letter does not constitute final agency action~~.

~~(5) AUTHORIZATION TO DEVELOP.—~~

~~(a)1. A developer who is required to undergo development of regional impact review may undertake a development of regional impact if the development has been approved under the~~

~~requirements of this section.~~

~~2. If the land on which the development is proposed is within an area of critical state concern, the development must also be approved under the requirements of s. 380.05.~~

~~(b) State or regional agencies may inquire whether a proposed project is undergoing or will be required to undergo development-of-regional-impact review. If a project is undergoing or will be required to undergo development-of-regional-impact review, any state or regional permit necessary for the construction or operation of the project that is valid for 5 years or less shall take effect, and the period of time for which the permit is valid shall begin to run, upon expiration of the time allowed for an administrative appeal of the development or upon final action following an administrative appeal or judicial review, whichever is later. However, if the application for development approval is not filed within 18 months after the issuance of the permit, the time of validity of the permit shall be considered to be from the date of issuance of the permit. If a project is required to obtain a binding letter under subsection (4), any state or regional agency permit necessary for the construction or operation of the project that is valid for 5 years or less shall take effect, and the period of time for which the permit is valid shall begin to run, only after the developer obtains a binding letter stating that the project is not required to undergo development-of-regional-impact review or after the developer obtains a development order pursuant to this section.~~

~~(c) Prior to the issuance of a final development order, the developer may elect to be bound by the rules adopted pursuant to~~

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~~chapters 373 and 403 in effect when such development order is issued. The rules adopted pursuant to chapters 373 and 403 in effect at the time such development order is issued shall be applicable to all applications for permits pursuant to those chapters and which are necessary for and consistent with the development authorized in such development order, except that a later adopted rule shall be applicable to an application if:~~

~~1. The later adopted rule is determined by the rule-adopting agency to be essential to the public health, safety, or welfare;~~

~~2. The later adopted rule is adopted pursuant to s. 403.061(27);~~

~~3. The later adopted rule is being adopted pursuant to a subsequently enacted statutorily mandated program;~~

~~4. The later adopted rule is mandated in order for the state to maintain delegation of a federal program; or~~

~~5. The later adopted rule is required by state or federal law.~~

~~(d) The provision of day care service facilities in developments approved pursuant to this section is permissible but is not required.~~

~~Further, in order for any developer to apply for permits pursuant to this provision, the application must be filed within 5 years from the issuance of the final development order and the permit shall not be effective for more than 8 years from the issuance of the final development order. Nothing in this paragraph shall be construed to alter or change any permitting agency's authority to approve permits or to determine applicable~~

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~~criteria for longer periods of time.~~

~~(6) APPLICATION FOR APPROVAL OF DEVELOPMENT; CONCURRENT PLAN AMENDMENTS.—~~

~~(a) Prior to undertaking any development, a developer that is required to undergo development of regional impact review shall file an application for development approval with the appropriate local government having jurisdiction. The application shall contain, in addition to such other matters as may be required, a statement that the developer proposes to undertake a development of regional impact as required under this section.~~

~~(b) Any local government comprehensive plan amendments related to a proposed development of regional impact, including any changes proposed under subsection (19), may be initiated by a local planning agency or the developer and must be considered by the local governing body at the same time as the application for development approval using the procedures provided for local plan amendment in s. 163.3184 and applicable local ordinances, without regard to local limits on the frequency of consideration of amendments to the local comprehensive plan. This paragraph does not require favorable consideration of a plan amendment solely because it is related to a development of regional impact. The procedure for processing such comprehensive plan amendments is as follows:~~

~~1. If a developer seeks a comprehensive plan amendment related to a development of regional impact, the developer must so notify in writing the regional planning agency, the applicable local government, and the state land planning agency no later than the date of preapplication conference or the~~

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~~submission of the proposed change under subsection (19).~~

~~2. When filing the application for development approval or the proposed change, the developer must include a written request for comprehensive plan amendments that would be necessitated by the development of regional impact approvals sought. That request must include data and analysis upon which the applicable local government can determine whether to transmit the comprehensive plan amendment pursuant to s. 163.3184.~~

~~3. The local government must advertise a public hearing on the transmittal within 30 days after filing the application for development approval or the proposed change and must make a determination on the transmittal within 60 days after the initial filing unless that time is extended by the developer.~~

~~4. If the local government approves the transmittal, procedures set forth in s. 163.3184 must be followed.~~

~~5. Notwithstanding subsection (11) or subsection (19), the local government may not hold a public hearing on the application for development approval or the proposed change or on the comprehensive plan amendments sooner than 30 days after reviewing agency comments are due to the local government pursuant to s. 163.3184.~~

~~6. The local government must hear both the application for development approval or the proposed change and the comprehensive plan amendments at the same hearing. However, the local government must take action separately on the application for development approval or the proposed change and on the comprehensive plan amendments.~~

~~7. Thereafter, the appeal process for the local government~~

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~~development order must follow the provisions of s. 380.07, and the compliance process for the comprehensive plan amendments must follow the provisions of s. 163.3184.~~

~~(7) PREAPPLICATION PROCEDURES.—~~

~~(a) Before filing an application for development approval, the developer shall contact the regional planning agency having jurisdiction over the proposed development to arrange a preapplication conference. Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in this conference and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. The levels of service required in the transportation methodology shall be the same levels of service used to evaluate concurrency in accordance with s. 163.3180. The regional planning agency shall provide the developer information about the development-of-regional-impact process and the use of preapplication conferences to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development. If an agreement is reached regarding assumptions and methodology to be used in the application for development approval, the reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the project or information obtained during the review make those assumptions and methodologies inappropriate. The reviewing agencies may make only recommendations or comments regarding a proposed development which are consistent with the statutes, rules, or adopted local

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~~government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.~~

~~(b) The regional planning agency shall establish by rule a procedure by which a developer may enter into binding written agreements with the regional planning agency to eliminate questions from the application for development approval when those questions are found to be unnecessary for development-of-regional-impact review. It is the legislative intent of this subsection to encourage reduction of paperwork, to discourage unnecessary gathering of data, and to encourage the coordination of the development-of-regional-impact review process with federal, state, and local environmental reviews when such reviews are required by law.~~

~~(c) If the application for development approval is not submitted within 1 year after the date of the preapplication conference, the regional planning agency, the local government having jurisdiction, or the applicant may request that another preapplication conference be held.~~

~~(8) PRELIMINARY DEVELOPMENT AGREEMENTS.—~~

~~(a) A developer may enter into a written preliminary development agreement with the state land planning agency to allow a developer to proceed with a limited amount of the total proposed development, subject to all other governmental approvals and solely at the developer's own risk, prior to issuance of a final development order. All owners of the land in the total proposed development shall join the developer as parties to the agreement. Each agreement shall include and be subject to the following conditions:~~

~~1. The developer shall comply with the preapplication~~

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~~conference requirements pursuant to subsection (7) within 45 days after the execution of the agreement.~~

~~2. The developer shall file an application for development approval for the total proposed development within 3 months after execution of the agreement, unless the state land planning agency agrees to a different time for good cause shown. Failure to timely file an application and to otherwise diligently proceed in good faith to obtain a final development order shall constitute a breach of the preliminary development agreement.~~

~~3. The agreement shall include maps and legal descriptions of both the preliminary development area and the total proposed development area and shall specifically describe the preliminary development in terms of magnitude and location. The area approved for preliminary development must be included in the application for development approval and shall be subject to the terms and conditions of the final development order.~~

~~4. The preliminary development shall be limited to lands that the state land planning agency agrees are suitable for development and shall only be allowed in areas where adequate public infrastructure exists to accommodate the preliminary development, when such development will utilize public infrastructure. The developer must also demonstrate that the preliminary development will not result in material adverse impacts to existing resources or existing or planned facilities.~~

~~5. The preliminary development agreement may allow development which is:~~

~~a. Less than 100 percent of any applicable threshold if the developer demonstrates that such development is consistent with subparagraph 4.; or~~

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~~b. Less than 120 percent of any applicable threshold if the developer demonstrates that such development is part of a proposed downtown development of regional impact specified in subsection (22) or part of any areawide development of regional impact specified in subsection (25) and that the development is consistent with subparagraph 4.~~

~~6. The developer and owners of the land may not claim vested rights, or assert equitable estoppel, arising from the agreement or any expenditures or actions taken in reliance on the agreement to continue with the total proposed development beyond the preliminary development. The agreement shall not entitle the developer to a final development order approving the total proposed development or to particular conditions in a final development order.~~

~~7. The agreement shall not prohibit the regional planning agency from reviewing or commenting on any regional issue that the regional agency determines should be included in the regional agency's report on the application for development approval.~~

~~8. The agreement shall include a disclosure by the developer and all the owners of the land in the total proposed development of all land or development within 5 miles of the total proposed development in which they have an interest and shall describe such interest.~~

~~9. In the event of a breach of the agreement or failure to comply with any condition of the agreement, or if the agreement was based on materially inaccurate information, the state land planning agency may terminate the agreement or file suit to enforce the agreement as provided in this section and s. 380.11,~~

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~~including a suit to enjoin all development.~~

~~10. A notice of the preliminary development agreement shall be recorded by the developer in accordance with s. 28.222 with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located. The notice shall include a legal description of the land covered by the agreement and shall state the parties to the agreement, the date of adoption of the agreement and any subsequent amendments, the location where the agreement may be examined, and that the agreement constitutes a land development regulation applicable to portions of the land covered by the agreement. The provisions of the agreement shall inure to the benefit of and be binding upon successors and assigns of the parties in the agreement.~~

~~11. Except for those agreements which authorize preliminary development for substantial deviations pursuant to subsection (19), a developer who no longer wishes to pursue a development of regional impact may propose to abandon any preliminary development agreement executed after January 1, 1985, including those pursuant to s. 380.032(3), provided at the time of abandonment:~~

~~a. A final development order under this section has been rendered that approves all of the development actually constructed; or~~

~~b. The amount of development is less than 100 percent of all numerical thresholds of the guidelines and standards, and the state land planning agency determines in writing that the development to date is in compliance with all applicable local regulations and the terms and conditions of the preliminary development agreement and otherwise adequately mitigates for the~~

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~~impacts of the development to date.~~

~~In either event, when a developer proposes to abandon said agreement, the developer shall give written notice and state that he or she is no longer proposing a development of regional impact and provide adequate documentation that he or she has met the criteria for abandonment of the agreement to the state land planning agency. Within 30 days of receipt of adequate documentation of such notice, the state land planning agency shall make its determination as to whether or not the developer meets the criteria for abandonment. Once the state land planning agency determines that the developer meets the criteria for abandonment, the state land planning agency shall issue a notice of abandonment which shall be recorded by the developer in accordance with s. 28.222 with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located.~~

~~(b) The state land planning agency may enter into other types of agreements to effectuate the provisions of this act as provided in s. 380.032.~~

~~(c) The provisions of this subsection shall also be available to a developer who chooses to seek development approval of a Florida Quality Development pursuant to s. 380.061.~~

~~(9) CONCEPTUAL AGENCY REVIEW.—~~

~~(a)1. In order to facilitate the planning and preparation of permit applications for projects that undergo development of regional impact review, and in order to coordinate the information required to issue such permits, a developer may~~

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~~elect to request conceptual agency review under this subsection either concurrently with development-of-regional-impact review and comprehensive plan amendments, if applicable, or subsequent to a preapplication conference held pursuant to subsection (7).~~

~~2. "Conceptual agency review" means general review of the proposed location, densities, intensity of use, character, and major design features of a proposed development required to undergo review under this section for the purpose of considering whether these aspects of the proposed development comply with the issuing agency's statutes and rules.~~

~~3. Conceptual agency review is a licensing action subject to chapter 120, and approval or denial constitutes final agency action, except that the 90-day time period specified in s. 120.60(1) shall be tolled for the agency when the affected regional planning agency requests information from the developer pursuant to paragraph (10)(b). If proposed agency action on the conceptual approval is the subject of a proceeding under ss. 120.569 and 120.57, final agency action shall be conclusive as to any issues actually raised and adjudicated in the proceeding, and such issues may not be raised in any subsequent proceeding under ss. 120.569 and 120.57 on the proposed development by any parties to the prior proceeding.~~

~~4. A conceptual agency review approval shall be valid for up to 10 years, unless otherwise provided in a state or regional agency rule, and may be reviewed and reissued for additional periods of time under procedures established by the agency.~~

~~(b) The Department of Environmental Protection, each water management district, and each other state or regional agency that requires construction or operation permits shall establish~~

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~~by rule a set of procedures necessary for conceptual agency review for the following permitting activities within their respective regulatory jurisdictions:~~

~~1. The construction and operation of potential sources of water pollution, including industrial wastewater, domestic wastewater, and stormwater.~~

~~2. Dredging and filling activities.~~

~~3. The management and storage of surface waters.~~

~~4. The construction and operation of works of the district, only if a conceptual agency review approval is requested under subparagraph 3.~~

~~Any state or regional agency may establish rules for conceptual agency review for any other permitting activities within its respective regulatory jurisdiction.~~

~~(c)1. Each agency participating in conceptual agency reviews shall determine and establish by rule its information and application requirements and furnish these requirements to the state land planning agency and to any developer seeking conceptual agency review under this subsection.~~

~~2. Each agency shall cooperate with the state land planning agency to standardize, to the extent possible, review procedures, data requirements, and data collection methodologies among all participating agencies, consistent with the requirements of the statutes that establish the permitting programs for each agency.~~

~~(d) At the conclusion of the conceptual agency review, the agency shall give notice of its proposed agency action as required by s. 120.60(3) and shall forward a copy of the notice~~

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~~to the appropriate regional planning council with a report setting out the agency's conclusions on potential development impacts and stating whether the agency intends to grant conceptual approval, with or without conditions, or to deny conceptual approval. If the agency intends to deny conceptual approval, the report shall state the reasons therefor. The agency may require the developer to publish notice of proposed agency action in accordance with s. 403.815.~~

~~(c) An agency's decision to grant conceptual approval shall not relieve the developer of the requirement to obtain a permit and to meet the standards for issuance of a construction or operation permit or to meet the agency's information requirements for such a permit. Nevertheless, there shall be a rebuttable presumption that the developer is entitled to receive a construction or operation permit for an activity for which the agency granted conceptual review approval, to the extent that the project for which the applicant seeks a permit is in accordance with the conceptual approval and with the agency's standards and criteria for issuing a construction or operation permit. The agency may revoke or appropriately modify a valid conceptual approval if the agency shows:~~

~~1. That an applicant or his or her agent has submitted materially false or inaccurate information in the application for conceptual approval;~~

~~2. That the developer has violated a condition of the conceptual approval; or~~

~~3. That the development will cause a violation of the agency's applicable laws or rules.~~

~~(f) Nothing contained in this subsection shall modify or~~

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~~abridge the law of vested rights or estoppel.~~

~~(g) Nothing contained in this subsection shall be construed to preclude an agency from adopting rules for conceptual review for developments which are not developments of regional impact.~~

~~(10) APPLICATION; SUFFICIENCY.~~

~~(a) When an application for development approval is filed with a local government, the developer shall also send copies of the application to the appropriate regional planning agency and the state land planning agency.~~

~~(b) If a regional planning agency determines that the application for development approval is insufficient for the agency to discharge its responsibilities under subsection (12), it shall provide in writing to the appropriate local government and the applicant a statement of any additional information desired within 30 days of the receipt of the application by the regional planning agency. The applicant may supply the information requested by the regional planning agency and shall communicate its intention to do so in writing to the appropriate local government and the regional planning agency within 5 working days of the receipt of the statement requesting such information, or the applicant shall notify the appropriate local government and the regional planning agency in writing that the requested information will not be supplied. Within 30 days after receipt of such additional information, the regional planning agency shall review it and may request only that information needed to clarify the additional information or to answer new questions raised by, or directly related to, the additional information. The regional planning agency may request additional information no more than twice, unless the developer waives this~~

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~~limitation. If an applicant does not provide the information requested by a regional planning agency within 120 days of its request, or within a time agreed upon by the applicant and the regional planning agency, the application shall be considered withdrawn.~~

~~(c) The regional planning agency shall notify the local government that a public hearing date may be set when the regional planning agency determines that the application is sufficient or when it receives notification from the developer that the additional requested information will not be supplied, as provided for in paragraph (b).~~

~~(11) LOCAL NOTICE. Upon receipt of the sufficiency notification from the regional planning agency required by paragraph (10)(c), the appropriate local government shall give notice and hold a public hearing on the application in the same manner as for a rezoning as provided under the appropriate special or local law or ordinance, except that such hearing proceedings shall be recorded by tape or a certified court reporter and made available for transcription at the expense of any interested party. When a development of regional impact is proposed within the jurisdiction of more than one local government, the local governments, at the request of the developer, may hold a joint public hearing. The local government shall comply with the following additional requirements:~~

~~(a) The notice of public hearing shall state that the proposed development is undergoing a development-of-regional-impact review.~~

~~(b) The notice shall be published at least 60 days in advance of the hearing and shall specify where the information~~

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~~and reports on the development-of-regional-impact application may be reviewed.~~

~~(c) The notice shall be given to the state land planning agency, to the applicable regional planning agency, to any state or regional permitting agency participating in a conceptual agency review process under subsection (9), and to such other persons as may have been designated by the state land planning agency as entitled to receive such notices.~~

~~(d) A public hearing date shall be set by the appropriate local government at the next scheduled meeting. The public hearing shall be held no later than 90 days after issuance of notice by the regional planning agency that a public hearing may be set, unless an extension is requested by the applicant.~~

~~(12) REGIONAL REPORTS.~~

~~(a) Within 50 days after receipt of the notice of public hearing required in paragraph (11)(c), the regional planning agency, if one has been designated for the area including the local government, shall prepare and submit to the local government a report and recommendations on the regional impact of the proposed development. In preparing its report and recommendations, the regional planning agency shall identify regional issues based upon the following review criteria and make recommendations to the local government on these regional issues, specifically considering whether, and the extent to which:~~

~~1. The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state or regional plans. As used in this subsection, the term "applicable state plan" means the state~~

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~~comprehensive plan. As used in this subsection, the term "applicable regional plan" means an adopted strategic regional policy plan.~~

~~2. The development will significantly impact adjacent jurisdictions. At the request of the appropriate local government, regional planning agencies may also review and comment upon issues that affect only the requesting local government.~~

~~3. As one of the issues considered in the review in subparagraphs 1. and 2., the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment if the regional planning agency has adopted an affordable housing policy as part of its strategic regional policy plan. The determination should take into account information on factors that are relevant to the availability of reasonably accessible adequate housing. Adequate housing means housing that is available for occupancy and that is not substandard.~~

~~(b) The regional planning agency report must contain recommendations that are consistent with the standards required by the applicable state permitting agencies or the water management district.~~

~~(c) At the request of the regional planning agency, other appropriate agencies shall review the proposed development and shall prepare reports and recommendations on issues that are clearly within the jurisdiction of those agencies. Such agency reports shall become part of the regional planning agency report; however, the regional planning agency may attach dissenting views. When water management district and Department~~

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~~of Environmental Protection permits have been issued pursuant to chapter 373 or chapter 403, the regional planning council may comment on the regional implications of the permits but may not offer conflicting recommendations.~~

~~(d) The regional planning agency shall afford the developer or any substantially affected party reasonable opportunity to present evidence to the regional planning agency head relating to the proposed regional agency report and recommendations.~~

~~(e) If the location of a proposed development involves land within the boundaries of multiple regional planning councils, the state land planning agency shall designate a lead regional planning council. The lead regional planning council shall prepare the regional report.~~

~~(13) CRITERIA IN AREAS OF CRITICAL STATE CONCERN.—If the development is in an area of critical state concern, the local government shall approve it only if it complies with the land development regulations therefor under s. 380.05 and the provisions of this section. The provisions of this section shall not apply to developments in areas of critical state concern which had pending applications and had been noticed or agendaed by local government after September 1, 1985, and before October 1, 1985, for development order approval. In all such cases, the state land planning agency may consider and address applicable regional issues contained in subsection (12) as part of its area-of-critical-state-concern review pursuant to ss. 380.05, 380.07, and 380.11.~~

~~(14) CRITERIA OUTSIDE AREAS OF CRITICAL STATE CONCERN. If the development is not located in an area of critical state concern, in considering whether the development is approved,~~

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~~denied, or approved subject to conditions, restrictions, or limitations, the local government shall consider whether, and the extent to which:~~

~~(a) The development is consistent with the local comprehensive plan and local land development regulations.~~

~~(b) The development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (12).~~

~~(c) The development is consistent with the State Comprehensive Plan. In consistency determinations, the plan shall be construed and applied in accordance with s. 187.101(3).~~

~~However, a local government may approve a change to a development authorized as a development of regional impact if the change has the effect of reducing the originally approved height, density, or intensity of the development and if the revised development would have been consistent with the comprehensive plan in effect when the development was originally approved. If the revised development is approved, the developer may proceed as provided in s. 163.3167(5).~~

(4)~~(15)~~ LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(a) Notwithstanding any provision of any adopted local comprehensive plan or adopted local government land development regulation to the contrary, an amendment to a development order for an approved development of regional impact adopted pursuant to subsection (7) may not amend to an earlier date the ~~appropriate local government shall render a decision on the application within 30 days after the hearing unless an extension is requested by the developer~~.

~~(b) When possible, local governments shall issue development orders concurrently with any other local permits or development approvals that may be applicable to the proposed development.~~

~~(c) The development order shall include findings of fact and conclusions of law consistent with subsections (13) and (14). The development order:~~

~~1. Shall specify the monitoring procedures and the local official responsible for assuring compliance by the developer with the development order.~~

~~2. Shall establish compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and shall include a buildout date that reasonably reflects the time anticipated to complete the development.~~

~~3. Shall establish a~~ date until when ~~which~~ the local government agrees that the approved development of regional impact will ~~shall~~ not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare. The date established pursuant to this paragraph may not be ~~subparagraph shall be no~~ sooner than the buildout date of the project.

~~4. Shall specify the requirements for the biennial report designated under subsection (18), including the date of~~

~~submission, parties to whom the report is submitted, and contents of the report, based upon the rules adopted by the state land planning agency. Such rules shall specify the scope of any additional local requirements that may be necessary for the report.~~

~~5. May specify the types of changes to the development which shall require submission for a substantial deviation determination or a notice of proposed change under subsection (19).~~

~~6. Shall include a legal description of the property.~~

~~(d) Conditions of a development order that require a developer to contribute land for a public facility or construct, expand, or pay for land acquisition or construction or expansion of a public facility, or portion thereof, shall meet the following criteria:~~

~~1. The need to construct new facilities or add to the present system of public facilities must be reasonably attributable to the proposed development.~~

~~2. Any contribution of funds, land, or public facilities required from the developer shall be comparable to the amount of funds, land, or public facilities that the state or the local government would reasonably expect to expend or provide, based on projected costs of comparable projects, to mitigate the impacts reasonably attributable to the proposed development.~~

~~3. Any funds or lands contributed must be expressly designated and used to mitigate impacts reasonably attributable to the proposed development.~~

~~4. Construction or expansion of a public facility by a nongovernmental developer as a condition of a development order~~

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~~to mitigate the impacts reasonably attributable to the proposed development is not subject to competitive bidding or competitive negotiation for selection of a contractor or design professional for any part of the construction or design.~~

(b) ~~(c)~~1. A local government may ~~shall~~ not include~~,~~ as a development order condition for a development of regional impact~~,~~ any requirement that a developer contribute or pay for land acquisition or construction or expansion of public facilities or portions thereof unless the local government has enacted a local ordinance which requires other development not subject to this section to contribute its proportionate share of the funds, land, or public facilities necessary to accommodate any impacts having a rational nexus to the proposed development, and the need to construct new facilities or add to the present system of public facilities must be reasonably attributable to the proposed development.

2. Selection of a contractor or design professional for any aspect of construction or design related to the construction or expansion of a public facility by a nongovernmental developer which is undertaken as a condition of a development order to mitigate the impacts reasonably attributable to the proposed development is not subject to competitive bidding or competitive negotiation ~~A local government shall not approve a development of regional impact that does not make adequate provision for the public facilities needed to accommodate the impacts of the proposed development unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order; however, a local~~

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~~government's failure to meet the requirements of subparagraph 1. and this subparagraph shall not preclude the issuance of a development order where adequate provision is made by the developer for the public facilities needed to accommodate the impacts of the proposed development. Any funds or lands contributed by a developer must be expressly designated and used to accommodate impacts reasonably attributable to the proposed development~~.

~~3. The Department of Economic Opportunity and other state and regional agencies involved in the administration and implementation of this act shall cooperate and work with units of local government in preparing and adopting local impact fee and other contribution ordinances.~~

(c) ~~(f)~~ Notice of the adoption of an amendment ~~a development order or the subsequent amendments~~ to an adopted development order shall be recorded by the developer, in accordance with s. 28.222, with the clerk of the circuit court for each county in which the development is located. The notice shall include a legal description of the property covered by the order and shall state which unit of local government adopted the development order, the date of adoption, the date of adoption of any amendments to the development order, the location where the adopted order with any amendments may be examined, and that the development order constitutes a land development regulation applicable to the property. The recording of this notice does ~~shall~~ not constitute a lien, cloud, or encumbrance on real property, or actual or constructive notice of any such lien, cloud, or encumbrance. This paragraph applies only to developments initially approved under this section after July 1,

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1980. If the local government of jurisdiction rescinds a development order for an approved development of regional impact pursuant to s. 380.115, the developer may record notice of the rescission.

(d) ~~(g)~~ Any agreement entered into by the state land planning agency, the developer, and the ~~A~~ local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before the effective date of this act. ~~may not issue a permit for a development subsequent to the buildout date contained in the development order unless:~~

~~1. The proposed development has been evaluated cumulatively with existing development under the substantial deviation provisions of subsection (19) after the termination or expiration date;~~

~~2. The proposed development is consistent with an abandonment of development order that has been issued in accordance with subsection (26);~~

~~3. The development of regional impact is essentially built out, in that all the mitigation requirements in the development order have been satisfied, all developers are in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remains to be built is less than 40 percent of any applicable development of regional impact threshold; or~~

~~4. The project has been determined to be an essentially built-out development of regional impact through an agreement~~

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~~executed by the developer, the state land planning agency, and the local government, in accordance with s. 380.032, which will establish the terms and conditions under which the development may be continued. If the project is determined to be essentially built out, development may proceed pursuant to the s. 380.032 agreement after the termination or expiration date contained in the development order without further development-of-regional-impact review subject to the local government comprehensive plan and land development regulations. The parties may amend the agreement without submission, review, or approval of a notification of proposed change pursuant to subsection (19). For the purposes of this paragraph, a development of regional impact is considered essentially built out, if:~~

~~a. The developers are in compliance with all applicable terms and conditions of the development order except the buildout date or reporting requirements; and~~

~~b.(I) The amount of development that remains to be built is less than the substantial deviation threshold specified in paragraph (19)(b) for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or~~

~~(II) The state land planning agency and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.~~

~~The single family residential portions of a development may be considered essentially built out if all of the workforce housing~~

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~~obligations and all of the infrastructure and horizontal development have been completed, at least 50 percent of the dwelling units have been completed, and more than 80 percent of the lots have been conveyed to third-party individual lot owners or to individual builders who own no more than 40 lots at the time of the determination. The mobile home park portions of a development may be considered essentially built out if all the infrastructure and horizontal development has been completed, and at least 50 percent of the lots are leased to individual mobile home owners. In order to accommodate changing market demands and achieve maximum land use efficiency in an essentially built out project, when a developer is building out a project, a local government, without the concurrence of the state land planning agency, may adopt a resolution authorizing the developer to exchange one approved land use for another approved land use as specified in the agreement. Before the issuance of a building permit pursuant to an exchange, the developer must demonstrate to the local government that the exchange ratio will not result in a net increase in impacts to public facilities and will meet all applicable requirements of the comprehensive plan and land development code. For developments previously determined to impact strategic intermodal facilities as defined in s. 339.63, the local government shall consult with the Department of Transportation before approving the exchange.~~

~~(h) If the property is annexed by another local jurisdiction, the annexing jurisdiction shall adopt a new development order that incorporates all previous rights and obligations specified in the prior development order.~~

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(5) ~~(16)~~ CREDITS AGAINST LOCAL IMPACT FEES.—

(a) Notwithstanding any provision of an adopted local comprehensive plan or adopted local government land development regulations to the contrary, the adoption of an amendment to a development order for an approved development of regional impact pursuant to subsection (7) does not diminish or otherwise alter any credits for a development order exaction or fee as against impact fees, mobility fees, or exactions when such credits are based upon the developer's contribution of land or a public facility or the construction, expansion, or payment for land acquisition or construction or expansion of a public facility, or a portion thereof ~~If the development order requires the developer to contribute land or a public facility or construct, expand, or pay for land acquisition or construction or expansion of a public facility, or portion thereof, and the developer is also subject by local ordinance to impact fees or exactions to meet the same needs, the local government shall establish and implement a procedure that credits a development order exaction or fee toward an impact fee or exaction imposed by local ordinance for the same need; however, if the Florida Land and Water Adjudicatory Commission imposes any additional requirement, the local government shall not be required to grant a credit toward the local exaction or impact fee unless the local government determines that such required contribution, payment, or construction meets the same need that the local exaction or impact fee would address. The nongovernmental developer need not be required, by virtue of this credit, to competitively bid or negotiate any part of the construction or design of the facility, unless otherwise requested by the local~~

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~~government~~.

(b) If the local government imposes or increases an impact fee, mobility fee, or exaction by local ordinance after a development order has been issued, the developer may petition the local government, and the local government shall modify the affected provisions of the development order to give the developer credit for any contribution of land for a public facility, or construction, expansion, or contribution of funds for land acquisition or construction or expansion of a public facility, or a portion thereof, required by the development order toward an impact fee or exaction for the same need.

(c) Any ~~The local government and the developer may enter into~~ capital contribution front-ending agreement entered into by a local government and a developer which is still in effect as of the effective date of this act ~~agreements~~ as part of a development-of-regional-impact development order to reimburse the developer, or the developer's successor, for voluntary contributions paid in excess of his or her fair share remains valid.

(d) This subsection does not apply to internal, onsite facilities required by local regulations or to any offsite facilities to the extent that such facilities are necessary to provide safe and adequate services to the development.

~~(17) LOCAL MONITORING.—The local government issuing the development order is primarily responsible for monitoring the development and enforcing the provisions of the development order. Local governments shall not issue any permits or approvals or provide any extensions of services if the developer fails to act in substantial compliance with the development~~

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~~order.~~

(6)~~(18)~~ ~~BIENNIAL~~ REPORTS.—Notwithstanding any condition in a development order for an approved development of regional impact, the developer is not required to ~~shall~~ submit an annual or a biennial report on the development of regional impact to the local government, the regional planning agency, the state land planning agency, and all affected permit agencies ~~in alternate years on the date specified in the development order,~~ unless required to do so by the local government that has jurisdiction over the development. The penalty for failure to file such a required report is as prescribed by the local government ~~development order by its terms requires more frequent monitoring. If the report is not received, the state land planning agency shall notify the local government. If the local government does not receive the report or receives notification that the state land planning agency has not received the report, the local government shall request in writing that the developer submit the report within 30 days. The failure to submit the report after 30 days shall result in the temporary suspension of the development order by the local government. If no additional development pursuant to the development order has occurred since the submission of the previous report, then a letter from the developer stating that no development has occurred shall satisfy the requirement for a report. Development orders that require annual reports may be amended to require biennial reports at the option of the local government~~.

(7)~~(19)~~ CHANGES ~~SUBSTANTIAL DEVIATIONS~~.—

(a) Notwithstanding any provision to the contrary in any development order, agreement, local comprehensive plan, or local

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land development regulation, any proposed change to a previously approved development of regional impact must be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and adopted local land development regulations, including, but not limited to, procedures for notice to the applicant and the public regarding the issuance of development orders. However, a change to a development of regional impact that has the effect of reducing the originally approved height, density, or intensity of the development must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved, and if the development would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change. If the revised development is approved, the developer may proceed as provided in s. 163.3167(5). For any proposed change to a previously approved development of regional impact, at least one public hearing must be held on the application for change, and any change must be approved by the local governing body before it becomes effective. The review must abide by any prior agreements or other actions vesting the laws and policies governing the development. Development within the previously approved development of regional impact may continue, as approved, during the review in portions of the development which are not directly affected by the proposed change ~~which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, shall constitute a substantial~~

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~~deviation and shall cause the proposed change to be subject to further development-of-regional-impact review. There are a variety of reasons why a developer may wish to propose changes to an approved development of regional impact, including changed market conditions. The procedures set forth in this subsection are for that purpose~~.

(b) The local government shall either adopt an amendment to the development order that approves the application, with or without conditions, or deny the application for the proposed change. Any new conditions in the amendment to the development order issued by the local government may address only those impacts directly created by the proposed change, and must be consistent with s. 163.3180(5), the adopted comprehensive plan, and adopted land development regulations. Changes to a phase date, buildout date, expiration date, or termination date may also extend any required mitigation associated with a phased construction project so that mitigation takes place in the same timeframe relative to the impacts as approved ~~Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the criteria in subparagraphs 1.-11. constitutes a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review through the notice of proposed change process under this section~~.

~~1. An increase in the number of parking spaces at an attraction or recreational facility by 15 percent or 500 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 15 percent or~~

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~~1,500 spectators, whichever is greater.~~

~~2. A new runway, a new terminal facility, a 25 percent lengthening of an existing runway, or a 25 percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.~~

~~3. An increase in land area for office development by 15 percent or an increase of gross floor area of office development by 15 percent or 100,000 gross square feet, whichever is greater.~~

~~4. An increase in the number of dwelling units by 10 percent or 55 dwelling units, whichever is greater.~~

~~5. An increase in the number of dwelling units by 50 percent or 200 units, whichever is greater, provided that 15 percent of the proposed additional dwelling units are dedicated to affordable workforce housing, subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters and provisions for the workforce housing to be commenced before the completion of 50 percent of the market rate dwelling. For purposes of this subparagraph, the term "affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this subparagraph, the term "statewide median purchase price of a single family existing home" means the statewide purchase price as determined~~

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~~in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.~~

~~6. An increase in commercial development by 60,000 square feet of gross floor area or of parking spaces provided for customers for 425 cars or a 10 percent increase, whichever is greater.~~

~~7. An increase in a recreational vehicle park area by 10 percent or 110 vehicle spaces, whichever is less.~~

~~8. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.~~

~~9. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 110 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 110 percent has been reached or exceeded.~~

~~10. A 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.~~

~~11. Any change that would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or~~

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~~archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The refinement of the boundaries and configuration of such areas shall be considered under sub-subparagraph (e)2.j.~~

~~The substantial deviation numerical standards in subparagraphs 3., 6., and 9., excluding residential uses, and in subparagraph 10., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Department of Economic Opportunity as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 3., 4., 5., 6., 9., and 10. are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.~~

(c) This section is not intended to alter or otherwise limit the extension, previously granted by statute, of a commencement, buildout, phase, termination, or expiration date in any development order for an approved development of regional impact and any corresponding modification of a related permit or agreement. Any such extension is not subject to review or modification in any future amendment to a development order pursuant to the adopted local comprehensive plan and adopted local land development regulations ~~An extension of the date of buildout of a development, or any phase thereof, by more than 7 years is presumed to create a substantial deviation subject to further development-of-regional-impact review~~.

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~~1. An extension of the date of buildout, or any phase thereof, of more than 5 years but not more than 7 years is presumed not to create a substantial deviation. The extension of the date of buildout of an areawide development of regional impact by more than 5 years but less than 10 years is presumed not to create a substantial deviation. These presumptions may be rebutted by clear and convincing evidence at the public hearing held by the local government. An extension of 5 years or less is not a substantial deviation.~~

~~2. In recognition of the 2011 real estate market conditions, at the option of the developer, all commencement, phase, buildout, and expiration dates for projects that are currently valid developments of regional impact are extended for 4 years regardless of any previous extension. Associated mitigation requirements are extended for the same period unless, before December 1, 2011, a governmental entity notifies a developer that has commenced any construction within the phase for which the mitigation is required that the local government has entered into a contract for construction of a facility with funds to be provided from the development's mitigation funds for that phase as specified in the development order or written agreement with the developer. The 4-year extension is not a substantial deviation, is not subject to further development-of-regional-impact review, and may not be considered when determining whether a subsequent extension is a substantial deviation under this subsection. The developer must notify the local government in writing by December 31, 2011, in order to receive the 4-year extension.~~

~~For the purpose of calculating when a buildout or phase date has been exceeded, the time shall be tolled during the pendency of administrative or judicial proceedings relating to development permits. Any extension of the buildout date of a project or a phase thereof shall automatically extend the commencement date of the project, the termination date of the development order, the expiration date of the development of regional impact, and the phases thereof if applicable by a like period of time.~~

~~(d) A change in the plan of development of an approved development of regional impact resulting from requirements imposed by the Department of Environmental Protection or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency shall be submitted to the local government pursuant to this subsection. The change shall be presumed not to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.~~

~~(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order which individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-10. and does not exceed any other criterion, or which involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made~~

~~to the regional planning council and the state land planning agency. Such notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.~~

~~2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:~~

~~a. Changes in the name of the project, developer, owner, or monitoring official.~~

~~b. Changes to a setback which do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.~~

~~c. Changes to minimum lot sizes.~~

~~d. Changes in the configuration of internal roads which do not affect external access points.~~

~~e. Changes to the building design or orientation which stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.~~

~~f. Changes to increase the acreage in the development, if no development is proposed on the acreage to be added.~~

~~g. Changes to eliminate an approved land use, if there are no additional regional impacts.~~

~~h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, if these changes do not create additional regional impacts.~~

~~i. Any renovation or redevelopment of development within a previously approved development of regional impact which does~~

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~~not change land use or increase density or intensity of use.~~

~~j. Changes that modify boundaries and configuration of areas described in subparagraph (b)11. due to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur before the time that a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.~~

~~k. Changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted by sub-subparagraph j.~~

~~l. A phase date extension, if the state land planning agency, in consultation with the regional planning council and subject to the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules.~~

~~m. Any other change that the state land planning agency, in consultation with the regional planning council, agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-l. and that does not create the likelihood of any additional regional impact.~~

~~This subsection does not require the filing of a notice of proposed change but requires an application to the local government to amend the development order in accordance with the~~

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~~local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., sub-subparagraph k., or sub-subparagraph m. and if the agency believes that the change creates a reasonable likelihood of new or additional regional impacts.~~

~~3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.~~

~~4. Any submittal of a proposed change to a previously approved development must include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.~~

~~5. The following changes to an approved development of regional impact shall be presumed to create a substantial~~

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~~deviation. Such presumption may be rebutted by clear and convincing evidence:~~

~~a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.~~

~~b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c) and (d) and residential use.~~

~~6. If a local government agrees to a proposed change, a change in the transportation proportionate share calculation and mitigation plan in an adopted development order as a result of recalculation of the proportionate share contribution meeting the requirements of s. 163.3180(5)(h) in effect as of the date of such change shall be presumed not to create a substantial deviation. For purposes of this subsection, the proposed change in the proportionate share calculation or mitigation plan may not be considered an additional regional transportation impact.~~

~~(f)1. The state land planning agency shall establish by rule standard forms for submittal of proposed changes to a previously approved development of regional impact which may require further development-of-regional-impact review. At a minimum, the standard form shall require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order.~~

~~2. The developer shall submit, simultaneously, to the local~~

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government, the regional planning agency, and the state land planning agency the request for approval of a proposed change.

3. No sooner than 30 days but no later than 45 days after submittal by the developer to the local government, the state land planning agency, and the appropriate regional planning agency, the local government shall give 15 days' notice and schedule a public hearing to consider the change that the developer asserts does not create a substantial deviation. This public hearing shall be held within 60 days after submittal of the proposed changes, unless that time is extended by the developer.

4. The appropriate regional planning agency or the state land planning agency shall review the proposed change and, no later than 45 days after submittal by the developer of the proposed change, unless that time is extended by the developer, and prior to the public hearing at which the proposed change is to be considered, shall advise the local government in writing whether it objects to the proposed change, shall specify the reasons for its objection, if any, and shall provide a copy to the developer.

5. At the public hearing, the local government shall determine whether the proposed change requires further development-of-regional-impact review. The provisions of paragraphs (a) and (c), the thresholds set forth in paragraph (b), and the presumptions set forth in paragraphs (c) and (d) and subparagraph (c)3. shall be applicable in determining whether further development of regional impact review is required. The local government may also deny the proposed change based on matters relating to local issues, such as if the land

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on which the change is sought is plat restricted in a way that would be incompatible with the proposed change, and the local government does not wish to change the plat restriction as part of the proposed change.

6. If the local government determines that the proposed change does not require further development-of-regional-impact review and is otherwise approved, or if the proposed change is not subject to a hearing and determination pursuant to subparagraphs 3. and 5. and is otherwise approved, the local government shall issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change. The requirement that a change be otherwise approved shall not be construed to require additional local review or approval if the change is allowed by applicable local ordinances without further local review or approval. The decision of the local government to approve, with or without conditions, or to deny the proposed change that the developer asserts does not require further review shall be subject to the appeal provisions of s. 380.07. However, the state land planning agency may not appeal the local government decision if it did not comply with subparagraph 4. The state land planning agency may not appeal a change to a development order made pursuant to subparagraph (c)1. or subparagraph (c)2. for developments of regional impact approved after January 1, 1980, unless the change would result in a significant impact to a regionally significant archaeological, historical, or natural resource not previously identified in the original development of regional impact review.

(g) If a proposed change requires further development-of-

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~~regional-impact review pursuant to this section, the review shall be conducted subject to the following additional conditions:~~

~~1. The development-of-regional-impact review conducted by the appropriate regional planning agency shall address only those issues raised by the proposed change except as provided in subparagraph 2.~~

~~2. The regional planning agency shall consider, and the local government shall determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development. If the local government determines that the proposed change, as it relates to the entire development, is unacceptable, the local government shall deny the change.~~

~~3. If the local government determines that the proposed change should be approved, any new conditions in the amendment to the development order issued by the local government shall address only those issues raised by the proposed change and require mitigation only for the individual and cumulative impacts of the proposed change.~~

~~4. Development within the previously approved development of regional impact may continue, as approved, during the development-of-regional-impact review in those portions of the development which are not directly affected by the proposed change.~~

~~(h) When further development-of-regional-impact review is required because a substantial deviation has been determined or admitted by the developer, the amendment to the development order issued by the local government shall be consistent with the requirements of subsection (15) and shall be subject to the~~

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~~hearing and appeal provisions of s. 380.07. The state land planning agency or the appropriate regional planning agency need not participate at the local hearing in order to appeal a local government development order issued pursuant to this paragraph.~~

~~(i) An increase in the number of residential dwelling units shall not constitute a substantial deviation and shall not be subject to development-of-regional-impact review for additional impacts, provided that all the residential dwelling units are dedicated to affordable workforce housing and the total number of new residential units does not exceed 200 percent of the substantial deviation threshold. The affordable workforce housing shall be subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters. For purposes of this paragraph, the term "affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this paragraph, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.~~

(8)~~(20)~~ VESTED RIGHTS.—Nothing in this section shall limit or modify the rights of any person to complete any development

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that was authorized by registration of a subdivision pursuant to former chapter 498, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position and which registration or recordation was accomplished, or which permit or authorization was issued, prior to July 1, 1973. If a developer has, by his or her actions in reliance on prior regulations, obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to the developer's interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

(a) For the purpose of determining the vesting of rights under this subsection, approval pursuant to local subdivision plat law, ordinances, or regulations of a subdivision plat by formal vote of a county or municipal governmental body having jurisdiction after August 1, 1967, and prior to July 1, 1973, is sufficient to vest all property rights for the purposes of this subsection; and no action in reliance on, or change of position concerning, such local governmental approval is required for vesting to take place. Anyone claiming vested rights under this paragraph must notify the department in writing by January 1, 1986. Such notification shall include information adequate to document the rights established by this subsection. When such notification requirements are met, in order for the vested rights authorized pursuant to this paragraph to remain valid after June 30, 1990, development of the vested plan must be commenced prior to that date upon the property that the state land planning agency has determined to have acquired vested

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rights following the notification or in a binding letter of interpretation. When the notification requirements have not been met, the vested rights authorized by this paragraph shall expire June 30, 1986, unless development commenced prior to that date.

(b) For the purpose of this act, the conveyance of, or the agreement to convey, property to the county, state, or local government as a prerequisite to zoning change approval shall be construed as an act of reliance to vest rights as determined under this subsection, provided such zoning change is actually granted by such government.

(9) ~~(21)~~ VALIDITY OF COMPREHENSIVE APPLICATION~~; MASTER PLAN DEVELOPMENT ORDER~~.—

~~(a)~~ Any agreement previously entered into by a developer, a regional planning agency, and a local government regarding ~~If~~ a development project that includes two or more developments of regional impact and was the subject of~~, a developer may file~~ a comprehensive development-of-regional-impact application remains valid unless it expired on or before the effective date of this act.

~~(b) If a proposed development is planned for development over an extended period of time, the developer may file an application for master development approval of the project and agree to present subsequent increments of the development for preconstruction review. This agreement shall be entered into by the developer, the regional planning agency, and the appropriate local government having jurisdiction. The provisions of subsection (9) do not apply to this subsection, except that a developer may elect to utilize the review process established in subsection (9) for review of the increments of a master plan.~~

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~~1. Prior to adoption of the master plan development order, the developer, the landowner, the appropriate regional planning agency, and the local government having jurisdiction shall review the draft of the development order to ensure that anticipated regional impacts have been adequately addressed and that information requirements for subsequent incremental application review are clearly defined. The development order for a master application shall specify the information which must be submitted with an incremental application and shall identify those issues which can result in the denial of an incremental application.~~

~~2. The review of subsequent incremental applications shall be limited to that information specifically required and those issues specifically raised by the master development order, unless substantial changes in the conditions underlying the approval of the master plan development order are demonstrated or the master development order is shown to have been based on substantially inaccurate information.~~

~~(c) The state land planning agency, by rule, shall establish uniform procedures to implement this subsection.~~

~~(22) DOWNTOWN DEVELOPMENT AUTHORITIES.—~~

~~(a) A downtown development authority may submit a development-of-regional-impact application for development approval pursuant to this section. The area described in the application may consist of any or all of the land over which a downtown development authority has the power described in s. 380.031(5). For the purposes of this subsection, a downtown development authority shall be considered the developer whether or not the development will be undertaken by the downtown development authority.~~

~~(b) In addition to information required by the development-of-regional-impact application, the application for development approval submitted by a downtown development authority shall specify the total amount of development planned for each land use category. In addition to the requirements of subsection (15), the development order shall specify the amount of development approved within each land use category. Development undertaken in conformance with a development order issued under this section does not require further review.~~

~~(c) If a development is proposed within the area of a downtown development plan approved pursuant to this section which would result in development in excess of the amount specified in the development order for that type of activity, changes shall be subject to the provisions of subsection (19), except that the percentages and numerical criteria shall be double those listed in paragraph (19)(b).~~

~~(d) The provisions of subsection (9) do not apply to this subsection.~~

~~(23) ADOPTION OF RULES BY STATE LAND PLANNING AGENCY.—~~

~~(a) The state land planning agency shall adopt rules to ensure uniform review of developments of regional impact by the state land planning agency and regional planning agencies under this section. These rules shall be adopted pursuant to chapter 120 and shall include all forms, application content, and review guidelines necessary to implement development-of-regional-impact reviews. The state land planning agency, in consultation with the regional planning agencies, may also designate types of development or areas suitable for development in which reduced~~

~~information requirements for development-of-regional-impact review shall apply.~~

~~(b) Regional planning agencies shall be subject to rules adopted by the state land planning agency. At the request of a regional planning council, the state land planning agency may adopt by rule different standards for a specific comprehensive planning district upon a finding that the statewide standard is inadequate to protect or promote the regional interest at issue. If such a regional standard is adopted by the state land planning agency, the regional standard shall be applied to all pertinent development-of-regional-impact reviews conducted in that region until rescinded.~~

~~(c) Within 6 months of the effective date of this section, the state land planning agency shall adopt rules which:~~

~~1. Establish uniform statewide standards for development-of-regional-impact review.~~

~~2. Establish a short application for development approval form which eliminates issues and questions for any project in a jurisdiction with an adopted local comprehensive plan that is in compliance.~~

~~(d) Regional planning agencies that perform development-of-regional-impact and Florida Quality Development review are authorized to assess and collect fees to fund the costs, direct and indirect, of conducting the review process. The state land planning agency shall adopt rules to provide uniform criteria for the assessment and collection of such fees. The rules providing uniform criteria shall not be subject to rule challenge under s. 120.56(2) or to drawout proceedings under s. 120.54(3)(c)2., but, once adopted, shall be subject to an~~

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~~invalidity challenge under s. 120.56(3) by substantially affected persons. Until the state land planning agency adopts a rule implementing this paragraph, rules of the regional planning councils currently in effect regarding fees shall remain in effect. Fees may vary in relation to the type and size of a proposed project, but shall not exceed $75,000, unless the state land planning agency, after reviewing any disputed expenses charged by the regional planning agency, determines that said expenses were reasonable and necessary for an adequate regional review of the impacts of a project.~~

~~(24) STATUTORY EXEMPTIONS.—~~

~~(a) Any proposed hospital is exempt from this section.~~

~~(b) Any proposed electrical transmission line or electrical power plant is exempt from this section.~~

~~(c) Any proposed addition to an existing sports facility complex is exempt from this section if the addition meets the following characteristics:~~

~~1. It would not operate concurrently with the scheduled hours of operation of the existing facility.~~

~~2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility.~~

~~3. The sports facility complex property is owned by a public body before July 1, 1983.~~

~~This exemption does not apply to any pari-mutuel facility.~~

~~(d) Any proposed addition or cumulative additions subsequent to July 1, 1988, to an existing sports facility complex owned by a state university is exempt if the increased seating capacity of the complex is no more than 30 percent of~~

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~~the capacity of the existing facility.~~

~~(c) Any addition of permanent seats or parking spaces for an existing sports facility located on property owned by a public body before July 1, 1973, is exempt from this section if future additions do not expand existing permanent seating or parking capacity more than 15 percent annually in excess of the prior year's capacity.~~

~~(f) Any increase in the seating capacity of an existing sports facility having a permanent seating capacity of at least 50,000 spectators is exempt from this section, provided that such an increase does not increase permanent seating capacity by more than 5 percent per year and not to exceed a total of 10 percent in any 5-year period, and provided that the sports facility notifies the appropriate local government within which the facility is located of the increase at least 6 months before the initial use of the increased seating, in order to permit the appropriate local government to develop a traffic management plan for the traffic generated by the increase. Any traffic management plan shall be consistent with the local comprehensive plan, the regional policy plan, and the state comprehensive plan.~~

~~(g) Any expansion in the permanent seating capacity or additional improved parking facilities of an existing sports facility is exempt from this section, if the following conditions exist:~~

~~1.a. The sports facility had a permanent seating capacity on January 1, 1991, of at least 41,000 spectator seats;~~

~~b. The sum of such expansions in permanent seating capacity does not exceed a total of 10 percent in any 5-year period and does not exceed a cumulative total of 20 percent for any such expansions; or~~

~~c. The increase in additional improved parking facilities is a one-time addition and does not exceed 3,500 parking spaces serving the sports facility; and~~

~~2. The local government having jurisdiction of the sports facility includes in the development order or development permit approving such expansion under this paragraph a finding of fact that the proposed expansion is consistent with the transportation, water, sewer and stormwater drainage provisions of the approved local comprehensive plan and local land development regulations relating to those provisions.~~

~~Any owner or developer who intends to rely on this statutory exemption shall provide to the department a copy of the local government application for a development permit. Within 45 days after receipt of the application, the department shall render to the local government an advisory and nonbinding opinion, in writing, stating whether, in the department's opinion, the prescribed conditions exist for an exemption under this paragraph. The local government shall render the development order approving each such expansion to the department. The owner, developer, or department may appeal the local government development order pursuant to s. 380.07, within 45 days after the order is rendered. The scope of review shall be limited to the determination of whether the conditions prescribed in this paragraph exist. If any sports facility expansion undergoes development of regional impact review, all previous expansions which were exempt under this paragraph shall be included in the~~

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~~development-of-regional-impact review.~~

~~(h) Expansion to port harbors, spoil disposal sites, navigation channels, turning basins, harbor berths, and other related inwater harbor facilities of ports listed in s. 403.021(9)(b), port transportation facilities and projects listed in s. 311.07(3)(b), and intermodal transportation facilities identified pursuant to s. 311.09(3) are exempt from this section when such expansions, projects, or facilities are consistent with comprehensive master plans that are in compliance with s. 163.3178.~~

~~(i) Any proposed facility for the storage of any petroleum product or any expansion of an existing facility is exempt from this section.~~

~~(j) Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use.~~

~~(k) Waterport and marina development, including dry storage facilities, are exempt from this section.~~

~~(l) Any proposed development within an urban service boundary established under s. 163.3177(14), Florida Statutes (2010), which is not otherwise exempt pursuant to subsection (29), is exempt from this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary and has entered into a binding agreement with jurisdictions that would be impacted and with the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities.~~

~~(m) Any proposed development within a rural land stewardship area created under s. 163.3248.~~

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~~(n) The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, is exempt from this section.~~

~~(o) Any self-storage warehousing that does not allow retail or other services is exempt from this section.~~

~~(p) Any proposed nursing home or assisted living facility is exempt from this section.~~

~~(q) Any development identified in an airport master plan and adopted into the comprehensive plan pursuant to s. 163.3177(6)(b)4. is exempt from this section.~~

~~(r) Any development identified in a campus master plan and adopted pursuant to s. 1013.30 is exempt from this section.~~

~~(s) Any development in a detailed specific area plan which is prepared and adopted pursuant to s. 163.3245 is exempt from this section.~~

~~(t) Any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine is exempt from this section. A mine owner will enter into a binding agreement with the Department of Transportation to mitigate impacts to strategic intermodal system facilities pursuant to the transportation thresholds in subsection (19) or rule 9J-2.045(6), Florida Administrative Code. Proposed changes to any previously approved solid mineral mine development-of-regional-impact development orders having vested rights are is not subject to further review or approval as a development-of-regional-impact or notice-of-proposed-change review or approval pursuant to subsection (19), except for those applications pending as of July 1, 2011, which shall be governed by s. 380.115(2). Notwithstanding the foregoing, however,~~

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~~pursuant to s. 380.115(1), previously approved solid mineral mine development-of-regional-impact development orders shall continue to enjoy vested rights and continue to be effective unless rescinded by the developer. All local government regulations of proposed solid mineral mines shall be applicable to any new solid mineral mine or to any proposed addition to, expansion of, or change to an existing solid mineral mine.~~

~~(u) Notwithstanding any provisions in an agreement with or among a local government, regional agency, or the state land planning agency or in a local government's comprehensive plan to the contrary, a project no longer subject to development-of-regional-impact review under revised thresholds is not required to undergo such review.~~

~~(v) Any development within a county with a research and education authority created by special act and that is also within a research and development park that is operated or managed by a research and development authority pursuant to part V of chapter 159 is exempt from this section.~~

~~(w) Any development in an energy economic zone designated pursuant to s. 377.809 is exempt from this section upon approval by its local governing body.~~

~~(x) Any proposed development that is located in a local government jurisdiction that does not qualify for an exemption based on the population and density criteria in paragraph (29)(a), that is approved as a comprehensive plan amendment adopted pursuant to s. 163.3184(4), and that is the subject of an agreement pursuant to s. 288.106(5) is exempt from this section. This exemption shall only be effective upon a written agreement executed by the applicant, the local government, and~~

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~~the state land planning agency. The state land planning agency shall only be a party to the agreement upon a determination that the development is the subject of an agreement pursuant to s. 288.106(5) and that the local government has the capacity to adequately assess the impacts of the proposed development. The local government shall only be a party to the agreement upon approval by the governing body of the local government and upon providing at least 21 days' notice to adjacent local governments that includes, at a minimum, information regarding the location, density and intensity of use, and timing of the proposed development. This exemption does not apply to areas within the boundary of any area of critical state concern designated pursuant to s. 380.05, within the boundary of the Wekiva Study Area as described in s. 369.316, or within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2).~~

~~If a use is exempt from review as a development of regional impact under paragraphs (a)-(u), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Department of Economic Opportunity under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.~~

(10)~~(25)~~ AREAWIDE DEVELOPMENT OF REGIONAL IMPACT.—

~~(a)~~ Any approval of an authorized developer for ~~may submit~~

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an areawide development of regional impact remains valid unless it expired on or before the effective date of this act. ~~to be reviewed pursuant to the procedures and standards set forth in this section. The areawide development-of-regional-impact review shall include an areawide development plan in addition to any other information required under this section. After review and approval of an areawide development of regional impact under this section, all development within the defined planning area shall conform to the approved areawide development plan and development order. Individual developments that conform to the approved areawide development plan shall not be required to undergo further development-of-regional-impact review, unless otherwise provided in the development order. As used in this subsection, the term:~~

~~1. "Areawide development plan" means a plan of development that, at a minimum:~~

~~a. Encompasses a defined planning area approved pursuant to this subsection that will include at least two or more developments;~~

~~b. Maps and defines the land uses proposed, including the amount of development by use and development phasing;~~

~~c. Integrates a capital improvements program for transportation and other public facilities to ensure development staging contingent on availability of facilities and services;~~

~~d. Incorporates land development regulation, covenants, and other restrictions adequate to protect resources and facilities of regional and state significance; and~~

~~e. Specifies responsibilities and identifies the mechanisms for carrying out all commitments in the areawide development~~

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~~plan and for compliance with all conditions of any areawide development order.~~

~~2. "Developer" means any person or association of persons, including a governmental agency as defined in s. 380.031(6), that petitions for authorization to file an application for development approval for an areawide development plan.~~

~~(b) A developer may petition for authorization to submit a proposed areawide development of regional impact for a defined planning area in accordance with the following requirements:~~

~~1. A petition shall be submitted to the local government, the regional planning agency, and the state land planning agency.~~

~~2. A public hearing or joint public hearing shall be held if required by paragraph (c), with appropriate notice, before the affected local government.~~

~~3. The state land planning agency shall apply the following criteria for evaluating a petition:~~

~~a. Whether the developer is financially capable of processing the application for development approval through final approval pursuant to this section.~~

~~b. Whether the defined planning area and anticipated development therein appear to be of a character, magnitude, and location that a proposed areawide development plan would be in the public interest. Any public interest determination under this criterion is preliminary and not binding on the state land planning agency, regional planning agency, or local government.~~

~~4. The state land planning agency shall develop and make available standard forms for petitions and applications for development approval for use under this subsection.~~

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~~(c) Any person may submit a petition to a local government having jurisdiction over an area to be developed, requesting that government to approve that person as a developer, whether or not any or all development will be undertaken by that person, and to approve the area as appropriate for an areawide development of regional impact.~~

~~(d) A general purpose local government with jurisdiction over an area to be considered in an areawide development of regional impact shall not have to petition itself for authorization to prepare and consider an application for development approval for an areawide development plan. However, such a local government shall initiate the preparation of an application only:~~

~~1. After scheduling and conducting a public hearing as specified in paragraph (c); and~~

~~2. After conducting such hearing, finding that the planning area meets the standards and criteria pursuant to subparagraph (b)3. for determining that an areawide development plan will be in the public interest.~~

~~(e) The local government shall schedule a public hearing within 60 days after receipt of the petition. The public hearing shall be advertised at least 30 days prior to the hearing. In addition to the public hearing notice by the local government, the petitioner, except when the petitioner is a local government, shall provide actual notice to each person owning land within the proposed areawide development plan at least 30 days prior to the hearing. If the petitioner is a local government, or local governments pursuant to an interlocal agreement, notice of the public hearing shall be provided by the~~

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~~publication of an advertisement in a newspaper of general circulation that meets the requirements of this paragraph. The advertisement must be no less than one-quarter page in a standard size or tabloid size newspaper, and the headline in the advertisement must be in type no smaller than 18 point. The advertisement shall not be published in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the advertisement must appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the community is published less than 5 days a week. The advertisement must be in substantially the form used to advertise amendments to comprehensive plans pursuant to s. 163.3184. The local government shall specifically notify in writing the regional planning agency and the state land planning agency at least 30 days prior to the public hearing. At the public hearing, all interested parties may testify and submit evidence regarding the petitioner's qualifications, the need for and benefits of an areawide development of regional impact, and such other issues relevant to a full consideration of the petition. If more than one local government has jurisdiction over the defined planning area in an areawide development plan, the local governments shall hold a joint public hearing. Such hearing shall address, at a minimum, the need to resolve conflicting ordinances or comprehensive plans, if any. The local government holding the joint hearing shall comply with the following additional~~

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~~requirements:~~

~~1. The notice of the hearing shall be published at least 60 days in advance of the hearing and shall specify where the petition may be reviewed.~~

~~2. The notice shall be given to the state land planning agency, to the applicable regional planning agency, and to such other persons as may have been designated by the state land planning agency as entitled to receive such notices.~~

~~3. A public hearing date shall be set by the appropriate local government at the next scheduled meeting.~~

~~(f) Following the public hearing, the local government shall issue a written order, appealable under s. 380.07, which approves, approves with conditions, or denies the petition. It shall approve the petitioner as the developer if it finds that the petitioner and defined planning area meet the standards and criteria, consistent with applicable law, pursuant to subparagraph (b)3.~~

~~(g) The local government shall submit any order which approves the petition, or approves the petition with conditions, to the petitioner, to all owners of property within the defined planning area, to the regional planning agency, and to the state land planning agency within 30 days after the order becomes effective.~~

~~(h) The petitioner, an owner of property within the defined planning area, the appropriate regional planning agency by vote at a regularly scheduled meeting, or the state land planning agency may appeal the decision of the local government to the Florida Land and Water Adjudicatory Commission by filing a notice of appeal with the commission. The procedures established~~

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~~in s. 380.07 shall be followed for such an appeal.~~

~~(i) After the time for appeal of the decision has run, an approved developer may submit an application for development approval for a proposed areawide development of regional impact for land within the defined planning area, pursuant to subsection (6). Development undertaken in conformance with an areawide development order issued under this section shall not require further development-of-regional-impact review.~~

~~(j) In reviewing an application for a proposed areawide development of regional impact, the regional planning agency shall evaluate, and the local government shall consider, the following criteria, in addition to any other criteria set forth in this section:~~

~~1. Whether the developer has demonstrated its legal, financial, and administrative ability to perform any commitments it has made in the application for a proposed areawide development of regional impact.~~

~~2. Whether the developer has demonstrated that all property owners within the defined planning area consent or do not object to the proposed areawide development of regional impact.~~

~~3. Whether the area and the anticipated development are consistent with the applicable local, regional, and state comprehensive plans, except as provided for in paragraph (k).~~

~~(k) In addition to the requirements of subsection (14), a development order approving, or approving with conditions, a proposed areawide development of regional impact shall specify the approved land uses and the amount of development approved within each land use category in the defined planning area. The development order shall incorporate by reference the approved~~

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~~areawide development plan. The local government shall not approve an areawide development plan that is inconsistent with the local comprehensive plan, except that a local government may amend its comprehensive plan pursuant to paragraph (6)(b).~~

~~(l) Any owner of property within the defined planning area may withdraw his or her consent to the areawide development plan at any time prior to local government approval, with or without conditions, of the petition; and the plan, the areawide development order, and the exemption from development-of-regional-impact review of individual projects under this section shall not thereafter apply to the owner's property. After the areawide development order is issued, a landowner may withdraw his or her consent only with the approval of the local government.~~

~~(m) If the developer of an areawide development of regional impact is a general purpose local government with jurisdiction over the land area included within the areawide development proposal and if no interest in the land within the land area is owned, leased, or otherwise controlled by a person, corporate or natural, for the purpose of mining or beneficiation of minerals, then:~~

~~1. Demonstration of property owner consent or lack of objection to an areawide development plan shall not be required; and~~

~~2. The option to withdraw consent does not apply, and all property and development within the areawide development planning area shall be subject to the areawide plan and to the development order conditions.~~

~~(n) After a development order approving an areawide~~

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~~development plan is received, changes shall be subject to the provisions of subsection (19), except that the percentages and numerical criteria shall be double those listed in paragraph (19)(b).~~

(11)~~(26)~~ ABANDONMENT OF DEVELOPMENTS OF REGIONAL IMPACT.—

(a) There is hereby established a process to abandon a development of regional impact and its associated development orders. A development of regional impact and its associated development orders may be proposed to be abandoned by the owner or developer. The local government in whose jurisdiction ~~in which~~ the development of regional impact is located also may propose to abandon the development of regional impact, provided that the local government gives individual written notice to each development-of-regional-impact owner and developer of record, and provided that no such owner or developer objects in writing to the local government before ~~prior to~~ or at the public hearing pertaining to abandonment of the development of regional impact. ~~The state land planning agency is authorized to promulgate rules that shall include, but not be limited to, criteria for determining whether to grant, grant with conditions, or deny a proposal to abandon, and provisions to ensure that the developer satisfies all applicable conditions of the development order and adequately mitigates for the impacts of the development.~~ If there is no existing development within the development of regional impact at the time of abandonment and no development within the development of regional impact is proposed by the owner or developer after such abandonment, an abandonment order may ~~shall~~ not require the owner or developer to contribute any land, funds, or public facilities as a

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condition of such abandonment order. The local government must file ~~rules shall also provide a procedure for filing~~ notice of the abandonment pursuant to s. 28.222 with the clerk of the circuit court for each county in which the development of regional impact is located. Abandonment will be deemed to have occurred upon the recording of the notice. Any decision by a local government concerning the abandonment of a development of regional impact is ~~shall be~~ subject to an appeal pursuant to s. 380.07. The issues in any such appeal must ~~shall~~ be confined to whether the provisions of this subsection ~~or any rules promulgated thereunder~~ have been satisfied.

(b) If requested by the owner, developer, or local government, the development-of-regional-impact development order must be abandoned by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development which existed on the date of abandonment has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s. 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies ~~Upon receipt of written confirmation from the state land planning agency that any required mitigation applicable to completed development has occurred, an industrial development of regional impact located within the coastal high-hazard area of a rural area of opportunity which was approved before the adoption of the local government's comprehensive plan required under s. 163.3167 and which plan's future land use map and zoning designates the land use for the development of regional impact as commercial may be unilaterally abandoned without the need to~~

~~proceed through the process described in paragraph (a) if the developer or owner provides a notice of abandonment to the local government and records such notice with the applicable clerk of court. Abandonment shall be deemed to have occurred upon the recording of the notice~~. All development following abandonment must ~~shall~~ be fully consistent with the current comprehensive plan and applicable zoning.

(c) A development order for abandonment of an approved development of regional impact may be amended by a local government pursuant to subsection (7), provided that the amendment does not reduce any mitigation previously required as a condition of abandonment, unless the developer demonstrates that changes to the development no longer will result in impacts that necessitated the mitigation.

~~(27) RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS UNDER A DEVELOPMENT ORDER.—If a developer or owner is in doubt as to his or her rights, responsibilities, and obligations under a development order and the development order does not clearly define his or her rights, responsibilities, and obligations, the developer or owner may request participation in resolving the dispute through the dispute resolution process outlined in s. 186.509. The Department of Economic Opportunity shall be notified by certified mail of any meeting held under the process provided for by this subsection at least 5 days before the meeting.~~

~~(28) PARTIAL STATUTORY EXEMPTIONS.—~~

~~(a) If the binding agreement referenced under paragraph (24)(l) for urban service boundaries is not entered into within 12 months after establishment of the urban service boundary, the~~

development-of-regional-impact review for projects within the urban service boundary must address transportation impacts only.

(b) If the binding agreement referenced under paragraph (24)(m) for rural land stewardship areas is not entered into within 12 months after the designation of a rural land stewardship area, the development-of-regional-impact review for projects within the rural land stewardship area must address transportation impacts only.

(c) If the binding agreement for designated urban infill and redevelopment areas is not entered into within 12 months after the designation of the area or July 1, 2007, whichever occurs later, the development of regional impact review for projects within the urban infill and redevelopment area must address transportation impacts only.

(d) A local government that does not wish to enter into a binding agreement or that is unable to agree on the terms of the agreement referenced under paragraph (24)(l) or paragraph (24)(m) shall provide written notification to the state land planning agency of the decision to not enter into a binding agreement or the failure to enter into a binding agreement within the 12-month period referenced in paragraphs (a), (b) and (c). Following the notification of the state land planning agency, development-of-regional-impact review for projects within an urban service boundary under paragraph (24)(l), or a rural land stewardship area under paragraph (24)(m), must address transportation impacts only.

(e) The vesting provision of s. 163.3167(5) relating to an authorized development of regional impact does not apply to those projects partially exempt from the development-of-

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regional-impact review process under paragraphs (a)-(d).

(29) EXEMPTIONS FOR DENSE URBAN LAND AREAS.—

(a) The following are exempt from this section:

1. Any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;

2. Any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan;

3. Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan; or

4. Any proposed development within a county, including the municipalities located therein, which has a population of at least 1 million and is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions meet the density criteria in subparagraphs 1.-4. by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to

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~~s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries as recorded in accordance with s. 171.091. The Office of Economic and Demographic Research shall annually submit to the state land planning agency by July 1 a list of jurisdictions that meet the total population and density criteria. The state land planning agency shall publish the list of jurisdictions on its Internet website within 7 days after the list is received. The designation of jurisdictions that meet the criteria of subparagraphs 1.-4. is effective upon publication on the state land planning agency's Internet website. If a municipality that has previously met the criteria no longer meets the criteria, the state land planning agency shall maintain the municipality on the list and indicate the year the jurisdiction last met the criteria. However, any proposed development of regional impact not within the established boundaries of a municipality at the time the municipality last met the criteria must meet the requirements of this section until such time as the municipality as a whole meets the criteria. Any county that meets the criteria shall remain on the list in accordance with the provisions of this paragraph. Any jurisdiction that was placed on the dense urban land area list before June 2, 2011, shall remain on the list in accordance with the provisions of this paragraph.~~

~~(b) If a municipality that does not qualify as a dense urban land area pursuant to paragraph (a) designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the development-of-regional-impact process:~~

~~1. Urban infill as defined in s. 163.3164;~~

~~2. Community redevelopment areas as defined in s. 163.340;~~

~~3. Downtown revitalization areas as defined in s. 163.3164;~~

~~4. Urban infill and redevelopment under s. 163.2517; or~~

~~5. Urban service areas as defined in s. 163.3164 or areas within a designated urban service boundary under s. 163.3177(14), Florida Statutes (2010).~~

~~(c) If a county that does not qualify as a dense urban land area designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the development-of-regional-impact process:~~

~~1. Urban infill as defined in s. 163.3164;~~

~~2. Urban infill and redevelopment under s. 163.2517; or~~

~~3. Urban service areas as defined in s. 163.3164.~~

~~(d) A development that is located partially outside an area that is exempt from the development-of-regional-impact program must undergo development-of-regional-impact review pursuant to this section. However, if the total acreage that is included within the area exempt from development-of-regional-impact review exceeds 85 percent of the total acreage and square footage of the approved development of regional impact, the development-of-regional-impact development order may be rescinded in both local governments pursuant to s. 380.115(1), unless the portion of the development outside the exempt area meets the threshold criteria of a development of regional impact.~~

~~(e) In an area that is exempt under paragraphs (a)-(c), any~~

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~~previously approved development-of-regional-impact development orders shall continue to be effective, but the developer has the option to be governed by s. 380.115(1). A pending application for development approval shall be governed by s. 380.115(2).~~

~~(f) Local governments must submit by mail a development order to the state land planning agency for projects that would be larger than 120 percent of any applicable development-of-regional-impact threshold and would require development-of-regional-impact review but for the exemption from the program under paragraphs (a)-(c). For such development orders, the state land planning agency may appeal the development order pursuant to s. 380.07 for inconsistency with the comprehensive plan adopted under chapter 163.~~

~~(g) If a local government that qualifies as a dense urban land area under this subsection is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved.~~

~~(h) This subsection does not limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to this chapter.~~

~~(i) This subsection does not apply to areas:~~

~~1. Within the boundary of any area of critical state concern designated pursuant to s. 380.05;~~

~~2. Within the boundary of the Wekiva Study Area as described in s. 369.316; or~~

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~~3. Within 2 miles of the boundary of the Everglades Protection Area as described in s. 373.4592(2).~~

(12)~~(30)~~ PROPOSED DEVELOPMENTS.—

(a) A proposed development that exceeds the statewide guidelines and standards specified in s. 380.0651 and is not otherwise exempt pursuant to s. 380.0651 must ~~otherwise subject to the review requirements of this section shall~~ be approved by a local government pursuant to s. 163.3184(4) in lieu of proceeding in accordance with this section. However, if the proposed development is consistent with the comprehensive plan as provided in s. 163.3194(3)(b), the development is not required to undergo review pursuant to s. 163.3184(4) or this section.

(b) This subsection does not apply to:

1. Amendments to a development order governing an existing development of regional impact; or

2. Any application for development approval filed with a concurrent plan amendment application pending as of May 14, 2015, if the applicant elects to have the application reviewed pursuant to the provisions of this section as it existed on such date. Such election must be in writing and filed with the affected local government, regional planning council, and state land planning agency, before December 31, 2018.

Section 3. Section 380.061, Florida Statutes, is amended to read:

380.061 The Florida Quality Developments program.—

(1) This section only applies to developments approved as Florida Quality Developments before the effective date of this act ~~There is hereby created the Florida Quality Developments~~

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~~program. The intent of this program is to encourage development which has been thoughtfully planned to take into consideration protection of Florida's natural amenities, the cost to local government of providing services to a growing community, and the high quality of life Floridians desire. It is further intended that the developer be provided, through a cooperative and coordinated effort, an expeditious and timely review by all agencies with jurisdiction over the project of his or her proposed development~~.

(2) Following written notification to the state land planning agency and the appropriate regional planning agency, a local government with an approved Florida Quality Development within its jurisdiction must set a public hearing pursuant to its local procedures and shall adopt a local development order to replace and supersede the development order adopted by the state land planning agency for the Florida Quality Development. Thereafter, the Florida Quality Development shall follow the procedures and requirements for developments of regional impact as specified in this chapter ~~Developments that may be designated as Florida Quality Developments are those developments which are above 80 percent of any numerical thresholds in the guidelines and standards for development-of-regional-impact review pursuant to s. 380.06~~.

~~(3)(a) To be eligible for designation under this program, the developer shall comply with each of the following requirements if applicable to the site of a qualified development:~~

~~1. Donate or enter into a binding commitment to donate the fee or a lesser interest sufficient to protect, in perpetuity,~~

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~~the natural attributes of the types of land listed below. In lieu of this requirement, the developer may enter into a binding commitment that runs with the land to set aside such areas on the property, in perpetuity, as open space to be retained in a natural condition or as otherwise permitted under this subparagraph. Under the requirements of this subparagraph, the developer may reserve the right to use such areas for passive recreation that is consistent with the purposes for which the land was preserved.~~

~~a. Those wetlands and water bodies throughout the state which would be delineated if the provisions of s. 373.4145(1)(b) were applied. The developer may use such areas for the purpose of site access, provided other routes of access are unavailable or impracticable; may use such areas for the purpose of stormwater or domestic sewage management and other necessary utilities if such uses are permitted pursuant to chapter 403; or may redesign or alter wetlands and water bodies within the jurisdiction of the Department of Environmental Protection which have been artificially created if the redesign or alteration is done so as to produce a more naturally functioning system.~~

~~b. Active beach or primary and, where appropriate, secondary dunes, to maintain the integrity of the dune system and adequate public accessways to the beach. However, the developer may retain the right to construct and maintain elevated walkways over the dunes to provide access to the beach.~~

~~c. Known archaeological sites determined to be of significance by the Division of Historical Resources of the Department of State.~~

~~d. Areas known to be important to animal species designated~~

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~~as endangered or threatened by the United States Fish and Wildlife Service or by the Fish and Wildlife Conservation Commission, for reproduction, feeding, or nesting; for traveling between such areas used for reproduction, feeding, or nesting; or for escape from predation.~~

~~c. Areas known to contain plant species designated as endangered by the Department of Agriculture and Consumer Services.~~

~~2. Produce, or dispose of, no substances designated as hazardous or toxic substances by the United States Environmental Protection Agency, the Department of Environmental Protection, or the Department of Agriculture and Consumer Services. This subparagraph does not apply to the production of these substances in nonsignificant amounts as would occur through household use or incidental use by businesses.~~

~~3. Participate in a downtown reuse or redevelopment program to improve and rehabilitate a declining downtown area.~~

~~4. Incorporate no dredge and fill activities in, and no stormwater discharge into, waters designated as Class II, aquatic preserves, or Outstanding Florida Waters, except as permitted pursuant to s. 403.813(1), and the developer demonstrates that those activities meet the standards under Class II waters, Outstanding Florida Waters, or aquatic preserves, as applicable.~~

~~5. Include open space, recreation areas, Florida-friendly landscaping as defined in s. 373.185, and energy conservation and minimize impermeable surfaces as appropriate to the location and type of project.~~

~~6. Provide for construction and maintenance of all onsite~~

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~~infrastructure necessary to support the project and enter into a binding commitment with local government to provide an appropriate fair-share contribution toward the offsite impacts that the development will impose on publicly funded facilities and services, except offsite transportation, and condition or phase the commencement of development to ensure that public facilities and services, except offsite transportation, are available concurrent with the impacts of the development. For the purposes of offsite transportation impacts, the developer shall comply, at a minimum, with the standards of the state land planning agency's development-of-regional-impact transportation rule, the approved strategic regional policy plan, any applicable regional planning council transportation rule, and the approved local government comprehensive plan and land development regulations adopted pursuant to part II of chapter 163.~~

~~7. Design and construct the development in a manner that is consistent with the adopted state plan, the applicable strategic regional policy plan, and the applicable adopted local government comprehensive plan.~~

~~(b) In addition to the foregoing requirements, the developer shall plan and design his or her development in a manner which includes the needs of the people in this state as identified in the state comprehensive plan and the quality of life of the people who will live and work in or near the development. The developer is encouraged to plan and design his or her development in an innovative manner. These planning and design features may include, but are not limited to, such things as affordable housing, care for the elderly, urban renewal or~~

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~~redevelopment, mass transit, the protection and preservation of wetlands outside the jurisdiction of the Department of Environmental Protection or of uplands as wildlife habitat, provision for the recycling of solid waste, provision for onsite child care, enhancement of emergency management capabilities, the preservation of areas known to be primary habitat for significant populations of species of special concern designated by the Fish and Wildlife Conservation Commission, or community economic development. These additional amenities will be considered in determining whether the development qualifies for designation under this program.~~

~~(4) The department shall adopt an application for development designation consistent with the intent of this section.~~

~~(5)(a) Before filing an application for development designation, the developer shall contact the Department of Economic Opportunity to arrange one or more preapplication conferences with the other reviewing entities. Upon the request of the developer or any of the reviewing entities, other affected state or regional agencies shall participate in this conference. The department, in coordination with the local government with jurisdiction and the regional planning council, shall provide the developer information about the Florida Quality Developments designation process and the use of preapplication conferences to identify issues, coordinate appropriate state, regional, and local agency requirements, fully address any concerns of the local government, the regional planning council, and other reviewing agencies and the meeting of those concerns, if applicable, through development order~~

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~~conditions, and otherwise promote a proper, efficient, and timely review of the proposed Florida Quality Development. The department shall take the lead in coordinating the review process.~~

~~(b) The developer shall submit the application to the state land planning agency, the appropriate regional planning agency, and the appropriate local government for review. The review shall be conducted under the time limits and procedures set forth in s. 120.60, except that the 90-day time limit shall cease to run when the state land planning agency and the local government have notified the applicant of their decision on whether the development should be designated under this program.~~

~~(c) At any time prior to the issuance of the Florida Quality Development order, the developer of a proposed Florida Quality Development shall have the right to withdraw the proposed project from consideration as a Florida Quality Development. The developer may elect to convert the proposed project to a proposed development of regional impact. The conversion shall be in the form of a letter to the reviewing entities stating the developer's intent to seek authorization for the development as a development of regional impact under s. 380.06. If a proposed Florida Quality Development converts to a development of regional impact, the developer shall resubmit the appropriate application and the development shall be subject to all applicable procedures under s. 380.06, except that:~~

~~1. A preapplication conference held under paragraph (a) satisfies the preapplication procedures requirement under s. 380.06(7); and~~

~~2. If requested in the withdrawal letter, a finding of~~

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~~completeness of the application under paragraph (a) and s. 120.60 may be converted to a finding of sufficiency by the regional planning council if such a conversion is approved by the regional planning council.~~

~~The regional planning council shall have 30 days to notify the developer if the request for conversion of completeness to sufficiency is granted or denied. If granted and the application is found sufficient, the regional planning council shall notify the local government that a public hearing date may be set to consider the development for approval as a development of regional impact, and the development shall be subject to all applicable rules, standards, and procedures of s. 380.06. If the request for conversion of completeness to sufficiency is denied, the developer shall resubmit the appropriate application for review and the development shall be subject to all applicable procedures under s. 380.06, except as otherwise provided in this paragraph.~~

~~(d) If the local government and state land planning agency agree that the project should be designated under this program, the state land planning agency shall issue a development order which incorporates the plan of development as set out in the application along with any agreed-upon modifications and conditions, based on recommendations by the local government and regional planning council, and a certification that the development is designated as one of Florida's Quality Developments. In the event of conflicting recommendations, the state land planning agency, after consultation with the local government and the regional planning agency, shall resolve such~~

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~~conflicts in the development order. Upon designation, the development, as approved, is exempt from development-of-regional-impact review pursuant to s. 380.06.~~

~~(c) If the local government or state land planning agency, or both, recommends against designation, the development shall undergo development-of-regional-impact review pursuant to s. 380.06, except as provided in subsection (6) of this section.~~

~~(6)(a) In the event that the development is not designated under subsection (5), the developer may appeal that determination to the Quality Developments Review Board. The board shall consist of the secretary of the state land planning agency, the Secretary of Environmental Protection and a member designated by the secretary, the Secretary of Transportation, the executive director of the Fish and Wildlife Conservation Commission, the executive director of the appropriate water management district created pursuant to chapter 373, and the chief executive officer of the appropriate local government. When there is a significant historical or archaeological site within the boundaries of a development which is appealed to the board, the director of the Division of Historical Resources of the Department of State shall also sit on the board. The staff of the state land planning agency shall serve as staff to the board.~~

~~(b) The board shall meet once each quarter of the year. However, a meeting may be waived if no appeals are pending.~~

~~(c) On appeal, the sole issue shall be whether the development meets the statutory criteria for designation under this program. An affirmative vote of at least five members of the board, including the affirmative vote of the chief executive~~

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~~officer of the appropriate local government, shall be necessary to designate the development by the board.~~

~~(d) The state land planning agency shall adopt procedural rules for consideration of appeals under this subsection.~~

~~(7)(a) The development order issued pursuant to this section is enforceable in the same manner as a development order issued pursuant to s. 380.06.~~

~~(b) Appeal of a development order issued pursuant to this section shall be available only pursuant to s. 380.07.~~

~~(8)(a) Any local government comprehensive plan amendments related to a Florida Quality Development may be initiated by a local planning agency and considered by the local governing body at the same time as the application for development approval. Nothing in this subsection shall be construed to require favorable consideration of a Florida Quality Development solely because it is related to a development of regional impact.~~

~~(b) The department shall adopt, by rule, standards and procedures necessary to implement the Florida Quality Developments program. The rules must include, but need not be limited to, provisions governing annual reports and criteria for determining whether a proposed change to an approved Florida Quality Development is a substantial change requiring further review.~~

Section 4. Section 380.0651, Florida Statutes, is amended to read:

380.0651 Statewide guidelines, ~~and~~ standards, and exemptions.—

(1) STATEWIDE GUIDELINES AND STANDARDS. ~~The statewide guidelines and standards for developments required to undergo~~

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~~development-of-regional-impact review provided in this section supersede the statewide guidelines and standards previously adopted by the Administration Commission that address the same development. Other standards and guidelines previously adopted by the Administration Commission, including the residential standards and guidelines, shall not be superseded. The guidelines and standards shall be applied in the manner described in s. 380.06(2)(a).~~

~~(2) The Administration Commission shall publish the statewide guidelines and standards established in this section in its administrative rule in place of the guidelines and standards that are superseded by this act, without the proceedings required by s. 120.54 and notwithstanding the provisions of s. 120.545(1)(c). The Administration Commission shall initiate rulemaking proceedings pursuant to s. 120.54 to make all other technical revisions necessary to conform the rules to this act. Rule amendments made pursuant to this subsection shall not be subject to the requirement for legislative approval pursuant to s. 380.06(2).~~

~~(3)~~ Subject to the exemptions and partial exemptions specified in this section, the following statewide guidelines and standards shall be applied in the manner described in s. 380.06(2) to determine whether the following developments are subject to the requirements of s. 380.06 ~~shall be required to undergo development-of-regional-impact review~~:

(a) *Airports.*—

1. Any of the following airport construction projects is ~~shall be~~ a development of regional impact:

a. A new commercial service or general aviation airport

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with paved runways.

b. A new commercial service or general aviation paved runway.

c. A new passenger terminal facility.

2. Lengthening of an existing runway by 25 percent or an increase in the number of gates by 25 percent or three gates, whichever is greater, on a commercial service airport or a general aviation airport with regularly scheduled flights is a development of regional impact. However, expansion of existing terminal facilities at a nonhub or small hub commercial service airport is ~~shall~~ not ~~be~~ a development of regional impact.

3. Any airport development project which is proposed for safety, repair, or maintenance reasons alone and would not have the potential to increase or change existing types of aircraft activity is not a development of regional impact. Notwithstanding subparagraphs 1. and 2., renovation, modernization, or replacement of airport airside or terminal facilities that may include increases in square footage of such facilities but does not increase the number of gates or change the existing types of aircraft activity is not a development of regional impact.

(b) *Attractions and recreation facilities.*—Any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility, the construction or expansion of which:

1. For single performance facilities:

a. Provides parking spaces for more than 2,500 cars; or

b. Provides more than 10,000 permanent seats for

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spectators.

2. For serial performance facilities:

a. Provides parking spaces for more than 1,000 cars; or

b. Provides more than 4,000 permanent seats for spectators.

For purposes of this subsection, "serial performance facilities" means those using their parking areas or permanent seating more than one time per day on a regular or continuous basis.

(c) *Office development.*—Any proposed office building or park operated under common ownership, development plan, or management that:

1. Encompasses 300,000 or more square feet of gross floor area; or

2. Encompasses more than 600,000 square feet of gross floor area in a county with a population greater than 500,000 and only in a geographic area specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan.

(d) *Retail and service development.*—Any proposed retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite, operated under one common property ownership, development plan, or management that:

1. Encompasses more than 400,000 square feet of gross area; or

2. Provides parking spaces for more than 2,500 cars.

(e) *Recreational vehicle development.*—Any proposed recreational vehicle development planned to create or accommodate 500 or more spaces.

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(f) *Multiuse development.*—Any proposed development with two or more land uses where the sum of the percentages of the appropriate thresholds identified in chapter 28-24, Florida Administrative Code, or this section for each land use in the development is equal to or greater than 145 percent. Any proposed development with three or more land uses, one of which is residential and contains at least 100 dwelling units or 15 percent of the applicable residential threshold, whichever is greater, where the sum of the percentages of the appropriate thresholds identified in chapter 28-24, Florida Administrative Code, or this section for each land use in the development is equal to or greater than 160 percent. This threshold is in addition to, and does not preclude, a development from being required to undergo development-of-regional-impact review under any other threshold.

(g) *Residential development.*—A rule may not be adopted concerning residential developments which treats a residential development in one county as being located in a less populated adjacent county unless more than 25 percent of the development is located within 2 miles or less of the less populated adjacent county. The residential thresholds of adjacent counties with less population and a lower threshold may not be controlling on any development wholly located within areas designated as rural areas of opportunity.

(h) *Workforce housing.*—The applicable guidelines for residential development and the residential component for multiuse development shall be increased by 50 percent where the developer demonstrates that at least 15 percent of the total residential dwelling units authorized within the development of

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regional impact will be dedicated to affordable workforce housing, subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters and provisions for the workforce housing to be commenced prior to the completion of 50 percent of the market rate dwelling. For purposes of this paragraph, the term "affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For the purposes of this paragraph, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

(i) *Schools.*—

1. The proposed construction of any public, private, or proprietary postsecondary educational campus which provides for a design population of more than 5,000 full-time equivalent students, or the proposed physical expansion of any public, private, or proprietary postsecondary educational campus having such a design population that would increase the population by at least 20 percent of the design population.

2. As used in this paragraph, "full-time equivalent student" means enrollment for 15 or more quarter hours during a

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single academic semester. In career centers or other institutions which do not employ semester hours or quarter hours in accounting for student participation, enrollment for 18 contact hours shall be considered equivalent to one quarter hour, and enrollment for 27 contact hours shall be considered equivalent to one semester hour.

3. This paragraph does not apply to institutions which are the subject of a campus master plan adopted by the university board of trustees pursuant to s. 1013.30.

(2) STATUTORY EXEMPTIONS.—The following developments are exempt from s. 380.06:

(a) Any proposed hospital.

(b) Any proposed electrical transmission line or electrical power plant.

(c) Any proposed addition to an existing sports facility complex if the addition meets the following characteristics:

1. It would not operate concurrently with the scheduled hours of operation of the existing facility;

2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility; and

3. The sports facility complex property was owned by a public body before July 1, 1983.

This exemption does not apply to any pari-mutuel facility as defined in s. 550.002.

(d) Any proposed addition or cumulative additions subsequent to July 1, 1988, to an existing sports facility complex owned by a state university, if the increased seating capacity of the complex is no more than 30 percent of the

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capacity of the existing facility.

(e) Any addition of permanent seats or parking spaces for an existing sports facility located on property owned by a public body before July 1, 1973, if future additions do not expand existing permanent seating or parking capacity more than 15 percent annually in excess of the prior year's capacity.

(f) Any increase in the seating capacity of an existing sports facility having a permanent seating capacity of at least 50,000 spectators, provided that such an increase does not increase permanent seating capacity by more than 5 percent per year and does not exceed a total of 10 percent in any 5-year period. The sports facility must notify the appropriate local government within which the facility is located of the increase at least 6 months before the initial use of the increased seating in order to permit the appropriate local government to develop a traffic management plan for the traffic generated by the increase. Any traffic management plan must be consistent with the local comprehensive plan, the regional policy plan, and the state comprehensive plan.

(g) Any expansion in the permanent seating capacity or additional improved parking facilities of an existing sports facility, if the following conditions exist:

1.a. The sports facility had a permanent seating capacity on January 1, 1991, of at least 41,000 spectator seats;

b. The sum of such expansions in permanent seating capacity does not exceed a total of 10 percent in any 5-year period and does not exceed a cumulative total of 20 percent for any such expansions; or

c. The increase in additional improved parking facilities

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is a one-time addition and does not exceed 3,500 parking spaces serving the sports facility; and

2. The local government having jurisdiction over the sports facility includes in the development order or development permit approving such expansion under this paragraph a finding of fact that the proposed expansion is consistent with the transportation, water, sewer, and stormwater drainage provisions of the approved local comprehensive plan and local land development regulations relating to those provisions.

Any owner or developer who intends to rely on this statutory exemption shall provide to the state land planning agency a copy of the local government application for a development permit. Within 45 days after receipt of the application, the state land planning agency shall render to the local government an advisory and nonbinding opinion, in writing, stating whether, in the state land planning agency's opinion, the prescribed conditions exist for an exemption under this paragraph. The local government shall render the development order approving each such expansion to the state land planning agency. The owner, developer, or state land planning agency may appeal the local government development order pursuant to s. 380.07 within 45 days after the order is rendered. The scope of review shall be limited to the determination of whether the conditions prescribed in this paragraph exist. If any sports facility expansion undergoes development-of-regional-impact review, all previous expansions that were exempt under this paragraph must be included in the development-of-regional-impact review.

(h) Expansion to port harbors, spoil disposal sites,

navigation channels, turning basins, harbor berths, and other related inwater harbor facilities of the ports specified in s. 403.021(9)(b), port transportation facilities and projects listed in s. 311.07(3)(b), and intermodal transportation facilities identified pursuant to s. 311.09(3) when such expansions, projects, or facilities are consistent with port master plans and are in compliance with s. 163.3178.

(i) Any proposed facility for the storage of any petroleum product or any expansion of an existing facility.

(j) Any renovation or redevelopment within the same parcel as the existing development if such renovation or redevelopment does not change land use or increase density or intensity of use.

(k) Waterport and marina development, including dry storage facilities.

(l) Any proposed development within an urban service area boundary established under s. 163.3177(14), Florida Statutes 2010, that is not otherwise exempt pursuant to subsection (3),if the local government having jurisdiction over the area where the development is proposed has adopted the urban service area boundary and has entered into a binding agreement with jurisdictions that would be impacted and with the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities.

(m) Any proposed development within a rural land stewardship area created under s. 163.3248.

(n) The establishment, relocation, or expansion of any military installation as specified in s. 163.3175.

(o) Any self-storage warehousing that does not allow retail

or other services.

(p) Any proposed nursing home or assisted living facility.

(q) Any development identified in an airport master plan and adopted into the comprehensive plan pursuant to s. 163.3177(6)(b)4.

(r) Any development identified in a campus master plan and adopted pursuant to s. 1013.30.

(s) Any development in a detailed specific area plan prepared and adopted pursuant to s. 163.3245.

(t) Any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine. A mine owner must, however, enter into a binding agreement with the Department of Transportation to mitigate impacts to strategic intermodal system facilities. Proposed changes to any previously approved solid mineral mine development-of-regional-impact development orders having vested rights are not subject to further review or approval as a development-of-regional-impact or notice-of-proposed-change review or approval pursuant to subsection (19), except for those applications pending as of July 1, 2011, which are governed by s. 380.115(2). Notwithstanding this requirement, pursuant to s. 380.115(1), a previously approved solid mineral mine development-of-regional-impact development order continues to have vested rights and continues to be effective unless rescinded by the developer. All local government regulations of proposed solid mineral mines are applicable to any new solid mineral mine or to any proposed addition to, expansion of, or change to an existing solid mineral mine.

(u) Notwithstanding any provision in an agreement with or

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among a local government, regional agency, or the state land planning agency or in a local government's comprehensive plan to the contrary, a project no longer subject to development-of-regional-impact review under the revised thresholds specified in s. 380.06(2)(b) and this section.

(v) Any development within a county that has a research and education authority created by special act and which is also within a research and development park that is operated or managed by a research and development authority pursuant to part V of chapter 159.

(w) Any development in an energy economic zone designated pursuant to s. 377.809 upon approval by its local governing body.

If a use is exempt from review pursuant to paragraphs (a)-(u), but will be part of a larger project that is subject to review pursuant to s. 380.06(12), the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development that includes a landowner, tenant, or user that has entered into a funding agreement with the state land planning agency under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

(3) EXEMPTIONS FOR DENSE URBAN LAND AREAS.

(a) The following are exempt from the requirements of s. 380.06:

1. Any proposed development in a municipality having an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;

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2. Any proposed development within a county, including the municipalities located therein, having an average of at least 1,000 people per square mile of land area and the development is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan as defined in s. 163.3164;

3. Any proposed development within a county, including the municipalities located therein, having a population of at least 900,000 and an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan; and

4. Any proposed development within a county, including the municipalities located therein, having a population of at least 1 million and the development is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions meet the density criteria in subparagraphs 1.-4. by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries as recorded in accordance with s. 171.091. The Office of Economic and

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Demographic Research shall annually submit to the state land planning agency by July 1 a list of jurisdictions that meet the total population and density criteria. The state land planning agency shall publish the list of jurisdictions on its website within 7 days after the list is received. The designation of jurisdictions that meet the criteria of subparagraphs 1.-4. is effective upon publication on the state land planning agency's website. If a municipality that has previously met the criteria no longer meets the criteria, the state land planning agency must maintain the municipality on the list and indicate the year the jurisdiction last met the criteria. However, any proposed development of regional impact not within the established boundaries of a municipality at the time the municipality last met the criteria must meet the requirements of this section until the municipality as a whole meets the criteria. Any county that meets the criteria must remain on the list. Any jurisdiction that was placed on the dense urban land area list before June 2, 2011, must remain on the list.

(b) If a municipality that does not qualify as a dense urban land area pursuant to paragraph (a) designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from s. 380.06 unless otherwise required by part II of chapter 163:

1. Urban infill as defined in s. 163.3164;

2. Community redevelopment areas as defined in s. 163.340;

3. Downtown revitalization areas as defined in s. 163.3164;

4. Urban infill and redevelopment under s. 163.2517; or

5. Urban service areas as defined in s. 163.3164 or areas within a designated urban service area boundary pursuant to s.

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163.3177(14), Florida Statutes 2010.

(c) If a county that does not qualify as a dense urban land area designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the development-of-regional-impact process:

1. Urban infill as defined in s. 163.3164;

2. Urban infill and redevelopment pursuant to s. 163.2517; or

3. Urban service areas as defined in s. 163.3164.

(d) If any portion of a development is located in an area that is not exempt from review under s. 380.06, the development must undergo review pursuant to that section.

(e) In an area that is exempt under paragraphs (a), (b), and (c), any previously approved development-of-regional-impact development orders shall continue to be effective. However, the developer has the option to be governed by s. 380.115(1).

(f) If a local government qualifies as a dense urban land area under this subsection and is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development shall maintain the exemption if the developer is continuing the application process in good faith or the development is approved.

(g) This subsection does not limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to this chapter.

(h) This subsection does not apply to areas:

1. Within the boundary of any area of critical state

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concern designated pursuant to s. 380.05;

2. Within the boundary of the Wekiva Study Area as described in s. 369.316; or

3. Within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592.

(4) PARTIAL STATUTORY EXEMPTIONS.—

(a) If the binding agreement referenced under paragraph (2)(l) for urban service boundaries is not entered into within 12 months after establishment of the urban service area boundary, the review pursuant to s. 380.06(12) for projects within the urban service area boundary must address transportation impacts only.

(b) If the binding agreement referenced under paragraph (2)(m) for rural land stewardship areas is not entered into within 12 months after the designation of a rural land stewardship area, the review pursuant to s. 380.06(12) for projects within the rural land stewardship area must address transportation impacts only.

(c) If the binding agreement for designated urban infill and redevelopment areas is not entered into within 12 months after the designation of the area or July 1, 2007, whichever occurs later, the review pursuant to s. 380.06(12) for projects within the urban infill and redevelopment area must address transportation impacts only.

(d) A local government that does not wish to enter into a binding agreement or that is unable to agree on the terms of the agreement referenced under paragraph (2)(l) or paragraph (2)(m) must provide written notification to the state land planning agency of the decision to not enter into a binding agreement or

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the failure to enter into a binding agreement within the 12-month period referenced in paragraphs (a), (b), and (c). Following the notification of the state land planning agency, a review pursuant to s. 380.06(12) for projects within an urban service area boundary under paragraph (2)(l), or a rural land stewardship area under paragraph (2)(m), must address transportation impacts only.

(e) The vesting provision of s. 163.3167(5) relating to an authorized development of regional impact does not apply to those projects partially exempt from s. 380.06 under paragraphs (a)-(d) of this subsection.

~~(4) Two or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development under this chapter when they are determined to be part of a unified plan of development and are physically proximate to one other.~~

~~(a) The criteria of three of the following subparagraphs must be met in order for the state land planning agency to determine that there is a unified plan of development:~~

~~1.a. The same person has retained or shared control of the developments;~~

~~b. The same person has ownership or a significant legal or equitable interest in the developments; or~~

~~c. There is common management of the developments controlling the form of physical development or disposition of parcels of the development.~~

~~2. There is a reasonable closeness in time between the completion of 80 percent or less of one development and the submission to a governmental agency of a master plan or series~~

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~~of plans or drawings for the other development which is indicative of a common development effort.~~

~~3. A master plan or series of plans or drawings exists covering the developments sought to be aggregated which have been submitted to a local general-purpose government, water management district, the Florida Department of Environmental Protection, or the Division of Florida Condominiums, Timeshares, and Mobile Homes for authorization to commence development. The existence or implementation of a utility's master utility plan required by the Public Service Commission or general-purpose local government or a master drainage plan shall not be the sole determinant of the existence of a master plan.~~

~~4. There is a common advertising scheme or promotional plan in effect for the developments sought to be aggregated.~~

~~(b) The following activities or circumstances shall not be considered in determining whether to aggregate two or more developments:~~

~~1. Activities undertaken leading to the adoption or amendment of any comprehensive plan element described in part II of chapter 163.~~

~~2. The sale of unimproved parcels of land, where the seller does not retain significant control of the future development of the parcels.~~

~~3. The fact that the same lender has a financial interest, including one acquired through foreclosure, in two or more parcels, so long as the lender is not an active participant in the planning, management, or development of the parcels in which it has an interest.~~

~~4. Drainage improvements that are not designed to~~

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~~accommodate the types of development listed in the guidelines and standards contained in or adopted pursuant to this chapter or which are not designed specifically to accommodate the developments sought to be aggregated.~~

~~(c) Aggregation is not applicable when the following circumstances and provisions of this chapter apply:~~

~~1. Developments that are otherwise subject to aggregation with a development of regional impact which has received approval through the issuance of a final development order may not be aggregated with the approved development of regional impact. However, this subparagraph does not preclude the state land planning agency from evaluating an allegedly separate development as a substantial deviation pursuant to s. 380.06(19) or as an independent development of regional impact.~~

~~2. Two or more developments, each of which is independently a development of regional impact that has or will obtain a development order pursuant to s. 380.06.~~

~~3. Completion of any development that has been vested pursuant to s. 380.05 or s. 380.06, including vested rights arising out of agreements entered into with the state land planning agency for purposes of resolving vested rights issues. Development-of-regional-impact review of additions to vested developments of regional impact shall not include review of the impacts resulting from the vested portions of the development.~~

~~4. The developments sought to be aggregated were authorized to commence development before September 1, 1988, and could not have been required to be aggregated under the law existing before that date.~~

~~5. Any development that qualifies for an exemption under s.~~

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~~380.06(29).~~

~~6. Newly acquired lands intended for development in coordination with a developed and existing development of regional impact are not subject to aggregation if the newly acquired lands comprise an area that is equal to or less than 10 percent of the total acreage subject to an existing development-of-regional-impact development order.~~

~~(d) The provisions of this subsection shall be applied prospectively from September 1, 1988. Written decisions, agreements, and binding letters of interpretation made or issued by the state land planning agency prior to July 1, 1988, shall not be affected by this subsection.~~

~~(e) In order to encourage developers to design, finance, donate, or build infrastructure, public facilities, or services, the state land planning agency may enter into binding agreements with two or more developers providing that the joint planning, sharing, or use of specified public infrastructure, facilities, or services by the developers shall not be considered in any subsequent determination of whether a unified plan of development exists for their developments. Such binding agreements may authorize the developers to pool impact fees or impact-fee credits, or to enter into front-end agreements, or other financing arrangements by which they collectively agree to design, finance, donate, or build such public infrastructure, facilities, or services. Such agreements shall be conditioned upon a subsequent determination by the appropriate local government of consistency with the approved local government comprehensive plan and land development regulations. Additionally, the developers must demonstrate that the provision~~

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~~and sharing of public infrastructure, facilities, or services is in the public interest and not merely for the benefit of the developments which are the subject of the agreement. Developments that are the subject of an agreement pursuant to this paragraph shall be aggregated if the state land planning agency determines that sufficient aggregation factors are present to require aggregation without considering the design features, financial arrangements, donations, or construction that are specified in and required by the agreement.~~

~~(f) The state land planning agency has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this subsection.~~

Section 5. Section 380.07, Florida Statutes, is amended to read:

380.07 Florida Land and Water Adjudicatory Commission.—

(1) There is hereby created the Florida Land and Water Adjudicatory Commission, which shall consist of the Administration Commission. The commission may adopt rules necessary to ensure compliance with the area of critical state concern program ~~and the requirements for developments of regional impact as set forth in this chapter~~.

(2) Whenever any local government issues any development order in any area of critical state concern, or in regard to the abandonment of any approved development of regional impact, copies of such orders as prescribed by rule by the state land planning agency shall be transmitted to the state land planning agency, the regional planning agency, and the owner or developer of the property affected by such order. The state land planning agency shall adopt rules describing development order rendition

and effectiveness in designated areas of critical state concern. Within 45 days after the order is rendered, the owner, the developer, or the state land planning agency may appeal the order to the Florida Land and Water Adjudicatory Commission by filing a petition alleging that the development order is not consistent with ~~the provisions of~~ this part. ~~The appropriate regional planning agency by vote at a regularly scheduled meeting may recommend that the state land planning agency undertake an appeal of a development-of-regional-impact development order. Upon the request of an appropriate regional planning council, affected local government, or any citizen, the state land planning agency shall consider whether to appeal the order and shall respond to the request within the 45-day appeal period.~~

(3) Notwithstanding any other provision of law, an appeal of a development order in an area of critical state concern by the state land planning agency under this section may include consistency of the development order with the local comprehensive plan. ~~However, if a development order relating to a development of regional impact has been challenged in a proceeding under s. 163.3215 and a party to the proceeding serves notice to the state land planning agency of the pending proceeding under s. 163.3215, the state land planning agency shall:~~

~~(a) Raise its consistency issues by intervening as a full party in the pending proceeding under s. 163.3215 within 30 days after service of the notice; and~~

~~(b) Dismiss the consistency issues from the development order appeal.~~

(4) ~~The appellant shall furnish a copy of the petition to the opposing party, as the case may be, and to the local government that issued the order. The filing of the petition stays the effectiveness of the order until after the completion of the appeal process.~~

~~(5) The 45-day appeal period for a development of regional impact within the jurisdiction of more than one local government shall not commence until after all the local governments having jurisdiction over the proposed development of regional impact have rendered their development orders.~~ The appellant shall furnish a copy of the notice of appeal to the opposing party, as the case may be, and to the local government that ~~which~~ issued the order. The filing of the notice of appeal stays ~~shall stay~~ the effectiveness of the order until after the completion of the appeal process.

(5) ~~(6)~~ Before ~~Prior to~~ issuing an order, the Florida Land and Water Adjudicatory Commission shall hold a hearing pursuant to ~~the provisions of~~ chapter 120. The commission shall encourage the submission of appeals on the record made pursuant to subsection (7) ~~below~~ in cases in which the development order was issued after a full and complete hearing before the local government or an agency thereof.

(6) ~~(7)~~ The Florida Land and Water Adjudicatory Commission shall issue a decision granting or denying permission to develop pursuant to the standards of this chapter and may attach conditions and restrictions to its decisions.

(7) ~~(8)~~ If an appeal is filed with respect to any issues within the scope of a permitting program authorized by chapter 161, chapter 373, or chapter 403 and for which a permit or

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conceptual review approval has been obtained before ~~prior to~~ the issuance of a development order, any such issue shall be specifically identified in the notice of appeal which is filed pursuant to this section, together with other issues that ~~which~~ constitute grounds for the appeal. The appeal may proceed with respect to issues within the scope of permitting programs for which a permit or conceptual review approval has been obtained before ~~prior to~~ the issuance of a development order only after the commission determines by majority vote at a regularly scheduled commission meeting that statewide or regional interests may be adversely affected by the development. In making this determination, there is ~~shall be~~ a rebuttable presumption that statewide and regional interests relating to issues within the scope of the permitting programs for which a permit or conceptual approval has been obtained are not adversely affected.

Section 6. Section 380.115, Florida Statutes, is amended to read:

380.115 Vested rights and duties; effect of size reduction, changes in statewide guidelines and standards.—

~~(1) A change in a development-of-regional-impact guideline and standard does not abridge or modify any vested or other right or any duty or obligation pursuant to any development order or agreement that is applicable to a development of regional impact.~~ A development that has received a development-of-regional-impact development order pursuant to s. 380.06 but is no longer required to undergo development-of-regional-impact review by operation of law may elect ~~a change in the guidelines and standards, a development that has reduced its size below the~~

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~~thresholds as specified in s. 380.0651, a development that is exempt pursuant to s. 380.06(24) or (29), or a development that elects~~ to rescind the development order pursuant to ~~are governed by~~ the following procedures:

(1)~~(a)~~ The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures for rescission in subsection (2) ~~paragraph (b)~~. Any proposed changes to developments which continue to be governed by a development-of-regional-impact development order must be approved pursuant to s. 380.06(7) ~~s. 380.06(19) as it existed before a change in the development-of-regional-impact guidelines and standards, except that all percentage criteria are doubled and all other criteria are increased by 10 percent~~. The local government issuing the development order must monitor the development and enforce the development order. Local governments may not issue any permits or approvals or provide any extensions of services if the developer fails to act in substantial compliance with the development order. The development-of-regional-impact development order may be enforced ~~by the local government~~ as provided in s. 380.11 ~~ss. 380.06(17) and 380.11~~.

(2)~~(b)~~ If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as

defined in s. 380.031(6), if such permit or authorization is subject to enforcement through administrative or judicial remedies.

~~(2) A development with an application for development approval pending, pursuant to s. 380.06, on the effective date of a change to the guidelines and standards, or a notification of proposed change pending on the effective date of a change to the guidelines and standards, may elect to continue such review pursuant to s. 380.06. At the conclusion of the pending review, including any appeals pursuant to s. 380.07, the resulting development order shall be governed by the provisions of subsection (1).~~

~~(3) A landowner that has filed an application for a development-of-regional-impact review prior to the adoption of a sector plan pursuant to s. 163.3245 may elect to have the application reviewed pursuant to s. 380.06, comprehensive plan provisions in force prior to adoption of the sector plan, and any requested comprehensive plan amendments that accompany the application.~~

Section 7. Paragraph (c) of subsection (1) of section 125.68, Florida Statutes, is amended to read:

125.68 Codification of ordinances; exceptions; public record.—

(1)

(c) The following ordinances are exempt from codification and annual publication requirements:

1. Any development agreement, or amendment to such agreement, adopted by ordinance pursuant to ss. 163.3220-163.3243.

2. Any development order, or amendment to such order, adopted by ordinance pursuant to s. 380.06(4) ~~s. 380.06(15)~~.

Section 8. Paragraph (e) of subsection (3), subsection (6), and subsection (12) of section 163.3245, Florida Statutes, are amended to read:

163.3245 Sector plans.—

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

(e) Whenever a local government issues a development order approving a detailed specific area plan, a copy of such order shall be rendered to the state land planning agency and the owner or developer of the property affected by such order, as prescribed by rules of the state land planning agency for a development order for a development of regional impact. Within 45 days after the order is rendered, the owner, the developer, or the state land planning agency may appeal the order to the Florida Land and Water Adjudicatory Commission by filing a petition alleging that the detailed specific area plan is not consistent with the comprehensive plan or with the long-term master plan adopted pursuant to this section. The appellant shall furnish a copy of the petition to the opposing party, as the case may be, and to the local government that issued the order. The filing of the petition stays the effectiveness of the order until after completion of the appeal process. However, if a development order approving a detailed specific area plan has

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been challenged by an aggrieved or adversely affected party in a judicial proceeding pursuant to s. 163.3215, and a party to such proceeding serves notice to the state land planning agency, the state land planning agency shall dismiss its appeal to the commission and shall have the right to intervene in the pending judicial proceeding pursuant to s. 163.3215. Proceedings for administrative review of an order approving a detailed specific area plan shall be conducted consistent with s. 380.07(5) ~~s. 380.07(6)~~. The commission shall issue a decision granting or denying permission to develop pursuant to the long-term master plan and the standards of this part and may attach conditions or restrictions to its decisions.

(6) An applicant who applied ~~Concurrent with or subsequent to review and adoption of a long-term master plan pursuant to paragraph (3)(a), an applicant may apply~~ for master development approval pursuant to s. 380.06 ~~s. 380.06(21)~~ for the entire planning area shall remain subject to the master development order ~~in order to establish a buildout date until which the approved uses and densities and intensities of use of the master plan are not subject to downzoning, unit density reduction, or intensity reduction,~~ unless the developer elects to rescind the development order pursuant to s. 380.115, the development order is abandoned pursuant to s. 380.06(11), or the local government can demonstrate that implementation of the master plan is not continuing in good faith based on standards established by plan policy, that substantial changes in the conditions underlying the approval of the master plan have occurred, that the master plan was based on substantially inaccurate information provided by the applicant, or that change is clearly established to be

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essential to the public health, safety, or welfare. ~~Review of the application for master development approval shall be at a level of detail appropriate for the long-term and conceptual nature of the long-term master plan and, to the maximum extent possible, may only consider information provided in the application for a long-term master plan.~~ Notwithstanding s. 380.06, an increment of development in such an approved master development plan must be approved by a detailed specific area plan pursuant to paragraph (3)(b) and is exempt from review pursuant to s. 380.06.

(12) Notwithstanding s. 380.06, this part, or any planning agreement or plan policy, a landowner or developer who has received approval of a master development-of-regional-impact development order pursuant to s. 380.06(9) ~~s. 380.06(21)~~ may apply to implement this order by filing one or more applications to approve a detailed specific area plan pursuant to paragraph (3)(b).

Section 9. Subsections (11), (12), and (14) of section 163.3246, Florida Statutes, are amended to read:

163.3246 Local government comprehensive planning certification program.—

(11) If the local government of an area described in subsection (10) does not request that the state land planning agency review the developments of regional impact that are proposed within the certified area, an application for approval of a development order within the certified area is ~~shall be~~ exempt from ~~review under~~ s. 380.06.

(12) A local government's certification shall be reviewed by the local government and the state land planning agency as

part of the evaluation and appraisal process pursuant to s. 163.3191. Within 1 year after the deadline for the local government to update its comprehensive plan based on the evaluation and appraisal, the state land planning agency must ~~shall~~ renew or revoke the certification. The local government's failure to timely adopt necessary amendments to update its comprehensive plan based on an evaluation and appraisal, which are found to be in compliance by the state land planning agency, is ~~shall be~~ cause for revoking the certification agreement. The state land planning agency's decision to renew or revoke is ~~shall be considered~~ agency action subject to challenge under s. 120.569.

(14) It is the intent of the Legislature to encourage the creation of connected-city corridors that facilitate the growth of high-technology industry and innovation through partnerships that support research, marketing, workforce, and entrepreneurship. It is the further intent of the Legislature to provide for a locally controlled, comprehensive plan amendment process for such projects that are designed to achieve a cleaner, healthier environment; limit urban sprawl by promoting diverse but interconnected communities; provide a range of intergenerational housing types; protect wildlife and natural areas; assure the efficient use of land and other resources; create quality communities of a design that promotes alternative transportation networks and travel by multiple transportation modes; and enhance the prospects for the creation of jobs. The Legislature finds and declares that this state's connected-city corridors require a reduced level of state and regional oversight because of their high degree of urbanization and the

planning capabilities and resources of the local government.

(a) Notwithstanding subsections (2), (4), (5), (6), and (7), Pasco County is named a pilot community and shall be considered certified for a period of 10 years for connected-city corridor plan amendments. The state land planning agency shall provide a written notice of certification to Pasco County by July 15, 2015, which shall be considered a final agency action subject to challenge under s. 120.569. The notice of certification must include:

1. The boundary of the connected-city corridor certification area; and

2. A requirement that Pasco County submit an annual or biennial monitoring report to the state land planning agency according to the schedule provided in the written notice. The monitoring report must, at a minimum, include the number of amendments to the comprehensive plan adopted by Pasco County, the number of plan amendments challenged by an affected person, and the disposition of such challenges.

(b) A plan amendment adopted under this subsection may be based upon a planning period longer than the generally applicable planning period of the Pasco County local comprehensive plan, must specify the projected population within the planning area during the chosen planning period, may include a phasing or staging schedule that allocates a portion of Pasco County's future growth to the planning area through the planning period, and may designate a priority zone or subarea within the connected-city corridor for initial implementation of the plan. A plan amendment adopted under this subsection is not required to demonstrate need based upon projected population growth or on

any other basis.

(c) If Pasco County adopts a long-term transportation network plan and financial feasibility plan, and subject to compliance with the requirements of such a plan, the projects within the connected-city corridor are deemed to have satisfied all concurrency and other state agency or local government transportation mitigation requirements except for site-specific access management requirements.

(d) If Pasco County does not request that the state land planning agency review the developments of regional impact that are proposed within the certified area, an application for approval of a development order within the certified area is exempt from ~~review under~~ s. 380.06.

(e) The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2024, a report and recommendations for implementing a statewide program that addresses the legislative findings in this subsection. In consultation with the state land planning agency, OPPAGA shall develop the report and recommendations with input from other state and regional agencies, local governments, and interest groups. OPPAGA shall also solicit citizen input in the potentially affected areas and consult with the affected local government and stakeholder groups. Additionally, OPPAGA shall review local and state actions and correspondence relating to the pilot program to identify issues of process and substance in recommending changes to the pilot program. At a minimum, the report and recommendations must include:

1. Identification of local governments other than the local government participating in the pilot program which should be certified. The report may also recommend that a local government is no longer appropriate for certification; and

2. Changes to the certification pilot program.

Section 10. Subsection (4) of section 189.08, Florida Statutes, is amended to read:

189.08 Special district public facilities report.—

(4) Those special districts building, improving, or expanding public facilities addressed by a development order issued to the developer pursuant to s. 380.06 may use the most recent local government ~~annual~~ report required by s. 380.06(6) ~~s. 380.06(15) and (18)~~ and submitted by the developer, to the extent the annual report provides the information required by subsection (2).

Section 11. Subsection (2) of section 190.005, Florida Statutes, is amended to read:

190.005 Establishment of district.—

(2) The exclusive and uniform method for the establishment of a community development district of less than 2,500 acres in size or a community development district of up to 7,000 acres in size located within a connected-city corridor established pursuant to s. 163.3246(13) ~~s. 163.3246(14)~~ shall be pursuant to an ordinance adopted by the county commission of the county having jurisdiction over the majority of land in the area in which the district is to be located granting a petition for the establishment of a community development district as follows:

(a) A petition for the establishment of a community development district shall be filed by the petitioner with the

county commission. The petition shall contain the same information as required in paragraph (1)(a).

(b) A public hearing on the petition shall be conducted by the county commission in accordance with the requirements and procedures of paragraph (1)(d).

(c) The county commission shall consider the record of the public hearing and the factors set forth in paragraph (1)(e) in making its determination to grant or deny a petition for the establishment of a community development district.

(d) The county commission may ~~shall~~ not adopt any ordinance which would expand, modify, or delete any provision of the uniform community development district charter as set forth in ss. 190.006-190.041. An ordinance establishing a community development district shall only include the matters provided for in paragraph (1)(f) unless the commission consents to any of the optional powers under s. 190.012(2) at the request of the petitioner.

(e) If all of the land in the area for the proposed district is within the territorial jurisdiction of a municipal corporation, then the petition requesting establishment of a community development district under this act shall be filed by the petitioner with that particular municipal corporation. In such event, the duties of the county, hereinabove described, in action upon the petition shall be the duties of the municipal corporation. If any of the land area of a proposed district is within the land area of a municipality, the county commission may not create the district without municipal approval. If all of the land in the area for the proposed district, even if less than 2,500 acres, is within the territorial jurisdiction of two

or more municipalities or two or more counties, except for proposed districts within a connected-city corridor established pursuant to s. 163.3246(13) ~~s. 163.3246(14)~~, the petition shall be filed with the Florida Land and Water Adjudicatory Commission and proceed in accordance with subsection (1).

(f) Notwithstanding any other provision of this subsection, within 90 days after a petition for the establishment of a community development district has been filed pursuant to this subsection, the governing body of the county or municipal corporation may transfer the petition to the Florida Land and Water Adjudicatory Commission, which shall make the determination to grant or deny the petition as provided in subsection (1). A county or municipal corporation shall have no right or power to grant or deny a petition that has been transferred to the Florida Land and Water Adjudicatory Commission.

Section 12. Paragraph (g) of subsection (1) of section 190.012, Florida Statutes, is amended to read:

190.012 Special powers; public improvements and community facilities.—The district shall have, and the board may exercise, subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies, and special districts having authority with respect to any area included therein, any or all of the following special powers relating to public improvements and community facilities authorized by this act:

(1) To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems, facilities, and basic infrastructures for the

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following:

(g) Any other project within or without the boundaries of a district when a local government issued a development order pursuant to s. 380.06 ~~or s. 380.061~~ approving or expressly requiring the construction or funding of the project by the district, or when the project is the subject of an agreement between the district and a governmental entity and is consistent with the local government comprehensive plan of the local government within which the project is to be located.

Section 13. Paragraph (a) of subsection (1) of section 252.363, Florida Statutes, is amended to read:

252.363 Tolling and extension of permits and other authorizations.—

(1)(a) The declaration of a state of emergency by the Governor tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the tolled period. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.

2. The expiration of a building permit.

3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.

4. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c) ~~pursuant to s.~~

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~~380.06(19)(c)~~.

Section 14. Subsection (4) of section 369.303, Florida Statutes, is amended to read:

369.303 Definitions.—As used in this part:

(4) "Development of regional impact" means a development that ~~which~~ is subject to ~~the review procedures established by~~ s. 380.06 ~~or s. 380.065, and s. 380.07~~.

Section 15. Subsection (1) of section 369.307, Florida Statutes, is amended to read:

369.307 Developments of regional impact in the Wekiva River Protection Area; land acquisition.—

(1) Notwithstanding s. 380.06(4) ~~the provisions of s. 380.06(15)~~, the counties shall consider and issue the development permits applicable to a proposed development of regional impact which is located partially or wholly within the Wekiva River Protection Area at the same time as the development order approving, approving with conditions, or denying a development of regional impact.

Section 16. Subsection (8) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(8) A water management district may issue a permit to an applicant, as set forth in s. 163.3245(13), for the same period of time as the applicant's approved master development order if the master development order was issued under s. 380.06(9) ~~s. 380.06(21)~~ by a county which, at the time the order was issued, was designated as a rural area of opportunity under s. 288.0656, was not located in an area encompassed by a regional water supply plan as set forth in s. 373.709(1), and was not located

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within the basin management action plan of a first magnitude spring. In reviewing the permit application and determining the permit duration, the water management district shall apply s. 163.3245(4)(b).

Section 17. Subsection (13) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(13) Any declaratory statement issued by the department under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by a water management district under s. 373.421, in response to a petition filed on or before June 1, 1994, shall continue to be valid for the duration of such declaratory statement. Any such petition pending on June 1, 1994, shall be exempt from the methodology ratified in s. 373.4211, but the rules of the department or the relevant water management district, as applicable, in effect prior to the effective date of s. 373.4211, shall apply. Until May 1, 1998, activities within the boundaries of an area subject to a petition pending on June 1, 1994, and prior to final agency action on such petition, shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9). In the event that a jurisdictional declaratory statement pursuant to the vegetative index in effect prior to the

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effective date of chapter 84-79, Laws of Florida, has been obtained and is valid prior to the effective date of the rules adopted under subsection (9) or July 1, 1994, whichever is later, and the affected lands are part of a project for which a master development order has been issued pursuant to s. 380.06(9) ~~s. 380.06(21)~~, the declaratory statement shall remain valid for the duration of the buildout period of the project. Any jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, shall remain in effect for a period of 5 years following the effective date of this act if proof of such validation is submitted to the department prior to January 1, 1995. In the event that a jurisdictional determination has been revalidated by the department pursuant to this subsection and the affected lands are part of a project for which a development order has been issued pursuant to s. 380.06(4) ~~s. 380.06(15)~~, a final development order to which s. 163.3167(5) applies has been issued, or a vested rights determination has been issued pursuant to s. 380.06(8) ~~s. 380.06(20)~~, the jurisdictional determination shall remain valid until the completion of the project, provided proof of such validation and documentation establishing that the project meets the requirements of this sentence are submitted to the department prior to January 1, 1995. Activities proposed within the boundaries of a valid declaratory statement issued pursuant to a petition submitted to either the department or the relevant water management district on or before June 1, 1994, or a revalidated jurisdictional determination, prior to its expiration shall continue thereafter

to be exempt from the methodology ratified in s. 373.4211 and to be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

Section 18. Subsection (5) of section 378.601, Florida Statutes, is amended to read:

378.601 Heavy minerals.—

(5) Any heavy mineral mining operation which annually mines less than 500 acres and whose proposed consumption of water is 3 million gallons per day or less may ~~shall~~ not be subject ~~required to undergo development of regional impact review pursuant~~ to s. 380.06, provided permits and plan approvals pursuant to either this section and part IV of chapter 373, or s. 378.901, are issued.

Section 19. Section 380.065, Florida Statutes, is repealed.

Section 20. Paragraph (a) of subsection (2) of section 380.11, Florida Statutes, is amended to read:

380.11 Enforcement; procedures; remedies.—

(2) ADMINISTRATIVE REMEDIES.—

(a) If the state land planning agency has reason to believe a violation of this part or any rule, development order, or other order issued hereunder or of any agreement entered into under s. 380.032(3) ~~or s. 380.06(8)~~ has occurred or is about to occur, it may institute an administrative proceeding pursuant to this section to prevent, abate, or control the conditions or activity creating the violation.

Section 21. Paragraph (b) of subsection (2) of section 403.524, Florida Statutes, is amended to read:

403.524 Applicability; certification; exemptions.—

(2) Except as provided in subsection (1), construction of a transmission line may not be undertaken without first obtaining certification under this act, but this act does not apply to:

(b) Transmission lines that have been exempted by a binding letter of interpretation issued under s. 380.06(3) ~~s. 380.06(4)~~, or in which the Department of Economic Opportunity or its predecessor agency has determined the utility to have vested development rights within the meaning of s. 380.05(18) or s. 380.06(8) ~~s. 380.06(20)~~.

Section 22. (1) The rules adopted by the state land planning agency to ensure uniform review of developments of regional impact by the state land planning agency and regional planning agencies and codified in chapter 73C-40, Florida Administrative Code, are repealed.

(2) The rules adopted by the Administration Commission, as defined in s. 380.031, Florida Statutes, regarding whether two or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development under chapter 380, Florida Statutes, are repealed.

Section 23. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" where it occurs in this act with the date this act takes effect.

Section 24. This act shall take effect upon becoming a law.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1262
INTRODUCER:	Community Affairs Committee, Ethics and Elections Committee, and Senator Hutson
SUBJECT:	Election Dates for Municipal Office
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	**Fav/CS**
2.	Cochran	Yeatman	CA	**Fav/CS**
3.	Carlton	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1262 expressly preempts to the state the authority to establish the dates of elections of municipal officers and provides the exclusive method for establishing those dates. Any state law, municipal charter, or municipal ordinance that conflicts with the bill is superseded to the extent of the conflict. As a result, a municipality will no longer have authority to establish unilaterally the date of its municipal officer elections.

The bill requires the governing body of a municipality to choose from among the following dates to hold its elections: the general election, the first Tuesday after the first Monday in November in an odd-numbered year, or the third Tuesday in March in an odd-numbered or even-numbered year, or any combination thereof. The bill specifies that a municipality may not conduct more than one municipal general election cycle in a calendar year. The bill sets a format for runoff elections and allows elected municipal officers to continue in office until the next municipal election held in accordance with the bill.

The bill requires any county for which a special act has established a date for the election of municipal officers applicable to all municipalities within its jurisdiction occurring on a date other than that of the general election or on the first Tuesday after the first Monday in November of an odd-numbered year to have the election date for all municipalities within the jurisdiction be the third Tuesday in March. If a runoff is required, the municipality shall conduct its elections on the Tuesday 7 weeks before the third Tuesday in March and the runoff election on the third Tuesday in March.

The provisions of the bill that establish the method of selecting municipal election dates do not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted. However, the bill allows municipal recall elections to be held concurrently with municipal elections provided the municipal election occurs during a specific period.

In order to provide for an orderly transition of office, the bill provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election.

Lastly, the bill repeals s. 101.75, F.S., which allows a municipality to change its election dates in order to hold its elections concurrently with a statewide or countywide election or, if the voting devices for a statewide or countywide election are not available, to hold its elections 30 days before or after the statewide or countywide election.

II. Present Situation:

Article VI, s. 5(a) of the Florida Constitution requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election. Section 100.031, F.S., incorporates that constitutional provision into statute, but also requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective federal and district officer whose term will expire before the next general election.

Article VI, s. 6 of the Florida Constitution provides that registration and elections in municipalities must, and in other governmental entities created by statute may, be provided by general law. The Florida Election Code,[1] which is a collection of general laws, governs the conduct of municipal elections in the absence of an applicable special act, charter, or ordinance.[2] However, no act, charter, or ordinance may be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.[3]

Elections for municipal officers are conducted during the general election in November of even-numbered years unless the governing body of a municipality has adopted an ordinance to change the dates for qualifying and for the election of members of the governing body of the municipality.[4] The ordinance may also provide for the orderly transition of office resulting from the date changes.[5]

Section 101.75, F.S., allows the governing body of a municipality to move the date of any municipal election to a date concurrent with any statewide or countywide election provided the

[1] Chapters 97-106, F.S., are known as "The Florida Election Code."
[2] Section 100.3605(1), F.S.
[3] *Id.*
[4] Section 100.3605(2), F.S.; *see also* s. 166.021(4), F.S.
[5] Section 100.3605(2), F.S.

election date and dates for qualifying for the election are specifically provided for in the ordinance.[6] However, if the voting devices used in the county are not available to the municipality during the statewide or countywide election, the municipality may provide that its election will be held 30 days before or after the statewide or countywide election.[7]

Any member of the governing body of a municipality may be removed from office by the electors of the municipality provided certain requirements are met.[8] If the requirements are met but the municipal officer does not resign his or her office, a municipal recall election is held for the removal of that officer.[9] A municipal recall election is held in conjunction with a general or special election if such an election is held during the defined timeframe for conducting a recall election.[10]

A municipality pays for the printing and delivery of ballots and instruction cards for a municipal election.[11]

III. Effect of Proposed Changes:

The bill expressly preempts to the state the authority to establish the dates of elections of municipal officers. Any state law, municipal charter, or municipal ordinance that conflicts with the bill is superseded to the extent of the conflict. As a result, a municipality will no longer have the authority to establish unilaterally the date of its municipal officer elections.

The bill requires the governing body of a municipality to choose from among the following dates:

- The general election in November;
- The first Tuesday after the first Monday in November in an odd-numbered year; or
- The third Tuesday in March in an odd-numbered year or even-numbered year, or any combination thereof.

If a municipal charter or ordinance requires the municipality to conduct its election in a runoff format, the bill requires the municipality to choose from among the following options:

Initial Election	Runoff Election
Primary Election (Tuesday, 10 weeks prior to General Election)	General Election
Tuesday 10 weeks before the first Tuesday after the first Monday in November of an odd-numbered year	First Tuesday after the first Monday in November of an odd-numbered year
Tuesday 7 weeks before the third Tuesday in March	Third Tuesday in March

[6] Section 101.75(3), F.S.
[7] Section 101.75(1), F.S.
[8] Section 100.361, F.S.
[9] Section 100.361(4), F.S.
[10] *Id*.
[11] Section 101.21, F.S.

The bill requires any county for which a special act has established a date for the election of municipal officers applicable to all municipalities within its jurisdiction occurring on a date other than that of the general election or on the first Tuesday after the first Monday in November of an odd-numbered year to have the election date for all municipalities within the jurisdiction be the third Tuesday in March. If a runoff is required, the municipality shall conduct its elections on the Tuesday 7 weeks before the third Tuesday in March and the runoff election on the third Tuesday in March.

The bill does not require a municipality to alter or amend its charter. Any municipal charter provision that conflicts with the bill is automatically superseded without further action by the municipality. Likewise, any ordinance that conflicts with the bill is automatically superseded without any further action of the municipality.

The provisions of the bill that establish the method of selecting municipal officer election dates does not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted. However, the bill allows municipal recall elections to be held concurrently with municipal elections provided the municipal election occurs during a specific time-period.

In order to provide for an orderly transition of office, the bill provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election held in accordance with the provisions of the bill.

The bill also repeals s. 101.75, F.S., which allows a municipality to change municipal officer election dates in order to hold its elections concurrently with a statewide or countywide election or, if the voting devices for a statewide or countywide election are not available, to hold its elections 30 days before or after the statewide or countywide election.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill may require some municipalities to spend funds or take action requiring the expenditure of funds in order to comply with the new election date requirements created by the bill; however, Art. VII, section 18 of the Florida Constitution explicitly exempts election laws from the county/municipality "mandates" provision within that section.

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:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 100.3605, 100.361, and 101.75.

IX. Additional Information:

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

CS/CS by Community Affairs on February 20, 2018:

- Allows a governing body of a municipality to choose the third Tuesday in March in an odd-numbered year or even-numbered year, or any combination thereof, to hold its elections.
- Allows a runoff to occur in the form where the initial action is held at an election on the Tuesday 7 weeks before the third Tuesday in March and the runoff election is held at an election on the third Tuesday in March.
- Requires any county for which a special act has established a date for the election of municipal officers applicable to all municipalities within its jurisdiction occurring on a date other than that of the general election or on the first Tuesday after the first Monday in November of an odd-numbered year to have the election date for all municipalities within the jurisdiction be the third Tuesday in March. If a runoff is required, the municipality shall conduct its elections on the Tuesday 7 weeks before the third Tuesday in March and the runoff election on the third Tuesday in March.

CS by Ethics and Elections on February 6, 2018:

- Clarifies that a municipality can choose to conduct its general election on a general election day, on the first Tuesday after the first Monday in an odd-numbered year, or on the third Tuesday in March; and
- Clarifies that a municipality may only conduct one municipal election per calendar year.

B. Amendments:

None.

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

By the Committees on Community Affairs; and Ethics and Elections; and Senator Hutson

578-03462-18 20181262c2

A bill to be entitled

An act relating to election dates for municipal office; amending s. 100.3605, F.S.; requiring the governing body of a municipality to determine the dates on which initial and runoff elections for municipal office are held and providing options therefor; requiring counties that have established certain dates for the election of municipal officers through a special act to conduct municipal elections on specified dates; preempting to the state the authority to establish election dates for municipal elections; providing construction; amending s. 100.361, F.S.; requiring municipal recall elections to be held concurrently with municipal elections under certain conditions; repealing s. 101.75, F.S., relating to change of dates for cause in municipal elections; extending the terms of incumbent elected municipal officers until the next municipal election; providing an effective date.

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

Section 1. Section 100.3605, Florida Statutes, is amended to read:

100.3605 Conduct of municipal elections.—

(1) The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which

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578-03462-18 20181262c2

conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

(2)(a) The governing body of a municipality shall determine if an election for municipal office is held on the same date as the general election, the first Tuesday after the first Monday in November in an odd-numbered year, or the third Tuesday in March in an odd-numbered year or even-numbered year, or any combination thereof.

(b) If a municipal charter or ordinance requires a runoff election for municipal office, the governing body of a municipality shall conduct its elections in any of the following formats:

1. The initial election shall be held at the primary election on the Tuesday 10 weeks before the general election and the runoff election shall be held on the same date as the general election.

2. The initial election shall be held at an election on the Tuesday 10 weeks before the election held on the first Tuesday after the first Monday in November in an odd-numbered year and the runoff election shall be held at an election on the first Tuesday after the first Monday in November in an odd-numbered year.

3. The initial election shall be held at an election on the Tuesday 7 weeks before the third Tuesday in March and the runoff election shall be held at an election on the third Tuesday in March.

(c) Any county for which a special act has established a date for the election of municipal officers applicable to all

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municipalities within its jurisdiction occurring on a date other than that of the general election or on the first Tuesday after the first Monday in November of an odd-numbered year shall have the election date for all municipalities within its jurisdiction be the third Tuesday in March. If a municipality within such a county requires a runoff election for municipal office, such municipality shall conduct its elections in accordance with subparagraph (b)3.

(d) This subsection does not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted.

(e) Notwithstanding any general law, special law, local law, municipal charter, or municipal ordinance, this subsection provides the sole method for establishing the dates of elections for municipal office in this state. Any general law, special law, local law, municipal charter, or municipal ordinance that conflicts with this subsection is superseded to the extent of the conflict.

(3) The governing body of a municipality may, by ordinance, ~~change the dates for qualifying and for the election of members of the governing body of the municipality and~~ provide for the orderly transition of office resulting from election ~~such~~ date changes.

Section 2. Subsection (4) of section 100.361, Florida Statutes, is amended to read:

100.361 Municipal recall.—

(4) RECALL ELECTION.—If the person designated in the petition files with the clerk, within 5 days after the last-mentioned notice, his or her written resignation, the clerk

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shall at once notify the governing body of that fact, and the resignation shall be irrevocable. The governing body shall then proceed to fill the vacancy according to the provisions of the appropriate law. In the absence of a resignation, the chief judge of the judicial circuit in which the municipality is located shall fix a day for holding a recall election for the removal of those not resigning. Any such election shall be held not less than 30 days or more than 60 days after the expiration of the 5-day period last-mentioned and at the same time as any other general, municipal, or special election held within the period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

Section 3. Section 101.75, Florida Statutes, is repealed.

Section 4. To provide for an orderly transition of office, the term of each incumbent elected municipal officer is extended until the next municipal election held in accordance with this act.

Section 5. This act shall take effect July 1, 2020.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1262
Bill Number (if applicable)

Topic Municipal Election Dates

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
Street

Phone 222-9684

Tallahassee FL 32301
City *State* *Zip*

Email rohara@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Fla. 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)

3/1/18
Meeting Date

SB 1262
Bill Number (if applicable)

Topic Municipal Actions

Amendment Barcode (if applicable)

Name Gil Ziffer

Job Title City Commissioner, Tallahassee

Address 300 S. Adams St
Street

Phone 850-509-9806

Tall FL 32301
City *State* *Zip*

Email gil.ziffer@talgov.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Tallahassee

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1262
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Elections

Name Quinda B Merritt

Job Title Mayor

Address 125 Hwy 40 West
Street
Town of Inglis FL 34449
City *State* *Zip*

Phone 352-229-0477

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Town of Inglis

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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 1302
INTRODUCER:	Senator Brandes
SUBJECT:	Consumer Report Security Freezes
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Harmsen	McKay	CM	**Favorable**
3.	Johnson	Phelps	RC	**Favorable**

I. Summary:

SB 1302 prohibits consumer reporting agencies (CRAs) from charging fees for placing, removing, or temporarily lifting a security freeze on a consumer report. A security freeze prevents a CRA from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the consumer's express authorization. Currently, Florida law permits a CRA to charge a consumer up to $10 to institute a credit freeze.

II. Present Situation:

Data Breaches and Identity Theft

In recent years, data breaches[1] have increased in frequency, scale, sophistication, and severity of impact; as a result, identity theft has been rampant. In late 2013, Target experienced a data breach that provided cybercriminals with access to 41 million customer payment card accounts[2] (customer name, credit or debit card number, and the card's expiration date) and contact information for more than 60 million Target customers.[3] In 2017, Equifax, one of the three major CRAs in the United States, reported that the sensitive personal information of an estimated 143

[1] A data breach occurs when a cybercriminal successfully infiltrates a data source and extracts sensitive information. This can be done physically by accessing a computer or network to steal local files, or by bypassing network security remotely. *See* TRENDMICRO, *Data Breaches 101* (Oct. 23, 2015) available at *https://www.trendmicro.com/vinfo/us/security/news/cyber-attacks/data-breach-101* (last visited Feb. 9, 2018).

[2] *Target to pay $18.5M for 2013 data breach that affected 41 million consumers*, (May 23, 2017), available at https://www.usatoday.com/story/money/2017/05/23/target-pay-185m-2013-data-breach-affected-consumers/102063932/ (last visited Feb. 9, 2018).

[3] Federal Trade Commission, *Are you affected by the recent Target hack?* https://www.consumer.ftc.gov/blog/2013/12/are-you-affected-recent-target-hack (last visited Feb. 9, 2018).

million American consumers[4] was disclosed in a data breach earlier that year. The cybercriminals accessed the names, Social Security numbers, birth dates, and addresses and, in some instances, consumers' driver's license numbers. They also accessed credit card numbers of about 209,000 consumers and dispute documents with personal identifying information of about 182,000 consumers.[5]

In response to identity theft, or as a precautionary action, consumers may place a security freeze on their credit reports. Such a freeze can help stop identity thieves from opening new accounts under a stolen identity by preventing new creditors from accessing a credit file.[6]

Consumer Reports and Consumer Reporting Agencies

Consumer reports include any written, oral, or other communication of any information by a CRA on a consumer's credit worthiness, credit standing, credit capacity, general reputation, personal characteristics, or mode of living.[7] Consumer reports generally list a consumer's name, address, Social Security number, credit cards, loans, debts, and history of timely bill payment.[8] Information contained in such reports is used as a factor in establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; and other purposes authorized under federal law.[9]

CRAs assemble or evaluate consumer credit information or other information on consumers and furnish consumer reports to third parties.[10] CRAs may provide consumer credit reports and credit scores to lenders, retail stores, employers, residential real estate management companies, payment processors, retail stores, debt buyers and collectors, insurance companies, communications and utility companies.[11] The three largest consumer-reporting agencies are Equifax, Experian, and TransUnion.[12]

Federal Fair Credit Reporting Act (FCRA)

The federal Fair Credit Reporting Act (FCRA) governs the collection and use of consumer report information and establishes the framework for the credit reporting system in the United States.[13] The FCRA prevents the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; improving the accuracy and integrity of consumer

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[4] Equifax, *Cybersecurity Incident and Important Consumer Information*, available at https://www.equifaxsecurity2017.com/frequently-asked-questions/ (last visited Feb. 9, 2018). Subsequently, on October 2, 2017, Equifax announced that approximately 2.5 million additional U.S. consumers were potentially impacted.
[5] Federal Trade Commission, *the Equifax Data Breach: What to Do*, https://www.consumer.ftc.gov/blog/2017/09/equifax-data-breach-what-do (last visited Feb. 9, 2018).
[6] Consumer Finance Protection Bureau, *Credit Reports and Scores*, available at https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/key-terms/#security-freeze (last visited Feb. 9, 2018.)
[7] *See* 15 U.S.C. 1681a(d).
[8] *See* 15 U.S.C. 1681c.
[9] *See* 15 U.S.C. 1681b.
[10] *See* 15 U.S.C. 1681a(f).
[11] Consumer Financial Protection Bureau (CFPB), *List of Consumer Reporting Companies*, pgs. 4-5 (2016). http://files.consumerfinance.gov/f/201604_cfpb_list-of-consumer-reporting-companies.pdf (last visited Feb. 9, 2018).
[12] *See* note, CFPB 10 at pg. 8.
[13] 15 U.S.C. s. 1681 *et seq*.

reports; and promoting the efficiency of the nation's banking and consumer credit systems.[14] The FCRA regulates the practices of CRAs (e.g., Equifax, Experian, TransUnion, etc.) that collect and compile consumer information into consumer reports, which are often referred to as credit reports.[15] Both the Federal Trade Commission and the Consumer Financial Protection Bureau provide education regarding, and enforcement of, the FCRA.[16]

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA, to add a number of provisions to help consumers and businesses combat identity theft; mitigate the damage when identity theft occurs; and establish a national fraud alert system.[17] The FACT Act allows a consumer or the consumer's representative to assert a good-faith suspicion to a CRA that he or she has been or is about to become the victim of identity theft.[18] The CRA must then, at no charge to the consumer, place an initial fraud alert on the consumer's credit report for at least 90 days.[19] A consumer or the consumer's representative can also file for an extended fraud alert that lasts up to 7 years if an identity theft report is submitted to the CRA.[20] While fraud alerts help make a consumer more aware of activity related to his or her consumer report, they do not prevent a potential creditor from obtaining the consumer report and may not prevent the opening of new credit accounts.[21]

Florida

Identity Theft

The Florida Department of Agriculture and Consumer Services' Division of Consumer Services (division) regulates 18 specific industries and serves as a clearinghouse for consumer complaints regarding unregulated issues. The division also focuses on consumer education to protect consumers from unfair or unsafe business practices.[22] The division and the Florida Attorney General's Office provide consumer resources to help prevent and to respond to identity theft in Florida.[23]

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[14] Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), *available at* http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf. (last visited Feb. 9, 2018)
[15] *Id*.
[16] *See* 15 U.S.C. §1681a (v); Federal Trade Commission, *Fair Credit Reporting Act*, https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act (last visited Feb. 8, 2018). Although the Dodd-Frank Act transferred most of the rulemaking responsibilities under the FCRA to the Consumer Financial Protection Bureau, enforcement authority was retained entirely by the FTC.
[17] P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003), *available at* https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg1952.pdf. (last visited Feb. 9, 2018).
[18] 15 U.S.C. s. 1681c-1(a)(1).
[19] *Id*.
[20] 15 U.S.C. s. 1681c-1(b).
[21] 15 U.S.C. ss. 1681c-1 and 1681m(e).
[22] Florida Department of Agriculture and Consumer Services, *Division of Consumer Services*, https://www.freshfromflorida.com/Divisions-Offices/Consumer-Services (last visited Feb. 9, 2018). *See also*, Florida Department of Agriculture and Consumer Services, *Consumer Resources*, https://www.freshfromflorida.com/Consumer-Resources/ (last visited Feb. 9, 2018).
[23] *Id*. *See also*, Florida Office of the Attorney General, *Identity Theft*, http://myfloridalegal.com/identitytheft (last visited Feb. 9, 2018).

In Florida, cases of identity theft can be prosecuted under s. 817.568, F.S. Identity theft is punishable by a third degree felony, up to a first degree felony, depending on the presence of aggravating circumstances, including the number of victims harmed and the pecuniary value amassed by the perpetrator.[24]

Florida Consumer Report Security Freeze Law

In 2006, Florida enacted legislation to allow a consumer to freeze access to his or her consumer report to prevent anyone from trying to open a new account or new credit under his or her name.[25] The consumer can place the security freeze by written request via certified mail to a CRA; the consumer must send a separate request to each CRA.[26] With some exceptions, a security freeze prohibits the CRA from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the consumer's express authorization.[27] Additionally, while a security freeze is in effect, a CRA may not change a consumer's name, address, date of birth, or social security number in a consumer report without first sending written confirmation of the change to the consumer.[28]

A CRA must place a security freeze within 5 business days after receiving a request and must provide the consumer with a unique personal identification number (PIN) or password for the consumer to use to authorize removal of a security freeze.[29] A CRA may charge a fee up to $10 to institute, temporarily lift, or remove a security freeze, or to reissue a lost PIN or password.[30] However, a CRA may neither charge a consumer 65 years or older for the institution or removal of a security freeze, nor charge a victim of identity theft *any fee*.[31]

2014 Keeping I.D. Safe (KIDS) Act

Florida's 2006 law did not contain a mechanism for freezing the credit for individuals who do not have an existing credit report. To address this issue, the Florida Legislature passed the Keeping I.D. Safe (KIDS) Act in 2014.[32] The KIDS Act allows a third party to place a security freeze on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate) by submitting a request and sufficient proof of authority and identification to the CRA.[33] A CRA has up to 30 days after it

[24] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine; a second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine; a first degree felony is punishable by up to 30 years and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[25] Ch. 2006-124, Laws of Fla.
[26] Section 501.005(2), F.S.
[27] Section 501.005(1), (12), and (15), F.S. Subsection 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified persons. Subsection 501.005(15), F.S., allows for the release of information otherwise protected by a security freeze to a check services company, a deposit account information service company, a consumer reporting agency that acts only as a reseller of credit information, and a fraud prevention services company.
[28] Section 501.005(14), F.S.
[29] Section 501.005(3), (4), F.S.
[30] Section 501.005(13)(a), (c), F.S.
[31] Section 501.005(13)(b), F.S.
[32] Ch. 2014-66, Laws of Fla.
[33] Section 501.0051, F.S.

confirms the authenticity of the security freeze request to place the freeze.[34] Otherwise, the KIDS Act credit freeze operates in the same manner as the credit freeze provided for in s. 501.005, F.S.

Like the traditional security freeze, the CRA must provide a unique PIN to the protected consumer's representative, and may charge a fee of up to $10 to place or remove the freeze, or to reissue a lost PIN.[35] However, a representative of a protected consumer who is a victim of identity theft is exempt from such fees.[36]

State Survey of Laws Relating to Consumer Report Security Freezes

Most states allow CRAs to charge fees for placing a security freeze, which generally range from $2 to $10.[37] Among the states that do not allow such fees, the majority allow some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report. Indiana and South Carolina prohibit all fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer.[38]

III. Effect of Proposed Changes:

Section 1 amends s. 501.005, F.S., to prohibit CRAs from charging a consumer fee for the following actions:

- Placing a security freeze on a consumer report;
- Temporarily lifting a security freeze on a consumer report; and
- Removing a security freeze on a consumer report.

The CRA may charge a reasonable fee, not to exceed $10, to replace a consumer's original personal identification number or password. This charge applies to victims of identity theft, who are not subject to such a fee under current law.

Section 2 amends s. 501.0051, F.S., to similarly prohibit such fees when a representative places, removes, or temporarily lifts a security freeze on a protected consumer's consumer report.

Section 3 provides an effective date of July 1, 2018.

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[34] Section 501.0051(4), (5), F.S.
[35] Section 501.0051(9)(a) and (b), F.S.
[36] Section 501.0051(9)(c), F.S.
[37] Equifax, *What are the security freeze fees in my state?*, https://help.equifax.com/s/article/What-are-the-security-freeze-fees-in-my-state (last visited Feb. 9, 2018); Experian, *Security Freeze*, https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/ (last visited Jan. 4, 2018); TransUnion, *Credit Freeze Information by State*, https://www.transunion.com/credit-freeze/credit-freeze-information-by-state (last visited Feb. 9, 2018). *See also*, National Conference of State Legislatures, *Consumer Report Security Freeze State Laws* (Sept. 1, 2017), available at http://www.ncsl.org/research/financial-services-and-commerce/consumer-report-security-freeze-state-statutes.aspx (last visited Feb. 9, 2018).
[38] *Id.*

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 elimination of the security freeze fees could potentially increase the utilization of security freezes and reduce identity theft. Consumers and their representatives will no longer pay fees of up to $10 related to placing, removing, or temporarily lifting a security freeze on a consumer report.

Consumer reporting agencies will no longer collect such fees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 501.005 and 501.0051 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Brandes

24-01395A-18 20181302__

A bill to be entitled

An act relating to consumer report security freezes; amending s. 501.005, F.S.; deleting the authorization for consumer reporting agencies to charge specified fees to consumers electing to place, remove, or temporarily lift a security freeze on their consumer reports; amending s. 501.0051, F.S.; deleting the authorization for consumer reporting agencies to charge a specified fee to representatives of protected consumers electing to place a security freeze on such consumer's consumer reports; deleting the authorization for consumer reporting agencies to charge a specified fee to protected consumers or representatives of protected consumers who elect to remove a security freeze on such consumer's consumer reports; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2), paragraph (d) of subsection (5), paragraph (c) of subsection (11), subsection (13), and paragraph (c) of subsection (17) of section 501.005, Florida Statutes, are amended to read:

501.005 Consumer report security freeze.—

(2) A consumer may place a security freeze on his or her consumer report by:

~~(c) Paying a fee authorized under this section.~~

(5) A consumer may allow his or her consumer report to be accessed for a designated period of time while a security freeze

is in effect by contacting the consumer reporting agency and requesting that the freeze be temporarily lifted. The consumer must provide the following information to the consumer reporting agency as part of the request:

~~(d) Payment of a fee authorized by this section.~~

(11) A security freeze shall remain in place until the consumer requests that it be removed. A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal from the consumer, who, upon making the request for removal, must provide the following:

~~(c) Payment of a fee authorized by this section.~~

(13)(a) A consumer reporting agency may not charge a ~~reasonable~~ fee~~, not to exceed $10,~~ to a consumer who elects to place, remove, or temporarily lift a security freeze on his or her consumer report.

~~(b) A consumer reporting agency shall not charge any fee:~~

~~1. To a consumer 65 years of age or older for the initial placement or removal of a security freeze; or~~

~~2. To a victim of identity theft who has submitted, at the time the security freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.~~

(b)~~(c)~~ A consumer reporting agency may charge a reasonable fee, not to exceed $10, if the consumer fails to retain the original personal identification number or password provided by the consumer reporting agency and the agency must reissue the personal identification number or password or provide a new personal identification number or password to the consumer.

(17) Any written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to any consumer residing in this state shall include a written summary of all rights the consumer has under this section, and, in the case of a consumer reporting agency which compiles and maintains consumer reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer reporting agency. The information set forth in paragraph (b) of the written summary of rights must be in at least 12-point boldface type. The written summary of rights required under this section is sufficient if it is substantially in the following form:

(c) When you place a security freeze on your consumer report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your consumer report or authorize the release of your consumer report for a designated period of time after the security freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The personal identification number or password.

2. Proper identification to verify your identity.

3. Information specifying the period of time for which the report shall be made available.

~~4. Payment of a fee authorized by this section.~~

Section 2. Subsection (2), paragraph (a) of subsection (7), subsection (9), and paragraph (c) of subsection (14) of section 501.0051, Florida Statutes, are amended to read:

501.0051 Protected consumer report security freeze.—

(2) A representative may place a security freeze on a protected consumer's consumer report by:

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

(a) Submitting a request to a consumer reporting agency in the manner prescribed by that agency; and

(b) Providing the agency with sufficient proof of authority and sufficient proof of identification of the representative~~; and~~

~~(c) Paying the agency a fee as authorized under this section~~.

(7) A consumer reporting agency shall remove a security freeze from a protected consumer's consumer report or record only under either of the following circumstances:

(a) Upon the request of a representative or a protected consumer. A consumer reporting agency shall remove a security freeze within 30 days after receiving a request for removal from a protected consumer or his or her representative.

1. A representative submitting a request for removal must provide all of the following:

a. Sufficient proof of identification of the representative and sufficient proof of authority as determined by the consumer reporting agency.

b. The unique personal identifier provided by the consumer reporting agency pursuant to subsection (5).

~~c. A fee as authorized under this section.~~

2. A protected consumer submitting a request for removal must provide both ~~all~~ of the following:

a. Sufficient proof of identification of the protected consumer as determined by the consumer reporting agency.

b. Documentation that the sufficient proof of authority of the protected consumer's representative to act on behalf of the protected consumer is no longer valid.

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

~~c. A fee as authorized under this section.~~

(9)(a) A consumer reporting agency may not charge any ~~a reasonable~~ fee~~, not to exceed $10,~~ to place or remove a security freeze.

(b) A consumer reporting agency may ~~also~~ charge a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must reissue the unique personal identifier or provide a new unique personal identifier to the representative.

~~(c) A consumer reporting agency may not charge a fee under this section to the representative of a protected consumer who is a victim of identity theft if the representative submits, at the time the security freeze is requested, a copy of a valid investigative report, an incident report, or a complaint with a law enforcement agency about the unlawful use of the protected consumer's identifying information by another person.~~

(14) A written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to a representative and protected consumer residing in this state must include a written summary of all rights that the representative and protected consumer have under this section and, in the case of a consumer reporting agency that compiles and maintains records on a nationwide basis, a toll-free telephone number that the representative can use to communicate with the consumer reporting agency. The information provided in paragraph (b) must be in at least 12-point boldfaced type. The written summary of rights required under this section is sufficient if it is substantially in the following form:

(c) To remove the security freeze on the protected consumer's record or report, you must contact the consumer reporting agency and provide all of the following:

1. Proof of identification as required by the consumer reporting agency.

2. Proof of authority over the protected consumer as required by the consumer reporting agency.

3. The unique personal identifier provided by the consumer reporting agency.

~~4. Payment of a fee.~~

Section 3. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Lizabeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: February 13, 2018

I respectfully request that **Senate Bill #1302**, relating to **Consumer Report Security Freezes**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

01/March/2018
Meeting Date

1302
Bill Number (if applicable)

Topic Credit Freeze Fee

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title Dir. of Legislative Affairs

Address PL 10 The Capitol
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850 617 7700

Email grace.lovett@freshfromflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Dept. Agriculture + Consumer Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1302
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street

Tallahassee, FL 32303
City *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1302
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consumer Report Security Freezes

Name BG Murphy

Job Title Legislative Affairs Director

Address 200 E. Gaines Street
Street
Tallahassee FL 32399
City *State* *Zip*

Phone 850-413-2890

Email bg.murphy@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Patronis/Department of Financial Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 1302
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consumer Rpnt Freezes

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave, Suite 304
Street

Tall FL 32301
City *State* *Zip*

Phone 850 228-4243

Email zsmith@aarp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 1364
INTRODUCER:	Health Policy Committee and Senator Rader
SUBJECT:	Public Records/Substance Abuse Service Providers
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Brown	Caldwell	GO	**Favorable**
3.	Looke	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1364 amends s. 119.071, F.S., to exempt from public records laws certain personal identifying information of current and former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider licensed under part II of ch. 397, F.S., as well as certain personal identifying and location information of their spouses and children. The bill provides in its statement of public necessity as justification for the exemption that the public records exemption is needed as the release of this information may place these employees and their families at risk of harm from hostile persons based on the actions of the employees.

The bill provides for an Open Government Sunset Review and an automatic repeal date of October 2, 2023, unless reviewed and saved from repeal by the Legislature before that date.

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

The bill takes effect July 1, 2018.

II. Present Situation:

Public Records Law

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

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

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

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

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

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[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(a).
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).
[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[12] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[13]

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.[14] 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.[15] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[16] 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;[17]
- 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;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

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

[13] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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

[15] Section 119.15(3), F.S.

[16] Section 119.15(6)(b), F.S.

[17] Section 119.15(6)(b)1., F.S.

[18] Section 119.15(6)(b)2., F.S.

[19] Section 119.15(6)(b)3., F.S.

[20] Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by 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.[21] 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.[22]

Substance Abuse Treatment Service Regulation

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[23] Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[24] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[25] Substance abuse causes physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[26]

A diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[27] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[28]

Substance Abuse Treatment

The Department of Children and Families (DCF) regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and Rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention, intervention, and clinical treatment services.[29]

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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?

[21] FLA. CONST. art. I, s. 24(c).
[22] Section 119.15(7), F.S.
[23] World Health Organization, *Substance Abuse*, available at: http://www.who.int/topics/substance_abuse/en/ (last visited Feb. 16, 2018).
[24] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders* (Oct. 27, 2015), available at: https://www.samhsa.gov/disorders/substance-use (last visited Feb. 16, 2018).
[25] National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction* (July 2014), available at: https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited Feb. 16, 2018).
[26] *Id*.
[27] Substance Abuse and Mental Health Services Administration, *supra* note 244.
[28] *Id*.
[29] Section 397.311(26), F.S.

Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles.[30] Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes, and evidence-based practices.[31]

Intervention involves structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or early stages of substance abuse and related problems.[32]

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.[33] Clinical treatment services include the following licensable service components:

- Addictions receiving facility;
- Day or night treatment;
- Day or night treatment with community housing;
- Detoxification;
- Intensive inpatient treatment;
- Intensive outpatient treatment;
- Medication-assisted treatment for opiate addiction;
- Outpatient treatment; and
- Residential treatment.[34]

Researchers find a substantial link between a criminal history and substance abuse. In a study conducted by the U.S. Department of Justice, about 58 percent of state prisoners and 63 percent of sentenced jail inmates met the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, (DSM-IV) criteria for drug dependence or abuse. [35] Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.[36]

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[30] Section 397.311(26)(c), F.S.

[31] Department of Children and Families, *Substance Abuse: Prevention*, http://www.myflfamilies.com/service-programs/substance-abuse/prevention, (last visited Feb. 16, 2018). These prevention programs are focused primarily on youth, and, recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural, and community environments.

[32] Section 397.311(26)(b), F.S.

[33] Section 397.311(26)(a), F.S.

[34] *Id*.

[35] Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, (June 2017) available at: https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf (last visited Feb. 16, 2018).

[36] U.S. Department of Health and Human Services, National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, p. 12, available at: **https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf** (last visited Feb. 16, 2018).

Some substance abuse treatment facilities are owned by county governments or county government agencies. Because these facilities are government-owned, the public has a right to access their records, including records of the home addresses, telephone numbers, dates of birth, and photographs of employees of those facilities, as well as information about their families. In at least one instance in Broward County, a client at the Broward Addiction Recovery Center (BARC) spontaneously came to the home of a BARC employee seeking after hours counseling. The client had found the employee's home address through an internet search.[37]

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to exempt the following information from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider that is licensed under part II of ch. 397, F.S., and whose duties include the counseling and treatment of persons who have mental health or substance abuse disorders;
- The home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- The names and locations of schools and day care facilities attended by the children of such personnel.

The bill establishes an Open Government Sunset Review Act automatic repeal date of October 2, 2023, unless reviewed and saved from repeal by the Legislature.

Section 2 provides the public necessity statement required by s. 24(c), Art. I of the Florida Constitution. The bill states that it is a public necessity to establish the public records exemption since the release of the information protected by the exemption may place the specified personnel of a licensed substance abuse provider and their family members in danger of physical and emotional harm from hostile persons who may react inappropriately and violently to actions taken by such personnel. The bill states that such personnel provide services that are necessary and appropriate for persons who have mental health or substance abuse disorders and provide valuable and supportive services to the state's most vulnerable residents. Despite the value of such services, some persons may become hostile toward the personnel and may pose a threat to them indefinitely. 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 of the bill establishes an effective date of July 1, 2018.

[37] Broward Addiction Recovery Center, Broward County, Florida, *Public Records Exemption* (on file with the Senate Committee on Governmental Oversight and Accountability and the Senate Committee on Health Policy).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Voting Requirement
Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Public Necessity Statement
Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the safety of the licensed substance abuse treatment provider's directors, managers, supervisors, nurses, or clinical employees and their family members since those individuals treat clients who have mental health and substance abuse disorders and who may become hostile toward the treatment provider.

Breadth of Exemption
Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts the home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider that is licensed under part II of ch. 397, F.S., and whose duties include the counseling and treatment of persons who have mental health or substance abuse disorders. Additionally, the bill exempts the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

This bill creates one undesignated section of Florida Law.

IX. Additional Information:

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

CS by Health Policy on February 13, 2018:
The CS removes all references to social security numbers as protected by the provisions of the bill. All government employee social security numbers and social security numbers collected by any government agency[38] are made confidential and exempt by current law in ss. 119.071(4)(a) and (5)(a), F.S.

B. Amendments:

None.

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

[38] Defined in s. 119.011, F.S., to include 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.

By the Committee on Health Policy; and Senator Rader

588-03169-18 20181364c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements to certain identifying and location information of current or former directors, managers, supervisors, nurses, and clinical employees of substance abuse service providers that are licensed under part II of ch. 397, F.S., and the spouses and children thereof; providing for retroactive applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

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

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and

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

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Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and

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

shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. 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-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, 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.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement

hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers;

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

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of

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

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

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

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

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

p. 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. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

q. 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. 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.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit

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

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider that is licensed under part II of chapter 397 and whose duties include the counseling and treatment of persons who have mental health or substance abuse disorders; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, 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.

Section 2. (1) The Legislature finds that it is a public necessity that all of the following identifying and location information be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider that is licensed under part II of chapter 397, Florida Statutes.

(b) The home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of personnel identified in paragraph (a).

(c) The names and locations of schools and day care facilities attended by the children of such personnel.

(2) The Legislature finds that the release of such identifying and location information may place current or former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider that is licensed under part II of chapter 397, Florida Statutes, and their family members, in danger of physical and emotional harm from hostile

persons who may react inappropriately and violently to actions taken by such directors, managers, supervisors, nurses, or clinical employees of a substance abuse service provider that is licensed under part II of chapter 397, Florida Statutes. These personnel provide services that are necessary and appropriate for persons who have mental health or substance abuse disorders. In addition, these personnel provide valuable and supportive services to the state's most vulnerable residents. Despite the value of such services, some persons may become hostile toward the personnel and may pose a threat to them indefinitely. 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 July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 21, 2018

I respectfully request that **Senate Bill # 1364**, relating to Public Records/ Substance Abuse Service Providers, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Kevin Rader

Senator Kevin J. Rader
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1364
Bill Number (if applicable)

Topic PUBLIC RECORDS/SUBSTANCE ABUSE SERVICE Providers
Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. ANDREWS AVE.
Street

Phone 954-253-7320

FT. LAUDERDALE FL 33301
City *State* *Zip*

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County Bd. of County Cmsrs.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1426
INTRODUCER:	Rules Committee and Senator Lee
SUBJECT:	Local Government Fiscal Transparency
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.	Babin	Hansen	AP	**Favorable**
3.	Present	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1426 creates the Local Government Fiscal Transparency Act. The act:

- Requires local governments to post on their websites the voting records related to taxes and debt.
- Requires property appraisers to maintain a website that includes certain property tax information.
- Requires local governments to provide additional notice of tax increases and new tax-supported debt.
- Requires local governments to undergo a debt affordability analysis before authorizing debt.
- Requires local government audits submitted to the Auditor General to be accompanied by an affidavit from the chair of the governing board stating that the local government has complied with the Local Government Fiscal Transparency Act.

The bill also:

- Requires the Auditor General, during its review of local government audit reports, to request evidence of corrective action from local governments found not to be in compliance under certain circumstances; and requires local governments to provide evidence of such correction action and evidence of completion of such action within a specified period.
- Revises the local government annual reporting requirements for economic development incentives.

- Requires the tentative budget to remain on a county or municipality's website for at least 45 days and the final budget, as well as any amendments to the budget, to remain on the entity's website for at least 2 years.

The bill does not affect state or local government revenues.

II. Present Situation:

The present situation is included in Section III. Effect of Proposed Changes.

III. Effect of Proposed Changes:

General Provisions (Section 9)

The bill creates Part VIII of Chapter 218, F.S., titled the "Local Government Fiscal Transparency Act." The bill creates s. 218.803, F.S., providing that the purpose of the Act is to:

Promote the fiscal transparency of local governments when using public funds by requiring additional public noticing of proposed local government actions that would increase taxes, enact new taxes, extend expiring taxes, or issue tax-supported debt and requiring voting records of local governing bodies related to such actions to be easily and readily accessible by the public.

The bill creates s. 218.805, F.S., defining the following terms:

- "Debt" is defined as bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanisms or financial arrangements, whether or not a debt for legal purposes, for financing or refinancing the acquisition, construction, improvement, or purchase of capital improvement projects.
- "Local government" is defined as any county, municipality, school district, special district dependent to a county or municipality, municipal service taxing unit, or independent special district, but does not include special dependent or independent districts established to provide hospital services, provided such special districts do not levy, assess, and collect ad valorem taxes.
- "Tax increase" is defined as:
  - For ad valorem taxes, any increase in a local government's millage rate above the rolled-back rate as defined in s. 200.065(1), F.S.
  - For all other taxes, a tax enactment, tax extension, or an increase in the tax rate.
- "Tax-supported debt" is defined as debt with a duration of more than 5 years secured in whole or in part by state or local tax levies, whether such security is direct or indirect, explicit or implicit, and includes, but is not limited to, debt for which annual appropriations pledged for payment are from government fund types receiving tax revenues or shared revenues from state tax sources. The term does not include debt secured solely by the revenues generated by the project that is financed with the debt.

Voting Record Access: Property Tax, Local Option Taxes, and New Debt Issuance (Section 9)

Current Situation

While the voting records of local governments' governing boards are public records[1] and subject to public disclosure, local governments are not required to make available, on their website, the voting records of their governing board on actions related to tax increases or the issuance of new tax-supported debt.

However, there are public notice requirements for actions taken by local governments *related to* tax increases and new tax-supported debt issuance. For example, many of these actions by municipalities and counties require the adoption of an ordinance, and the adoption of an ordinance generally requires publication of notice in a newspaper at least ten days before the meeting when such adoption is scheduled to occur.[2]

Proposed Changes

The bill creates s. 218.81, F.S., to require each local government to post on its website, in a manner that is easily accessible to the public, the voting records of each action taken by the local governing board during the most recent four years related to tax increases or new tax-supported debt issuance. However, debt that was refinanced or refunded and that did not extend the term or increase the outstanding principal amount of the original debt need not be included. The bill phases these provisions in over four years.

The bill also requires that the local government provide links on its website to allow users to navigate to related sites for available supporting details or documentation. Additionally, the local government must include the website address in the public notice of a tax increase or the issuance of new tax-supported debt.

Tax History: Property Taxes (Section 9)

Current Situation

Each year, the county property appraiser delivers a "notice of proposed property taxes and non-ad valorem assessments" to each taxpayer listed on the current year's tax roll. This notice is commonly referred to as the truth-in-millage notice or TRIM notice, and it is sent on behalf of all taxing authorities and local governing boards levying ad valorem taxes or non-ad valorem assessments.[3] The TRIM notice contains parcel-specific information that allows the property owner to compare the prior year's taxes with the current year's estimated taxes based on the recommended local government budget, as well as the time and place of the budget hearing.[4] Several years' of TRIM notices and corresponding tax bills are commonly available on county tax collectors' and property appraisers' websites.

[1] *See generally* ch. 119, F.S., and s. 119.01, F.S.
[2] *See* ss. 125.66(2)(a) and 166.041, F.S.
[3] *See* s. 200.069, F.S.
[4] Section 200.069(2), F.S.

Proposed Changes

The bill creates s. 218.82, F.S., to require each county property appraiser to maintain a website that includes, in a manner easily accessible by the public, for each parcel of property, the TRIM notice and a minimum four-year history of the millage rate and the amount of tax levied by each taxing authority on each parcel. The bill phases-in these requirements for the millage and taxes levied as follows:

- By October 1, 2017, 2 years of history;
- By October 1, 2018, 3 years of history; and
- By October 1, 2019, and thereafter 4 years of history.

The bill further requires each local government to post on its website, in a manner that is easily accessible to the public, a minimum of four years of history of its annual millage rates and the total annual amount of property tax revenue generated by each of these levies. The bill allows these provisions to be phased in over three years.

Public Notice: Local Option Tax Increases and New Debt Issuance (Section 9)

Current Situation

Current law requires public notice for certain actions taken by local governments related to tax increases and new tax-supported debt issuance. For instance, actions by municipalities and counties that require the adoption of an ordinance would be subject to public notice requirements for ordinances;[5] school districts are required to hold elections before the issuance of certain bonds,[6] and elections require publication of notice at least once a week for two consecutive weeks in a newspaper published in the district.[7]

Additionally, ch. 200, F.S., requires local governments to hold at least two public hearings to first adopt a tentative budget and then to adopt a final budget. The public meeting held to adopt the final budget requires publication of notice in a newspaper of general circulation in the county stating the governing board's intent to adopt a final millage rate and budget.[8]

Proposed Changes

The bill creates s. 218.83, F.S., to require an additional public meeting of the local governing board before the board takes final action on a tax increase[9] or final action on a new tax-supported debt issuance. Specifically, at least 14 days before the governing body meeting to take a final vote to approve a tax increase or to approve the issuance of any new tax-supported debt, the governing body must hold a public hearing to solicit public input on the proposed tax increase or new tax-supported debt issuance. The public is specifically allowed to speak and ask questions relevant to the proposed tax increase or debt issuance. The public hearing must be held after 5 p.m. if scheduled on a day other than Saturday and may not be held on a Sunday.

[5] *See* discussion related to voting records access, page 2, *infra.*
[6] Section 1010.41(3), F.S.
[7] Section 1010.43, F.S.
[8] Section 200.065(2)(d), F.S.
[9] For the purposes of this section, a tax increase does not include an ad valorem tax increase or taxes enacted, extended, or increased by referendum.

If, after the public hearing, the local government intends to proceed with a vote to approve a tax increase or the new issuance of tax-support debt, the local government must provide additional public notice at least ten days before the date of the scheduled meeting. The notice must be in an advertisement in a newspaper of general circulation in the county or counties where the local government is located. In lieu of publishing in a newspaper, the local government may mail a copy of the notice to each elector residing within the jurisdiction of the local government. However, the mailed notice must also be posted on the local government's website in a manner that is easily accessible to the public.

For tax increases, the notice must include, at a minimum:
- A statement prominently posted that the local government intends to vote on a proposed new tax enactment, tax extension, or tax rate increase;
- The time and place of the meeting;
- The amount of the tax increase, including both the rate and total amount of annual revenue expected to be generated and the expected annual revenue expressed as a percentage of the local government's general revenue fund;
- A detailed explanation of the intended uses of the levy; and
- A statement indicating whether the governing board expects to use the tax proceeds to secure debt.

For the new issuance of tax-supported debt, the notice must include, at a minimum:
- A statement prominently posted that the local government intends to vote on a proposed new issuance of tax-supported debt;
- The time and place of the meeting;
- A truth in bonding statement that includes the amount of the debt, the period of time over which the debt is expected to be repaid, a forecasted interest rate for the debt, the total amount of interest expected to be paid over the term of the debt issuance, the source of repayment or security for the debt, and a statement that the authorization of the debt will result in a specific amount of money being unavailable to finance the other services of the local government for each year of the term of the debt; and
- Presentation of the debt affordability ratios required to be calculated pursuant to s. 218.84, F.S. (see Debt Affordability Measures below).

New Debt Issuance: Debt Affordability Measures (Section 9)

Current Situation

Section 215.98, F.S., requires the state to annually prepare a debt affordability report. The report is required to include, at a minimum:
- A listing of state debt outstanding, other debt secured by state revenues, and other contingent debt;
- An estimate of revenues available for the next ten fiscal years to pay debt service, including general revenues plus any revenues specifically pledged to pay debt service;
- An estimate of additional debt issuance for the next ten fiscal years for the state's existing borrowing programs;

- A schedule of the annual debt service requirements, including principal and interest allocation, on the outstanding state debt and an estimate of the annual debt service requirements on the debt for each of the next ten fiscal years;
- An overview of the state's general obligation credit rating;
- Identification and calculation of pertinent debt ratios, including, but not limited to, debt service to revenues available to pay debt service, debt to personal income, and debt per capita for the state's net tax-supported debt;
- The estimated debt capacity available over the next ten fiscal years without the benchmark debt ratio of debt service to revenue exceeding six percent; and
- A comparison of the debt ratios prepared for the report with the comparable debt ratios for the ten most populous states.

Section 215.98, F.S., also requires legislative statements of determination (commonly referred to as "budget statements") in the legislative authorization of new tax-supported debt if the additional borrowing would exceed certain benchmark debt ratios. If the ratio of debt service to revenue available to pay debt service on tax-supported debt would exceed six percent as a result of the borrowing, the statement of determination is that such authorization and issuance is in the best interest of the state and should be implemented. If the same ratio would exceed seven percent, the Legislature must determine that such additional debt is necessary to address a critical state emergency.

Proposed Changes

The bill creates s. 218.84, F.S., to require local governments to conduct and consider a debt affordability analysis before approving the issuance of new tax-supported debt. The analysis must, at a minimum, consist of the calculation of the local government's actual debt affordability ratio for the five fiscal years before the year the debt is expected to be issued and a projection of the ratio for at least the two fiscal years in which the new debt is expected to be issued. The analysis must include a comparison of the debt affordability ratio with and without the new debt issuance. The debt affordability ratio is the total annual debt service for outstanding tax-supported debt divided by total annual revenues available to pay debt service on outstanding debt.

Consequences for Non-Compliance (Sections 1, 2, and 9)

Current Situation

Section 218.39, F.S., governs annual audit reports of local entities. If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, those entities must have an annual financial audit of its accounts and records completed within nine months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds. The types of local governments covered by this provision are:

- Each county;
- Any municipality with revenues or the total of expenditures and expenses in excess of $250,000;

- Any special district with revenues or the total of expenditures and expenses in excess of $100,000;
- Each district school board;
- Each charter school established under s. 1002.33, F.S; and
- Each charter technical center established under s. 1002.34, F.S.[10]

The auditor is required to prepare an audit report in accordance with the rules of the Auditor General. The audit report must be filed with the Auditor General within 45 days after delivery of the audit report to the governing body of the audited entity, but no later than nine months after the end of the audited entity's fiscal year. The audit report must include a written statement describing corrective actions to be taken in response to each of the auditor's recommendations included in the audit report.[11]

The Auditor General is required to notify the Legislative Auditing Committee of any audit report prepared pursuant to this section that indicates that an audited entity failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports.[12] The Legislative Auditing Committee may direct the governing body of the audited entity to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.[13] If the Legislative Auditing Committee determines that the written statement is not sufficient, it may require the chair of the governing body of the local governmental entity, the elected official of each county agency, the chair of the district school board, the chair of the board of the charter school, or the chair of the board of the charter technical career center, to appear before the committee.[14] If the Legislative Auditing Committee determines that an audited entity failed to take full corrective action for which there is no justifiable reason for not taking such action, or has failed to comply with committee requests made pursuant to this section, the committee may proceed in accordance with s. 11.40(2), F.S.[15]

Section 11.40, F.S., governs the Legislative Auditing Committee, its authority, and the actions it may take in specified circumstances. In the case of a local governmental entity or district school board, these actions include, but are not limited to, directing the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.[16]

Proposed Changes

Section 9 creates s. 218.88, F.S., to require the annual audit reports described above to include an affidavit executed by the chair of the governing board of the local government stating that the

[10] Municipalities with revenues or total expenditures and expenses between $100,000 and $250,000, and special districts with revenues or total expenditures and expenses between $50,000 and $100,000 are also covered in certain circumstances. Section 218.39(1)(g)-(h), F.S.
[11] Section 218.39(7), F.S.
[12] Section 218.39(8), F.S.
[13] Section 218.39(8)(a), F.S.
[14] Section 218.39(8)(b), F.S.
[15] Section 218.39(8)(c), F.S.
[16] Section 11.40(2)(a), F.S.

local government has complied with the requirements of Part VIII of Chapter 218, F.S. (the new provisions created by the bill). If the local government has not complied, the affidavit must include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future.

Section 2 amends s. 11.45, F.S., to require local governments not in compliance with Part VIII of Chapter 218, F.S., to provide, upon request of the Auditor General, evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date it is requested by the Auditor General. The Auditor General must notify the Legislative Auditing Committee if the local government fails to comply with the Auditor General's request or is unable to take correction action within the required timeframe.

Failure to comply with Part VIII, Chapter 218, F.S., could ultimately result in the Legislative Auditing Committee directing the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.[17]

Section 1 amends s. 11.40, F.S., to authorize the Department of Financial Services and the Division of Bond Finance of the State Board of Administration to subject a local government entity, district school board, charter school, or charter technical career center to further state action if the entity fails to comply with Part VIII of Chapter 218, F.S.

Administrative Changes (Section 9)

Section 9 creates s. 218.89, F.S., to provide that if a local government is required to post information to its website, but does not operate a website, the local government must inform the appropriate county or municipality within which the local government is located, of any information required to be posted. Each such municipality or county must post the required information from such local government on its website.

Economic Development Incentive Reporting (Sections 3 and 6)

Current Situation

Sections 125.045 and 166.021, F.S., require local governments to provide the Office of Economic and Demographic Research (EDR) with details regarding their economic development incentives in excess of $25,000 granted during the previous fiscal year. The EDR annually collects this data from local governments through an online survey, coupled with follow-up communications as necessary. The survey questions are guided by four categories of incentives: direct financial incentives of monetary assistance, indirect incentives in the forms of grants and loans, fee-based or tax-based incentives, and below-market rate leases or deeds for real property. The EDR compiles the economic development incentives provided by the local governments in a manner that shows the total of each class of incentives into a report and provides the report to the President of the Senate, Speaker of the House of Representatives, and the Department of Economic Opportunity.

[17] Section 11.40(2), F.S.

Proposed Changes

Sections 3 and 6 amend ss. 125.045 and 166.021, F.S., respectively, to revise the local government reporting requirements for economic development incentives. Sections 6 and 7 require each county and municipality to report whether the incentive was provided directly to an individual business or by another entity on behalf of the local government and the source of local dollars, and any state or federal dollars obligated for the incentive.

The bill also revises the classes of economic development incentives. The bill requires reporting on financial incentives; general assistance, services, and support; and business recruitment, retention, or expansion efforts.

Under sections 3 and 6, EDR must compare the results of the economic development incentives provided by all local governments with the results of state incentives provided in similar classes to the extent that such a comparison is possible.

Online Posting of Governmental Budgets (Sections 4, 5, and 7)

Current Situation

Counties[18] and municipalities[19] are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption.[20] Current law does not specify how long these documents must remain available on the website.

Proposed Changes

Sections 4, 5, and 7 amend ss. 129.03, 129.06, and 166.241, F.S., respectively, to require a tentative budget to remain on a county or municipality's website for at least 45 days. The sections also requires a final budget to remain on the entity's website for at least two years. Finally, the sections requires an adopted amendment to a budget to remain on the website for at least two years.

Other Miscellaneous Provisions (Sections 8, 10, 11, and 12)

The bill transfers and renumbers s. 218.80 as s. 218.795, F.S., amends s. 218.32(1)(e), F.S., to conform a cross-reference, and contains a legislative finding that the act fulfills an important state interest.

The effective date of the bill is July 1, 2018.

[18] Section 129.03, F.S.
[19] Section 166.241, F.S.
[20] Sections 129.06(2)(f)2., 166.241(5), and 189.016(7), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill could require expenditures related to the provision of additional data on local government websites, additional noticing requirements and public meetings, and additional required analysis of debt affordability.

However, there are several exemptions and exceptions to the mandate requirements. The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was approximately $2.05 million or less.[21,22,23] If none of the exemptions or exceptions apply, the bill must contain a finding that the bill fulfills an important state interest and must be approved by two-thirds of the membership of each house of the Legislature.

Bill Section 11 provides that this act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not directly affect state or local government revenues.

B. Private Sector Impact:

Households and businesses will have improved access to upcoming local government decisions regarding tax increases and new debt issuance.

C. Government Sector Impact:

The provisions of the bill are expected to require indeterminate expenditures by local governments.

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[21] FLA. CONST. art. VII, s. 18(d).
[22] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf.
[23] Based on the Demographic Estimating Conference's population adopted on April 1, 2017. The executive summary is available at http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 125.045, 129.03, 129.06, 166.021, 166.241, and 218.32.

This bill creates the following sections of the Florida Statutes: 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89.

This bill transfers and renumbers section 218.80 of the Florida Statutes as section 218.795 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on March 1, 2018:

- Requires the tentative budget to remain on a county or municipality's website for at least 45 days and the final budget, as well as any amendments to the budget, to remain on the entity's website for at least 2 years;
- Revises the definition of "debt" so that it applies to capital improvement projects rather than capital outlay projects;
- Provides that the additional public hearing and notice for a tax increase does not apply to taxes enacted, extended, or increased by referendum; and
- Clarifies that a local government that does not operate an official website must provide the required information to the appropriate entity in which the local government is located, whether that is a municipality or a county.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
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The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete lines 46 - 494
and insert:
Section 1. Paragraph (c) of subsection (3) of section 129.03, Florida Statutes, is amended to read:
129.03 Preparation and adoption of budget.—
(3) The county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the next fiscal year, shall prepare and present to the board a tentative budget for the next fiscal year for each of the funds



provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

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

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

129.06 Execution and amendment of budget.—

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

(f) Unless otherwise prohibited by law, if an amendment to a budget is required for a purpose not specifically authorized



in paragraphs (a)-(e), the amendment may be authorized by resolution or ordinance of the board of county commissioners adopted following a public hearing.

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

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

Section 3. Subsections (3) and (5) of section 166.241, Florida Statutes, are amended to read:

166.241 Fiscal years, budgets, and budget amendments.—

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



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the manager or administrator of such county or counties who shall post the budgets on the county's website.

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

Section 4. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s. 218.38, ~~or~~ s. 218.503(3), or part VIII of chapter 218, the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not



pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date such action shall begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement the provisions of this paragraph.

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

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the



process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

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

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

Section 5. Present paragraphs (d) through (j) of subsection (7) of section 11.45, Florida Statutes, are redesignated as paragraphs (e) through (k), respectively, and a new paragraph (d) is added to that subsection, to read:

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

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(d) During the Auditor General's review of audit reports, he or she shall contact each local government, as defined in s. 218.805(2), that is not in compliance with part VIII of chapter 218 and request evidence of corrective action. The local government shall provide the Auditor General with evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date it is requested by the Auditor General. If the local government fails to comply with the Auditor General's request or is unable to take corrective action within the required timeframe, the Auditor General shall notify the Legislative Auditing Committee.



Section 6. Subsection (5) of section 125.045, Florida Statutes, is amended to read:

125.045 County economic development powers.—

(5)(a) By January 15 of each year~~, 2011, and annually thereafter~~, each county shall report to the Office of Economic and Demographic Research ~~the~~ economic development incentives in excess of $25,000 given to businesses ~~any business~~ during the county's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the counties into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The county shall identify whether the economic development incentive is provided directly by the county or by another entity on behalf of the county, as well as the source of local dollars, and any state or federal dollars obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows ~~include~~:

1. Class one: ~~Direct~~ Financial incentives ~~of monetary assistance~~ provided to an individual ~~a~~ business ~~from the county or through an organization authorized by the county~~. Such incentives include:~~, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.~~

a. Grants.

b. Tax-based credits, refunds, or exemptions.

c. Fee-based credits, refunds, or exemptions.

d. Loans, loan insurance, or loan guarantees.

e. Below-market rate leases or deeds for real property.



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f. Job training or recruitment.

g. Subsidized or discounted government services.

h. Infrastructure improvements.

2. Class two: General assistance, services, and support provided collectively to businesses with a common interest or purpose. Such incentives include:

a. Technical assistance and training.

b. Business incubators and accelerators.

c. Infrastructure improvements ~~Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development~~.

3. Class three: Business recruitment, retention, or expansion efforts provided to benefit an individual business or class of businesses. Such incentives include:

a. Marketing and market research.

b. Trade missions and trade shows.

c. Site selection.

d. Targeted assistance with the permitting and licensing process.

e. Business plan or project development ~~Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions~~.

~~4. Below-market rate leases or deeds for real property.~~

(b) A county shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

(c) The Office of Economic and Demographic Research shall



compile the economic development incentives provided by each county in a manner that shows the total of each class of economic development incentives provided by each county and all counties. To the extent possible, the office shall compare the results of the economic development incentives provided by all counties to the results of state incentives provided in similar classes.

Section 7. Paragraph (e) of subsection (8) of section 166.021, Florida Statutes, is amended to read:

166.021 Powers.—

(8)

(e)1. By January 15 of each year~~, 2011, and annually thereafter~~, each municipality having annual revenues or expenditures greater than $250,000 shall report to the Office of Economic and Demographic Research ~~the~~ economic development incentives in excess of $25,000 given to businesses ~~any business~~ during the municipality's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the municipalities into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The municipality shall identify whether the economic development incentive was provided directly by the municipality or by another entity on behalf of the municipality, as well as the source of local dollars, and any state or federal dollars obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows ~~include~~:

a. Class one: ~~Direct~~ Financial incentives ~~of monetary assistance~~ provided to an individual ~~a~~ business ~~from the~~



~~municipality or through an organization authorized by the municipality~~. Such incentives include:~~, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.~~

(I) Grants.

(II) Tax-based credits, refunds, or exemptions.

(III) Fee-based credits, refunds, or exemptions.

(IV) Loans, loan insurance, or loan guarantees.

(V) Below-market rate leases or deeds for real property.

(VI) Job training or recruitment.

(VII) Subsidized or discounted government services.

(VIII) Infrastructure improvements.

b. Class two: General assistance, services, and support provided collectively to businesses with a common interest or purpose. Such incentives include:

(I) Technical assistance and training.

(II) Business incubators and accelerators.

(III) Infrastructure improvements ~~Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development~~.

c. Class three: Business recruitment, retention, or expansion efforts provided to benefit an individual business or class of businesses. Such incentives include:

(I) Marketing and market research.

(II) Trade missions and trade shows.

(III) Site selection.

(IV) Targeted assistance with the permitting and licensing process.



(V) Business plan or project development ~~Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions~~.

~~d. Below-market rate leases or deeds for real property.~~

2. A municipality shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

3. The Office of Economic and Demographic Research shall compile the economic development incentives provided by each municipality in a manner that shows the total of each class of economic development incentives provided by each municipality and all municipalities. To the extent possible, the office shall compare the results of the economic development incentives provided by all municipalities to the results of state incentives provided in similar classes.

Section 8. Section 218.80, Florida Statutes, is transferred and renumbered as section 218.795, Florida Statutes.

Section 9. Part VIII of chapter 218, Florida Statutes, consisting of sections 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89, is created to read:

PART VIII

LOCAL GOVERNMENT FISCAL TRANSPARENCY ACT

218.801 Short title.—This part may be cited as the "Local Government Fiscal Transparency Act."

218.803 Purpose.—The purpose of this part is to promote the fiscal transparency of local governments when using public funds by requiring additional public noticing of proposed local government actions that would increase taxes, enact new taxes,



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extend expiring taxes, or issue tax-supported debt and requiring voting records of local governing bodies related to such actions to be easily and readily accessible by the public.

218.805 Definitions.—As used in this part, the term:

(1) "Debt" means bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanisms or financial arrangements, whether or not a debt for legal purposes, for financing or refinancing the acquisition, construction, improvement, or purchase of capital improvement projects.

(2) "Local government" means any county, municipality, school district, special district dependent to a county or municipality, municipal service taxing unit, or independent special district, but does not include special dependent or independent districts established to provide hospital services, provided such special districts do not levy, assess, and collect ad valorem taxes.

(3) "Tax increase" means:

(a) For ad valorem taxes, any increase in a local government's millage rate above the rolled-back rate as defined in s. 200.065(1).

(b) For all other taxes, a tax enactment, tax extension, or an increase in the tax rate.

(4) "Tax-supported debt" means debt with a duration of more than 5 years secured in whole or in part by state or local tax levies, whether such security is direct or indirect, explicit or implicit, and includes, but is not limited to, debt for which annual appropriations pledged for payment are from government fund types receiving tax revenues or shared revenues from state


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tax sources. The term does not include debt secured solely by revenues generated by the project that is financed with the debt.

218.81 Voting record access.—

(1) Each local government shall post on its website, in a manner that is easily accessible to the public, a history of the voting record of each action taken by the local governing board which addressed a tax increase or new tax-supported debt issuance, except debt that was refinanced or refunded and that did not extend the term or increase the outstanding principal amount of the original debt, as follows:

(a) By October 1, 2018, the voting record history from the preceding year;

(b) By October 1, 2019, the voting record history from the preceding 2 years;

(c) By October 1, 2020, the voting record history from the preceding 3 years; and

(d) By October 1, 2021, and thereafter, the voting record history required pursuant to this subsection from the preceding 4 years.

(2) The website must provide links to allow users to navigate to related sites if supporting details or documentation are available.

(3) In any public notice of a tax increase or the issuance of new tax-supported debt, each local government shall include with the public notice the website address where the voting records can be accessed.

218.82 Property tax information and history.—

(1) Each county property appraiser, as defined in s.



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192.001, shall maintain a website that includes, in a manner easily accessible to the public, links that provide access to:

(a) The notice of proposed property taxes and non-ad valorem assessments required under s. 200.069 for each parcel of property in that county; and

(b) A history of the millage rate and the amount of tax levied by each taxing authority on each parcel, as follows:

1. By October 1, 2018, the history from the 2 preceding years;

2. By October 1, 2019, the history from the 3 preceding years; and

3. By October 1, 2020, and thereafter, the history from the 4 preceding years.

This subsection does not apply to information that is otherwise exempt from public disclosure.

(2) Each local government shall post on its website, in a manner that is easily accessible to the public, links that provide access to a history of each of its millage rates and the total annual amount of revenue generated by each of these levies, as follows:

(a) By October 1, 2018, the history from the 2 preceding years;

(b) By October 1, 2019, the history from the 3 preceding years; and

(c) By October 1, 2020, and thereafter, the history from the 4 preceding years.

218.83 Expanded public noticing of tax increases and new tax-supported debt issuance.—



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(1) For the purpose of this section, the term "tax increase" does not include an ad valorem tax increase or taxes enacted, extended, or increased by referendum.

(2) A local government that intends to vote on a proposed tax increase or the issuance of new tax-supported debt shall advertise a public hearing to solicit public input concerning the proposed tax increase or new tax-supported debt issuance. This public hearing must occur at least 14 days prior to the date that the local governing body meets to take a final vote on the tax increase or issuance of new tax-supported debt. Any hearing required under this subsection shall be held after 5 p.m. if scheduled on a day other than Saturday. No hearing shall be held on a Sunday. The general public shall be allowed to speak and to ask questions relevant to the tax increase or the tax-supported debt issuance. The local government shall provide public notice as set forth in subsection (4).

(3)(a) If, following the public hearing required under subsection (2), the local government intends to proceed with a vote to approve a tax increase or the new issuance of tax-supported debt, the local government shall provide public notice in the manner set forth in subsection (4) at least 10 days prior to the date of the scheduled public meeting.

(b) For a tax increase, the notice shall also include, at a minimum:

1. A statement prominently posted that the local government intends to vote on a proposed new tax enactment, tax extension, or tax rate increase.

2. The time and place of the meeting.

3. The amount of the tax increase, including both the rate


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and total amount of annual revenue expected to be generated and the expected annual revenue expressed as a percentage of the government's general fund revenue.

4. A detailed explanation of the intended uses of the levy.

5. A statement indicating whether the local government expects to use the proceeds to secure debt.

(c) For new tax-supported debt issuance, the notice shall also include, at a minimum:

1. A statement prominently posted that the local government intends to vote on a proposed new issuance of tax-supported debt.

2. The time and place of the meeting.

3. A truth in bonding statement in substantially the following form:

The ...(insert local government name)... is proposing to issue $...(insert principal)... of debt or obligation for the purpose of ...(insert purpose).... This debt or obligation is expected to be repaid over a period of ...(insert term of issue)... years. At a forecasted interest rate of ...(insert rate of interest)..., total interest paid over the life of the debt or obligation will be $...(insert sum of interest payments).... The source of repayment or security for this proposal is the ...(insert the local government name)... existing ...(insert fund).... Authorizing this debt or obligation will result in $...(insert the annual amount)... of ...(insert local government name)... ...(insert fund)... moneys not being available to finance the other services of the ...(insert local government name)... each year for ...(insert the length of the debt or obligation)....



4. Presentation of the debt affordability ratios calculated pursuant to s. 218.84, described in substantially the following form:

The following ratios measure the affordability of outstanding and proposed new long-term, tax-supported debt issued by ...(insert local government name).... The ratios show debt service as a percentage of the revenues available to support that debt, including the new debt being proposed ...(insert 5 year history and 2 year projection of debt affordability ratio)....

(4) The notice provided by a local government announcing a public hearing to take public input as set forth in subsection (2) or the public meeting to take a final vote as set forth in subsection (3) must meet the following requirements:

(a) The local government must advertise the notice in a newspaper of general circulation in the county or counties where the local government exists. A local government may advertise in a geographically limited insert of a general circulation newspaper if the region encompassed by the insert contains the jurisdictional boundaries of the local government. The newspaper must be of general interest with readership in the community and not one of limited subject matter, pursuant to chapter 50. The advertisement must be at least one-quarter page in size of a standard size newspaper or a half-page in size of a tabloid size newspaper, and the headline in the advertisement must be in a type no smaller than 18 point. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must appear in a newspaper that is published at least 5 days a week unless



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the only newspaper in the county is published less than 5 days a week. If the advertisement appears in a geographically limited insert of a general circulation newspaper, the insert must be one that is published at least twice a week throughout the local government's jurisdiction. In lieu of publishing the notice set out in this paragraph, the local government may mail a copy of the notice to each elector residing within the jurisdiction of the local government; and

(b) The local government must post on its website in a manner that is easily accessible to the public the information required under subsections (2) and (3), as applicable.

(5) This section does not apply to the refinancing or refunding of debt that does not extend the term or increase the outstanding principal amount of the original debt.

218.84 Local government debt fiscal responsibility.—

(1) It is the public policy of this state to encourage local governments to exercise prudence in authorizing and issuing debt. Before a local government authorizes debt, it must consider its ability to meet its total debt service requirements in light of other demands on the local government's fiscal resources. Each local government shall perform a debt affordability analysis as set forth in subsection (2), and the governing board shall consider the analysis before approving the issuance of new tax-supported debt.

(2) The debt affordability analysis shall, at a minimum, consist of the calculation of the local government's actual debt affordability ratio for the 5 fiscal years prior to the year the debt is expected to be issued and a projection of the ratio for at least the first 2 fiscal years in which the new debt is

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expected to be issued. The analysis shall include a comparison of the debt affordability ratio with and without the new debt issuance.

(3) The debt affordability ratio for a given fiscal year shall be a ratio:

(a) The denominator of which is the total annual revenues available to pay debt service on outstanding tax-supported debt of the local government; and

(b) The numerator of which is the total annual debt service for outstanding tax-supported debt of the local government.

218.88 Audits.—Audits of financial statements of local governments which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must be accompanied by an affidavit executed by the chair of the governing board of the local government stating that the local government has complied with this part. The affidavit must be filed with the Auditor General, or in the event the local government has not complied with this part, the affidavit shall instead include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future.

218.89 Local government websites.—If a local government is required under this part to post information on its website, but does not operate an official website, the local government must provide the appropriate county or municipality within which the local government is located the information required to be posted, and each county or municipality shall post the required information on its website.

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534 ================= T I T L E A M E N D M E N T ================
535 And the title is amended as follows:
536 Delete line 3
537 and insert:
538 affairs; amending ss. 129.03, 129.06, and 166.241,
539 F.S.; requiring counties and municipalities to
540 maintain certain budget documents on the entities'
541 websites for a specified period; amending s. 11.40,
542 F.S.; expanding the

By Senator Lee

20-00941-18 20181426__

A bill to be entitled

An act relating to local government fiscal transparency; amending s. 11.40, F.S.; expanding the scope of the Legislative Auditing Committee review to include compliance with local government fiscal transparency requirements; amending s. 11.45, F.S.; providing procedures for the Auditor General and local governments to comply with the local government fiscal transparency requirements; amending ss. 125.045 and 166.021, F.S.; revising reporting requirements for certain local government economic development incentives; transferring and renumbering s. 218.80, F.S.; creating part VIII of ch. 218, F.S., consisting of ss. 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89, F.S.; providing a short title; specifying the purpose of the local government fiscal transparency requirements; providing definitions; requiring local governments to post certain voting record information on their websites; requiring the posting of specified links to related sites if certain documentation or details are available; requiring property appraisers to post certain property tax information and history on their websites; requiring local governments to post certain property tax information and history on their websites; requiring public notices for public hearings and meetings before certain increases of local government tax levies or the issuance of new tax-supported debt; specifying noticing and advertising

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requirements for such public hearings and meetings; requiring local governments to conduct certain debt affordability analyses under specified conditions; requiring audits of financial statements of local governments to be accompanied by an affidavit signed by the chair of the local government governing board; requiring certain information to be included in affidavits filed with the Auditor General; providing a method for local governments that do not operate a website to post certain required information; amending s. 218.32, F.S.; conforming a cross-reference; providing that this act fulfills an important state interest; providing an effective date.

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

Section 1. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s. 218.38, ~~or~~ s. 218.503(3), or part VIII of chapter 218, the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be

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subject to further state action, the committee shall:

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

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

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the

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

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

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

Section 2. Present paragraphs (d) through (j) of subsection (7) of section 11.45, Florida Statutes, are redesignated as paragraphs (e) through (k), respectively, and a new paragraph (d) is added to that subsection, to read:

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

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(d) During the Auditor General's review of audit reports, he or she shall contact each local government, as defined in s. 218.805(2), that is not in compliance with part VIII of chapter 218 and request evidence of corrective action. The local government shall provide the Auditor General with evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date

it is requested by the Auditor General. If the local government fails to comply with the Auditor General's request or is unable to take corrective action within the required timeframe, the Auditor General shall notify the Legislative Auditing Committee.

Section 3. Subsection (5) of section 125.045, Florida Statutes, is amended to read:

125.045 County economic development powers.—

(5)(a) By January 15 of each year~~, 2011, and annually thereafter~~, each county shall report to the Office of Economic and Demographic Research ~~the~~ economic development incentives in excess of $25,000 given to businesses ~~any business~~ during the county's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the counties into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The county shall identify whether the economic development incentive is provided directly by the county or by another entity on behalf of the county, as well as the source of local dollars, and any state or federal dollars obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows ~~include~~:

1. Class one: ~~Direct~~ Financial incentives ~~of monetary assistance~~ provided to an individual ~~a~~ business ~~from the county or through an organization authorized by the county~~. Such incentives include:~~, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.~~

a. Grants.

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b. Tax-based credits, refunds, or exemptions.

c. Fee-based credits, refunds, or exemptions.

d. Loans, loan insurance, or loan guarantees.

e. Below-market rate leases or deeds for real property.

f. Job training or recruitment.

g. Subsidized or discounted government services.

h. Infrastructure improvements.

2. Class two: General assistance, services, and support provided collectively to businesses with a common interest or purpose. Such incentives include:

a. Technical assistance and training.

b. Business incubators and accelerators.

c. Infrastructure improvements ~~Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development~~.

3. Class three: Business recruitment, retention, or expansion efforts provided to benefit an individual business or class of businesses. Such incentives include:

a. Marketing and market research.

b. Trade missions and trade shows.

c. Site selection.

d. Targeted assistance with the permitting and licensing process.

e. Business plan or project development ~~Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions~~.

~~4. Below-market rate leases or deeds for real property.~~

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(b) A county shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

(c) The Office of Economic and Demographic Research shall compile the economic development incentives provided by each county in a manner that shows the total of each class of economic development incentives provided by each county and all counties. To the extent possible, the office shall compare the results of the economic development incentives provided by all counties to the results of state incentives provided in similar classes.

Section 4. Paragraph (e) of subsection (8) of section 166.021, Florida Statutes, is amended to read:

166.021 Powers.—

(8)

(e)1. By January 15 of each year~~, 2011, and annually thereafter~~, each municipality having annual revenues or expenditures greater than $250,000 shall report to the Office of Economic and Demographic Research ~~the~~ economic development incentives in excess of $25,000 given to businesses ~~any business~~ during the municipality's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the municipalities into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The municipality shall identify whether the economic development incentive was provided directly by the municipality or by another entity on behalf of the municipality, as well as the source of local dollars, and any state or federal dollars

obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows ~~include~~:

a. Class one: ~~Direct~~ Financial incentives ~~of monetary assistance~~ provided to an individual ~~a~~ business ~~from the municipality or through an organization authorized by the municipality~~. Such incentives include:~~, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.~~

(I) Grants.

(II) Tax-based credits, refunds, or exemptions.

(III) Fee-based credits, refunds, or exemptions.

(IV) Loans, loan insurance, or loan guarantees.

(V) Below-market rate leases or deeds for real property.

(VI) Job training or recruitment.

(VII) Subsidized or discounted government services.

(VIII) Infrastructure improvements.

b. Class two: General assistance, services, and support provided collectively to businesses with a common interest or purpose. Such incentives include:

(I) Technical assistance and training.

(II) Business incubators and accelerators.

(III) Infrastructure improvements ~~Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development~~.

c. Class three: Business recruitment, retention, or expansion efforts provided to benefit an individual business or class of businesses. Such incentives include:

(I) Marketing and market research.

(II) Trade missions and trade shows.

(III) Site selection.

(IV) Targeted assistance with the permitting and licensing process.

(V) Business plan or project development ~~Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions~~.

~~d. Below-market rate leases or deeds for real property.~~

2. A municipality shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

3. The Office of Economic and Demographic Research shall compile the economic development incentives provided by each municipality in a manner that shows the total of each class of economic development incentives provided by each municipality and all municipalities. To the extent possible, the office shall compare the results of the economic development incentives provided by all municipalities to the results of state incentives provided in similar classes.

Section 5. Section 218.80, Florida Statutes, is transferred and renumbered as section 218.795, Florida Statutes.

Section 6. Part VIII of chapter 218, Florida Statutes, consisting of sections 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89, is created to read:

PART VIII

LOCAL GOVERNMENT FISCAL TRANSPARENCY ACT

218.801 Short title.—This part may be cited as the "Local Government Fiscal Transparency Act."

218.803 Purpose.—The purpose of this part is to promote the fiscal transparency of local governments when using public funds by requiring additional public noticing of proposed local government actions that would increase taxes, enact new taxes, extend expiring taxes, or issue tax-supported debt and requiring voting records of local governing bodies related to such actions to be easily and readily accessible by the public.

218.805 Definitions.—As used in this part, the term:

(1) "Debt" means bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanisms or financial arrangements, whether or not a debt for legal purposes, for financing or refinancing the acquisition, construction, improvement, or purchase of capital outlay projects.

(2) "Local government" means any county, municipality, school district, special district dependent to a county or municipality, municipal service taxing unit, or independent special district, but does not include special dependent or independent districts established to provide hospital services, provided such special districts do not levy, assess, and collect ad valorem taxes.

(3) "Tax increase" means:

(a) For ad valorem taxes, any increase in a local government's millage rate above the rolled-back rate as defined in s. 200.065(1).

(b) For all other taxes, a tax enactment, tax extension, or an increase in the tax rate.

(4) "Tax-supported debt" means debt with a duration of more than 5 years secured in whole or in part by state or local tax

levies, whether such security is direct or indirect, explicit or implicit, and includes, but is not limited to, debt for which annual appropriations pledged for payment are from government fund types receiving tax revenues or shared revenues from state tax sources. The term does not include debt secured solely by revenues generated by the project that is financed with the debt.

218.81 Voting record access.—

(1) Each local government shall post on its website, in a manner that is easily accessible to the public, a history of the voting record of each action taken by the local governing board which addressed a tax increase or new tax-supported debt issuance, except debt that was refinanced or refunded and that did not extend the term or increase the outstanding principal amount of the original debt, as follows:

(a) By October 1, 2018, the voting record history from the preceding year;

(b) By October 1, 2019, the voting record history from the preceding 2 years;

(c) By October 1, 2020, the voting record history from the preceding 3 years; and

(d) By October 1, 2021, and thereafter, the voting record history required pursuant to this subsection from the preceding 4 years.

(2) The website must provide links to allow users to navigate to related sites if supporting details or documentation are available.

(3) In any public notice of a tax increase or the issuance of new tax-supported debt, each local government shall include

with the public notice the website address where the voting records can be accessed.

218.82 Property tax information and history.—

(1) Each county property appraiser, as defined in s. 192.001, shall maintain a website that includes, in a manner easily accessible to the public, links that provide access to:

(a) The notice of proposed property taxes and non-ad valorem assessments required under s. 200.069 for each parcel of property in that county; and

(b) A history of the millage rate and the amount of tax levied by each taxing authority on each parcel, as follows:

1. By October 1, 2018, the history from the 2 preceding years;

2. By October 1, 2019, the history from the 3 preceding years; and

3. By October 1, 2020, and thereafter, the history from the 4 preceding years.

This subsection does not apply to information that is otherwise exempt from public disclosure.

(2) Each local government shall post on its website, in a manner that is easily accessible to the public, links that provide access to a history of each of its millage rates and the total annual amount of revenue generated by each of these levies, as follows:

(a) By October 1, 2018, the history from the 2 preceding years;

(b) By October 1, 2019, the history from the 3 preceding years; and

(c) By October 1, 2020, and thereafter, the history from the 4 preceding years.

218.83 Expanded public noticing of tax increases and new tax-supported debt issuance.—

(1) For the purpose of this section, the term "tax increase" does not include an ad valorem tax increase.

(2) A local government that intends to vote on a proposed tax increase or the issuance of new tax-supported debt shall advertise a public hearing to solicit public input concerning the proposed tax increase or new tax-supported debt issuance. This public hearing must occur at least 14 days prior to the date that the local governing body meets to take a final vote on the tax increase or issuance of new tax-supported debt. Any hearing required under this subsection shall be held after 5 p.m. if scheduled on a day other than Saturday. No hearing shall be held on a Sunday. The general public shall be allowed to speak and to ask questions relevant to the tax increase or the tax-supported debt issuance. The local government shall provide public notice as set forth in subsection (4).

(3)(a) If, following the public hearing required under subsection (2), the local government intends to proceed with a vote to approve a tax increase or the new issuance of tax-supported debt, the local government shall provide public notice in the manner set forth in subsection (4) at least 10 days prior to the date of the scheduled public meeting.

(b) For a tax increase, the notice shall also include, at a minimum:

1. A statement prominently posted that the local government intends to vote on a proposed new tax enactment, tax extension,

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or tax rate increase.

2. The time and place of the meeting.

3. The amount of the tax increase, including both the rate and total amount of annual revenue expected to be generated and the expected annual revenue expressed as a percentage of the government's general fund revenue.

4. A detailed explanation of the intended uses of the levy.

5. A statement indicating whether the local government expects to use the proceeds to secure debt.

(c) For new tax-supported debt issuance, the notice shall also include, at a minimum:

1. A statement prominently posted that the local government intends to vote on a proposed new issuance of tax-supported debt.

2. The time and place of the meeting.

3. A truth in bonding statement in substantially the following form:

The ...(insert local government name)... is proposing to issue $...(insert principal)... of debt or obligation for the purpose of ...(insert purpose).... This debt or obligation is expected to be repaid over a period of ...(insert term of issue)... years. At a forecasted interest rate of ...(insert rate of interest)..., total interest paid over the life of the debt or obligation will be $...(insert sum of interest payments).... The source of repayment or security for this proposal is the ...(insert the local government name)... existing ...(insert fund).... Authorizing this debt or obligation will result in $...(insert the annual amount)... of ...(insert local government name)... ...(insert fund)... moneys

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

not being available to finance the other services of the ...(insert local government name)... each year for ...(insert the length of the debt or obligation)....

4. Presentation of the debt affordability ratios calculated pursuant to s. 218.84, described in substantially the following form:

The following ratios measure the affordability of outstanding and proposed new long-term, tax-supported debt issued by ...(insert local government name).... The ratios show debt service as a percentage of the revenues available to support that debt, including the new debt being proposed ...(insert 5 year history and 2 year projection of debt affordability ratio)....

(4) The notice provided by a local government announcing a public hearing to take public input as set forth in subsection (2) or the public meeting to take a final vote as set forth in subsection (3) must meet the following requirements:

(a) The local government must advertise the notice in a newspaper of general circulation in the county or counties where the local government exists. A local government may advertise in a geographically limited insert of a general circulation newspaper if the region encompassed by the insert contains the jurisdictional boundaries of the local government. The newspaper must be of general interest with readership in the community and not one of limited subject matter, pursuant to chapter 50. The advertisement must be at least one-quarter page in size of a standard size newspaper or a half-page in size of a tabloid size newspaper, and the headline in the advertisement must be in a type no smaller than 18 point. The advertisement may not be

placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must appear in a newspaper that is published at least 5 days a week unless the only newspaper in the county is published less than 5 days a week. If the advertisement appears in a geographically limited insert of a general circulation newspaper, the insert must be one that is published at least twice a week throughout the local government's jurisdiction. In lieu of publishing the notice set out in this paragraph, the local government may mail a copy of the notice to each elector residing within the jurisdiction of the local government; and

(b) The local government must post on its website in a manner that is easily accessible to the public the information required under subsections (2) and (3), as applicable.

(5) This section does not apply to the refinancing or refunding of debt that does not extend the term or increase the outstanding principal amount of the original debt.

218.84 Local government debt fiscal responsibility.—

(1) It is the public policy of this state to encourage local governments to exercise prudence in authorizing and issuing debt. Before a local government authorizes debt, it must consider its ability to meet its total debt service requirements in light of other demands on the local government's fiscal resources. Each local government shall perform a debt affordability analysis as set forth in subsection (2), and the governing board shall consider the analysis before approving the issuance of new tax-supported debt.

(2) The debt affordability analysis shall, at a minimum, consist of the calculation of the local government's actual debt

affordability ratio for the 5 fiscal years prior to the year the debt is expected to be issued and a projection of the ratio for at least the first 2 fiscal years in which the new debt is expected to be issued. The analysis shall include a comparison of the debt affordability ratio with and without the new debt issuance.

(3) The debt affordability ratio for a given fiscal year shall be a ratio:

(a) The denominator of which is the total annual revenues available to pay debt service on outstanding tax-supported debt of the local government; and

(b) The numerator of which is the total annual debt service for outstanding tax-supported debt of the local government.

218.88 Audits.—Audits of financial statements of local governments which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must be accompanied by an affidavit executed by the chair of the governing board of the local government stating that the local government has complied with this part. The affidavit must be filed with the Auditor General, or in the event the local government has not complied with this part, the affidavit shall instead include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future.

218.89 Local government websites.—If a local government is required under this part to post information on its website, but does not operate an official website, the local government must provide the county or counties within which the local government is located the information required to be posted, and each such

county shall post the required information on its website.

Section 7. Paragraph (e) of subsection (1) of section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities.—

(1)

(e) Each local governmental entity that is not required to provide for an audit under s. 218.39 must submit the annual financial report to the department no later than 9 months after the end of the fiscal year. The department shall consult with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. The format must include balance sheet information used by the Auditor General pursuant to s. 11.45(7)(g) ~~s. 11.45(7)(f)~~. The department must forward the financial information contained within the annual financial reports to the Auditor General in electronic form. This paragraph does not apply to housing authorities created under chapter 421.

Section 8. The Legislature finds that this act fulfills an important state interest.

Section 9. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1426
Bill Number (if applicable)

Topic Local Government Fiscal Transparency

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Sr. Legislative Advocate

Address PO Box 1757
Street

Phone 850-701-3621

Tall FL 32302
City *State* *Zip*

Email ahughes@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-1-18
Meeting Date

1426
Bill Number (if applicable)

Topic LOCAL GOVERNMENT FISCAL TRANSPARENCY *Amendment Barcode (if applicable)*

Name LAURA YOUMANS

Job Title

Address 100 N. MONROE ST *Street* Phone 294-1830

TAL *City* FL *State* 32301 *Zip* Email LYOUMANS@FLCOUNTIES.

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1460
INTRODUCER:	Criminal Justice Committee and Senator Montford
SUBJECT:	State Agency Law Enforcement Radio System
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Fav/CS**
2.	Erickson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1460 adds a representative of the Florida Sheriffs Association to the Joint Task Force on State Agency Law Enforcement Communications. This representative must be appointed by the president of the Florida Sheriffs Association.

The per diem and travel expenses incurred by the member of the task force who represents the Florida Sheriffs Association in attending task force meetings and in attending to task force affairs shall be paid by the sheriff's office that employs the representative.

II. Present Situation:

Florida's Statewide Law Enforcement Radio System

Florida's Statewide Law Enforcement Radio System (SLERS) is a single, unified digital radio network that meets the radio voice communications needs of state law enforcement officers and other participating agencies throughout the state. The SLERS is a 800/700 (aircraft) MHz system consisting of 200 microwave sites, RF multi-sites, and RF simulcast sites. The SLERS all-digital radio network covers over 60,000 square miles (including 25 miles offshore) with 98 percent mobile coverage and portable coverage in selected areas. The Department of Management

Services (DMS) was tasked with implementing the SLERS and is responsible for ensuring the proper operation and maintenance of all common system equipment.[1]

Joint Task Force on State Agency Law Enforcement Communications

The Joint Task Force on State Agency Law Enforcement Communications (task force) is created within the DMS to advise the DMS of member-agency needs relating to the planning, designing, and establishment of the SLERS.[2] The task force consists of the following members:

- A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who is appointed by the secretary of the department.
- A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who is appointed by the executive director of the department.
- A representative of the Department of Law Enforcement who is appointed by the executive director of the department.
- A representative of the Fish and Wildlife Conservation Commission who is appointed by the executive director of the commission.
- A representative of the Department of Corrections who is appointed by the secretary of the department.
- A representative of the Department of Financial Services who is appointed by the Chief Financial Officer.
- A representative of the Department of Agriculture and Consumer Services who is appointed by the Commissioner of Agriculture.[3]

Each appointed member of the task force must serve at the pleasure of the appointing official. Any vacancy on the task force is to be filled in the same manner as the original appointment. A task force member may, upon notification to the chair before the beginning of any scheduled meeting, appoint an alternative to represent the member on the task force and vote on task force business in his or her absence.[4]

The task force must elect a chair from among its members to serve a one-year term. A vacancy in the chair of the joint task force must be filled for the remainder of the unexpired term by an election of the joint task force members.[5]

The task force is required to meet as necessary, but at least quarterly, at the call of the chair and at the time and place designated by him or her.[6] The per diem and travel expenses incurred by a member of the task force in attending its meetings and in attending to its affairs must be paid from funds budgeted to the state agency that the member represents.[7]

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[1] "Statewide Law Enforcement Radio System (SLERS)," Department of Management Services, available at https://www.dms.myflorida.com/business_operations/telecommunications/radio_communications_services/statewide_law_enforcement_radio_system_slers (last visited on Jan. 16, 2018).
[2] Section 282.709(2), F.S.
[3] Section 282.709(2)(a), F.S.
[4] Section 282.709(2)(b), F.S.
[5] Section 282.709(2)(c), F.S.
[6] Section 282.709(2)(d), F.S.
[7] Section 282.709(2)(e), F.S.

III. Effect of Proposed Changes:

The bill amends s. 282.709, F.S., to add a representative of the Florida Sheriffs Association to the Joint Task Force on State Agency Law Enforcement Communications. This representative must be appointed by the president of the Florida Sheriffs Association. Currently, there are 20 sheriff's offices using the SLERS.[8]

The per diem and travel expenses incurred by the member of the task force who represents the Florida Sheriffs Association in attending task force meetings and in attending to task force affairs shall be paid by the sheriff's office that employs the representative.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have any fiscal impact on state government. However, s. 282.709(2)(e), F.S., provides that per diem and travel expenses incurred by a member of the task force in attending its meetings and in attending to its affairs must be paid from funds budgeted to the *state agency* that the member represents. The sheriff representative does not represent a *state agency*, and the bill does not specify how per diem and travel expenses for this representative are to be paid.

[8] Email from Department of Management Services staff to staff of the House Oversight, Transparency & Administration Subcommittee (Jan. 11, 2018) (on file with the Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

Section 282.709(2)(e), F.S., provides that per diem and travel expenses incurred by a member of the task force in attending its meetings and in attending to its affairs must be paid from funds budgeted to the *state agency* that the member represents. The sheriff representative does not represent a *state agency*, and the bill does not specify how per diem and travel expenses for this representative are to be paid.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 282.709 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 22, 2018:
The committee substitute provides that the per diem and travel expenses incurred by the member of the Joint Task Force on State Agency Law Enforcement Communications who represents the Florida Sheriffs Association in attending task force meetings and in attending to task force affairs shall be paid by the sheriff's office that employs the representative.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Montford

591-02322-18 20181460c1

A bill to be entitled

An act relating to the Joint Task Force on State Agency Law Enforcement Communications; amending s. 282.709, F.S.; providing that a representative of the Florida Sheriffs Association shall be an appointed member of the Joint Task Force on State Agency Law Enforcement Communications; providing that the sheriff's office that employs the representative must pay the per diem and travel expenses incurred by the representative; providing an effective date.

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

Section 1. Paragraphs (a) and (e) of subsection (2) of section 282.709, Florida Statutes, are amended to read:

282.709 State agency law enforcement radio system and interoperability network.—

(2) The Joint Task Force on State Agency Law Enforcement Communications is created adjunct to the department to advise the department of member-agency needs relating to the planning, designing, and establishment of the statewide communication system.

(a) The Joint Task Force on State Agency Law Enforcement Communications shall consist of the following members:

1. A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who shall be appointed by the secretary of the department.

2. A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who shall be appointed by the executive director of the department.

3. A representative of the Department of Law Enforcement who shall be appointed by the executive director of the department.

4. A representative of the Fish and Wildlife Conservation Commission who shall be appointed by the executive director of the commission.

5. A representative of the Department of Corrections who shall be appointed by the secretary of the department.

6. A representative of the Department of Financial Services who shall be appointed by the Chief Financial Officer.

7. A representative of the Department of Agriculture and Consumer Services who shall be appointed by the Commissioner of Agriculture.

8. A representative of the Florida Sheriffs Association who shall be appointed by the president of the Florida Sheriffs Association.

(e) The per diem and travel expenses incurred by a member of the joint task force who represents a state agency in attending task force ~~its~~ meetings and in attending to task force ~~its~~ affairs shall be paid pursuant to s. 112.061, from funds budgeted to the state agency that the member represents. The per diem and travel expenses incurred by the member of the task force who represents the Florida Sheriffs Association in attending task force meetings and in attending to task force affairs shall be paid pursuant to s. 112.061, by the sheriff's office that employs the representative.

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

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

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

The Florida Senate

Committee Agenda Request

To: Senator Benacquisto, Chair
Senate Committee on Rules

Subject: Committee Agenda Request

Date: January 25, 2018

I respectfully request that SB 1460 on State Agency Law Enforcement Radio System be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Bill Montford

Senator Bill Montford
Florida Senate, District 3

File signed original with committee office

S-020 (03/2004)

The Florida Senate

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 1562
INTRODUCER:	Senator Passidomo
SUBJECT:	Elder Abuse
DATE:	February 28, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Favorable**
2.	Harkness	Hansen	AP	**Favorable**
3.	Delia	Phelps	RC	**Favorable**

I. Summary:

SB 1562 provides a civil cause of action for an injunction prohibiting exploitation of a vulnerable adult. The bill allows courts to grant a temporary injunction if certain conditions are met, and creates standards for the court to follow when issuing an injunction.

The bill identifies individuals who may petition the court for an injunction, provides for a choice of venue specifying where the petition may be filed, and provides a procedural framework for the parties and court.

The bill provides several remedies for vulnerable adults following issuance of an injunction, including temporary and exclusive use of a shared residence and the ability to freeze the assets of both the vulnerable adult and an individual accused of exploiting the vulnerable adult. The bill also imposes criminal penalties for violating an injunction.

The bill may increase workload and expenditures for clerks of court, law enforcement agencies, and state attorney's offices statewide.

The bill takes effect July 1, 2018.

II. Present Situation:

Vulnerable Adults

Florida is home to approximately 3.3 million residents aged 65 or older,[1] and five percent of Florida residents are aged 80 or older.[2] Many of Florida's elderly residents may be classified as 'vulnerable adults,' or individuals aged 18 or older who may experience abuse, neglect, or

[1] U.S. Census Bureau, 2013 American Community Survey
[2] *Id*.

exploitation by second parties or may fail to take care of themselves adequately.[3] While abuse, neglect, and exploitation of a vulnerable adult can take various forms, the Department of Elder Affairs has described the "Financial or Material Exploitation" of a vulnerable adult to include the following activities: "Improper use of an elder's funds, property, or assets; cashing checks without permission; forging signatures; forcing or deceiving an older person into signing a document; using an ATM/debit card without permission."[4]

Vulnerable adults residing in nursing homes, assisted living facilities, and adult family care homes are particularly affected by financial exploitation due to the risk of discharge or eviction because of the inability to pay for necessary care and services.[5] Under state and federal law, a nursing home may discharge or transfer a resident with 30 days written notice if the resident has failed, after reasonable and appropriate notice, to pay, or have paid under Medicare or Medicaid, for residence at the facility.[6] Assisted living facilities and adult family care homes may relocate or terminate the residency of a vulnerable adult with 45 days' notice or 30 days' notice, respectively.[7]

Consequently, the responsibility of caring for exploited vulnerable adults at risk of discharge or eviction may fall on various state and federal programs. In 2010, a review of 80 elder financial exploitation cases in Utah found the state's Medicaid program would potentially have to pay about $900,000 to cover the cost of care for vulnerable adults who had suffered substantial losses due to financial exploitation.[8]

Adult Protective Services Act

In 1977, the Legislature enacted the "Adult Protective Services Act," (APSA) ch. 415, F.S., which provides statutory authority for the Department of Children and Families (DCF), to investigate reports of abuse, neglect or exploitation of a vulnerable adult. Upon a report of alleged abuse, neglect, or exploitation, an assessment of an individual's need for protective services is initiated.

The APSA defines a "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.[9]
In addition to DCF intervention and services, the APSA authorizes a vulnerable adult that has been abused, neglected, or exploited, to bring a civil action to recover actual and punitive

[3] S. 415.102, F.S.
[4] Florida Department of Elder Affairs, *The Power to Prevent Elder Abuse*, available at http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English_web.pdf (last visited January 31, 2018).
[5] Consumer Financial Protection Bureau, *We're helping long-term care facilities protect older Americans from financial exploitation*, available at, http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/ (last visited January 31, 2018).
[6] S. 400.022(1)(p), F.S.; 42 U.S.C. § 1396r.
[7] SS. 429.28(1)(k) and 429.85(1)(l), F.S.
[8] *Supra* at note 5.
[9] S. 415.102(28), F.S.

damages against the perpetrator.[10] An action under s. 415.1111, F.S. may be brought within 4 years[11] of the injury in any court of competent jurisdiction by:

- The vulnerable adult;
- The vulnerable adult's guardian;
- A person or organization acting on behalf of the vulnerable adult or the vulnerable adult's guardian; or
- The personal representative of the estate of a deceased vulnerable adult.[12]

The prevailing party in an action under s. 415.1111, F.S., may be entitled to recover attorney fees and costs.[13] The action is considered an addition to and cumulative with other legal and administrative remedies available to the vulnerable adult.

Current law also provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.[14] If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult are valued at $50,000 or more, the offender commits a felony of the first degree. If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult are valued at $10,000 or more, but less than $50,000, the offender commits a felony of the second degree. If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult are valued at less than $10,000, the offender commits a felony of the third degree.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 825.101, F.S., relating to abuse, neglect, and exploitation of elderly persons, to include definitions for the terms 'exploitation' and 'vulnerable adult.'

Section 2 creates s. 825.1035, F.S., to establish a cause of action for a protective injunction to be filed by a vulnerable adult in imminent danger of being exploited. A petition for injunction may be filed by the adult's guardian, a person or organization acting on the adult's behalf with the consent of their guardian, and an individual filing a petition to have the vulnerable adult deemed incapacitated. The bill allows the action to be filed in the judicial circuit where the vulnerable adult resides, where the individual accused of exploitation (the respondent) resides, where the person filing the action resides, or where the alleged exploitation occurred.

The bill prohibits the clerk of the circuit court from assessing a filing fee for petitions filed. Subject to legislative appropriation and on a quarterly basis, the clerk may submit to the Office of the State Courts Administrator a certified request for reimbursement for the processing of such petitions, at the rate of $40 per petition.

[10] S. 415.1111, F.S.
[11] S. 95.11(3)(f), F.S.
[12] S. 415.1111, F.S.
[13] *Id.*
[14] SS. 825.101-106, F.S.
[15] S. 825.103(3), F.S.

The bill provides that the court may require payment of a bond before an injunction is issued, and requires a sworn petition be filed alleging exploitation or imminent exploitation of the vulnerable adult. The bill requires the petition to contain the following information:

- The last known residence of both the vulnerable adult and the respondent;
- The respondent's last known employer, a physical description of the respondent, and any aliases they are known to have;
- The manner in which the respondent is associated with the vulnerable adult and any previous or pending legal actions between the respondent and the vulnerable adult;
- The petitioner's knowledge of any reports made to a state agency regarding exploitation, abuse, or neglect of the vulnerable adult;
- The reasons the petitioner claims to genuinely fear an imminent danger of exploitation, or any facts the petitioner believes show the respondent has already committed exploitation; and
- Remedies sought through the injunction, which may include:
    - Prohibiting any direct or indirect contact between the respondent and the vulnerable adult;
    - Immediately restraining the respondent from committing any acts of exploitation;
    - Freezing specified assets of the vulnerable adult, whether solely in the adult's name, jointly named with the respondent, or solely in the respondent's name; and
    - Providing any other conditions the court feels necessary to protect the vulnerable adult or their assets.

The bill requires the court to schedule a hearing on the petition at the earliest possible date and requires that the respondent be personally served with a copy of the petition and any other documents relevant to the proceeding.

The bill also requires the clerk of the court to assist the petitioner in filing, including providing simplified forms and filing instructions. The clerk must provide the petitioner with two copies of the petition, one of which is serviceable, and explain the process of serving and enforcing the petition. Clerks of court in each county statewide must provide informational brochures to petitioners upon filing containing information about exploitation of vulnerable adults and the effect of providing false information to the court.

The bill requires the court to consider the following factors in determining whether to grant an injunction:

- The vulnerable adult is a victim of exploitation or the court has reasonable cause to believe that the vulnerable adult is in imminent danger of becoming a victim of exploitation;
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law;
- There is a substantial likelihood of success on the merits;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and
- Granting of a temporary injunction will not disserve the public interest.

The bill allows the court to issue injunctions providing any of the following remedies:

- Restraining the respondent from committing any acts of exploitation;
- Awarding to the vulnerable adult the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the vulnerable adult, if the court finds that the vulnerable adult is able to reside safely without the respondent;

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing that assets under temporary freeze by injunction be returned to the vulnerable adult, or directing assets remain frozen until ownership can be determined; and/or
- Ordering such other relief as the court deems necessary for the protection of a vulnerable adult from exploitation, including injunctions or directives to law enforcement agencies.

The bill requires a temporary or final judgment on an injunction must indicate that the injunction is valid and enforceable in all counties of the state. The final judgment must indicate the date the respondent was served with the temporary or final order and include a statement that law enforcement officers are allowed to use their arrest powers to enforce the terms of the injunction.

The bill also requires the court to allow an advocate from a state attorney's office, law enforcement agency, or adult protective services to be present with the petitioner or the respondent during any court proceedings or hearings related to the injunction, provided the petitioner or the respondent has made such a request and the advocate is able to be present.

The bill provides that when an injunction is issued, the court may order that an officer from the appropriate law enforcement agency accompany the vulnerable adult and assist in placing them in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer must accept a copy of an injunction for protection against exploitation of a vulnerable adult, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served. Law enforcement must also serve any injunction freezing assets on the financial institution where the assets are held, unless the court waives such requirement.

All orders issued or changed subsequent to the service of original documents must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such an order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk of the circuit court must note on the original petition that service was effected. If delivery at the hearing is not possible, the clerk of the circuit court is required to mail certified copies of the order to the parties at the last known address of each party. When an order is served, the clerk of the circuit court must prepare a written certification to be placed in the court file specifying the time, date, and method of service.

The terms of the injunction remain in effect until the injunction is modified or dissolved. The petitioner, vulnerable adult, or the respondent may move the court to modify or dissolve an injunction at any time, and no specific allegations are required. The modification or dissolution of the injunction may be granted in addition to other civil or criminal penalties.

The clerk must notify the sheriff’s office within 24 hours of the injunction being terminated, and the sheriff’s office must then notify the Department of Law Enforcement of the termination within 24 hours.

Section 3 creates s. 825.1036, F.S., to require that, in cases where an injunction under s. 825.1035, F.S., has allegedly been violated, the clerk of the court must, upon request, assist the

petitioner in preparation of an affidavit attesting to the violation, or direct the petitioner to the office in that judicial circuit that serves as the central intake point for injunction violations.

The bill requires the clerk to forward completed affidavits to the state attorney's office and the appropriate court office in that circuit, and if the affidavit alleges criminal activity, to law enforcement. If criminal activity is alleged, within 20 days law enforcement must investigate the allegations and report findings to the state attorney's office, which must decide within 30 days whether or not to file criminal charges or state that the case remains under investigation.

The bill requires that if the court believes the vulnerable adult is in imminent danger should the court fail to act prior to the state attorney's decision to file charges, the court must order the state attorney's office to file an order to show cause as to why the respondent should not be held in contempt. Alternatively, the court may also notify the state attorney's office that it is proceeding to enforce the violation through a ruling of criminal contempt.

The bill provides that willful violation of an injunction constitutes a first degree misdemeanor. Violation of an injunction can occur through any of the following acts by the respondent:

- Refusing to vacate a dwelling shared with the vulnerable adult;
- Going within 500 feet of the vulnerable adult's residence;
- Exploiting the vulnerable adult;
- Violating the injunction in any other way through an intentional unlawful threat or act of violence toward the vulnerable adult;
- Contacting the vulnerable adult in any way unless otherwise allowed by the injunction; or
- Damaging the vulnerable adult's property.

The bill provides that anyone with two or more prior convictions for violation of an injunction against the same victim who violates a third time commits a third degree felony. Anyone who suffers any type of economic loss resulting from a violation can be awarded damages by the court that issued the injunction.

Section 4 amends s. 901.15, F.S., to add a violation of an injunction issued under the newly created statutes to the list of crimes that permit law enforcement to make a warrantless arrest.

Section 5 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will create an indeterminate increase in workload and expenditures for the clerks of courts, law enforcement agencies, and state attorney's offices due to the additional responsibilities imposed in issuing, serving, and enforcing injunctions. In Fiscal Year 2016-17, the Department of Children and Families reported that it received and investigated 55,890 reports of abuse from the Florida Abuse Hotline related to vulnerable adults, as defined by s. 415.102, F.S. Of those, roughly 1,000 were found to be verified exploitation cases. The department estimates that approximately 400 of those cases would result in an injunction.

The bill creates a new third degree felony for anyone with two or more prior convictions for violation of an injunction against the same victim who violates a third time. The Criminal Justice Impact Conference estimates that this provision will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). [16]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is silent on instances where a respondent owns and operates an assisted living facility (ALF), or similar setting housing multiple patients/residents, the ALF is also the respondent's primary residence, and an injunction is issued with respect to a single patient living in the facility. Granting temporary, exclusive use of the residence to the vulnerable adult may create issues with regard to care of the other patients/residents of the facility. Similarly, a freeze on the respondent's assets in such a case, particularly if those assets are used in caregiving for other patients/residents, may also be problematic.

[16] 2018 Conference Results (through February 12, 2018), Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls (last visited on Feb. 16, 2018).

The bill also provides a broad choice of venue, allowing an action to be brought in the circuit where the vulnerable adult lives, where the respondent lives, where the person filing the action lives, or where the alleged exploitation occurred. One purpose of venue rules is to ensure that the case takes place in a forum that is convenient for the parties.[17] A possible solution could be to eliminate the site where the alleged exploitation occurred as a venue option, as it is possible none of the parties to the case reside in that judicial circuit.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 825.101 and 901.15.

This bill creates the following sections of the Florida Statutes: 825.1035 and 825.1036.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[17] Mary Garvey Algero, *In Defense of Forum Shopping: A Realistic Look at Selecting a Venue*, 78 Neb. L.Rev. 79 (1999).

By Senator Passidomo

28-00542A-18 20181562__

A bill to be entitled

An act relating to elder abuse; amending s. 825.101, F.S.; defining terms; creating s. 825.1035, F.S.; creating a cause of action for an injunction for protection against the exploitation of a vulnerable adult; providing for standing to bring a cause of action for an injunction; providing that an injunction may be sought regardless of any other action that may be pending between specified parties; specifying that the right to petition for an injunction is not affected by a person temporarily or permanently vacating a residence or household to avoid exploitation; providing a list of persons who may seek an injunction; providing that parties to an injunction may not be required to be represented by an attorney; specifying that the petitioner is liable for actual damages under certain circumstances; providing for the submission of evidence to the court; providing for venue; providing that exploitation already having occurred is not required as a prerequisite for filing for or issuance of an injunction; requiring that a petition be filed in certain proceedings under ch. 744, F.S.; prohibiting the clerk of the circuit court from assessing a filing fee under certain circumstances; authorizing the clerk of the circuit court to request a reimbursement for such petitions, subject to the appropriation of funds for that purpose; requiring the clerk of the circuit court to pay from such reimbursement any fee not exceeding $20

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that a law enforcement agency requests; prohibiting the court from requiring a bond for the entry of the injunction; requiring a sworn petition to contain certain allegations and statements; requiring the court to set a hearing at a certain time; requiring the respondent to be personally served with certain documents prior to the hearing; requiring the clerk of the circuit court to assist the petitioner in filing an injunction or petition by providing certain forms and instructions; requiring the clerk of the court to ensure the petitioner's privacy; requiring the clerk of the court to provide the petitioners with certified copies of the injunction order; requiring that the clerks of the court and appropriate staff receive certain training; requiring that the clerk of the circuit court make available certain informational brochures and create and distribute a specified brochure containing specified information to the petitioner at the time of filing for an injunction; authorizing the court to grant a temporary injunction ex parte under certain circumstances; prohibiting the use of evidence other than verified pleadings or affidavits in an ex parte hearing; providing an exception; requiring the court to follow certain procedures when issuing an order denying a petition for an ex parte injunction; prohibiting an ex parte temporary injunction from having a duration longer than a specified number of days; requiring that a full hearing be set for a date no later than the date the

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temporary injunction expires; authorizing the court to grant a continuance of the hearing for good cause; authorizing the court to grant specified relief under certain circumstances; providing factors that a court must consider when determining whether petitioners have reasonable cause; requiring that the court allow certain advocates to be present under certain circumstances; requiring that the terms of certain injunctions remain in effect until modified or dissolved; authorizing either party to move at any time to modify or dissolve an injunction; requiring that a temporary or final judgment on an injunction meet certain requirements; specifying that granting separate orders of protection to opposing parties is not legally sufficient for certain purposes; requiring that certain proceedings be recorded; providing requirements and options for service of process; authorizing the court to waive the service of process requirement for a financial institution; requiring that the clerk of the circuit court deliver a certified copy of certain orders meeting certain criteria to the parties under certain circumstances; providing options for noting the service was effective; requiring that the clerk of the circuit court place a written certification in the court file and notify the sheriff under certain circumstances; authorizing the clerk of the circuit court to serve certain respondents by certified mail; requiring that the clerk of the circuit court, law enforcement

officers, and sheriffs follow certain procedures within a certain timeframe after an injunction has been issued or an injunction becomes ineffective; requiring the clerk of the circuit court to provide copies of certain petitions and orders to the adult protective services program; requiring the adult protective services program to treat petitions in a certain manner; requiring the adult protective services program to submit to the court the results of any previous investigations relating to the vulnerable adult within a specified timeframe; providing options for enforcing and prosecuting a violation of an injunction; requiring that the clerk of the circuit collect any assessment or fine ordered by the court and transfer it to the Department of Revenue for deposit into the General Revenue fund on a monthly basis; requiring that a respondent held in custody after an arrest for violating an injunction be brought before the court as expeditiously as possible; providing construction; creating s. 825.1036, F.S.; requiring that a clerk of the circuit court assist the petitioner in preparing an affidavit or direct the petitioner to a certain office, under certain circumstances; requiring the clerk of the circuit court or the office assisting the petitioner to immediately forward the affidavit to certain people and places depending on certain circumstances; requiring a law enforcement agency to complete its investigation and forward the affidavit along with a

report of any information obtained through its investigation to the state attorney within a specified timeframe; requiring the state attorney to determine how it will proceed within a specified timeframe; authorizing the court to immediately issue an order of appointment of the state attorney in certain circumstances; requiring the court to immediately notify the state attorney that the court is proceeding to enforce the violation through a ruling of criminal contempt if the court does not issue an order of appointment; providing a penalty for a willful violation of an injunction; providing an exception; providing for how an injunction may be violated; providing that a person with two or more prior convictions for violation of an injunction or foreign protection order against the same victim who commits a subsequent violation against the same victim commits a third degree felony; defining conviction; authorizing the court to award economic damages to a person who suffers an injury or loss as a result of a violation of an injunction; amending s. 901.15, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (6) through (12) of section 825.101, Florida Statutes, are redesignated as subsections (7) through (13), respectively, and a new subsection (6) and

subsection (14) are added to that section, to read:

825.101 Definitions.—As used in this chapter:

(6) "Exploitation" has the same meaning as the term "exploitation of an elderly person or disabled adult" as defined in s. 825.103(1).

(14) "Vulnerable adult" has the same meaning as in s. 415.102.

Section 2. Section 825.1035, Florida Statutes, is created to read:

825.1035 Injunction for protection against exploitation of vulnerable adults.—

(1) There is created a cause of action for an injunction for protection against the exploitation of a vulnerable adult.

(a) Any person described in paragraph (d) has standing in the circuit court to file a sworn petition for an injunction for protection against the exploitation of a vulnerable adult.

(b) A sworn petition for an injunction for protection against the exploitation of a vulnerable adult may be filed regardless of whether any other cause of action is currently pending between either the petitioner and the respondent or the vulnerable adult and the respondent. However, the pendency of any such cause of action shall be noted in the petition.

(c) A person temporarily or permanently vacating a residence or household in an attempt to avoid exploitation does not affect his or her right to petition for an injunction.

(d) This cause of action for an injunction may be sought by:

1. A vulnerable adult in imminent danger of being exploited;

2. The guardian of a vulnerable adult in imminent danger of being exploited;

3. A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or

4. A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.

(e) Parties to an injunction for protection against the exploitation of a vulnerable adult may not be required to be represented by an attorney.

(f) Notwithstanding any other law, the petitioner is liable for actual damages if it is found that the petition was without substantial fact or legal support.

(g) Any person who offers evidence relating to the exploitation of a vulnerable adult must present the evidence under oath at a hearing for which all parties have been given reasonable notice.

(h) Notwithstanding chapter 47, a petition for an injunction for protection against the exploitation of a vulnerable adult may be filed in the circuit where the petitioner currently resides, where the respondent resides, where the vulnerable adult resides, or where the exploitation occurred. There is no minimum requirement of residency to petition for an injunction for protection against the exploitation of a vulnerable adult. It is not required as a prerequisite of filing a petition for or issuance of an injunction under this section for exploitation to have already occurred. If a proceeding concerning the vulnerable adult under

chapter 744 is pending at the time of the filing, the petition must be filed in that proceeding.

(i) Notwithstanding any other provision of law, the clerk of the circuit court may not assess a filing fee for petitions filed under this section. However, subject to legislative appropriation for such purpose, the clerk of the circuit court may, on a quarterly basis, submit a certified request for reimbursement to the Office of the State Courts Administrator for the processing of such petitions, at the rate of $40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From each reimbursement received, the clerk of the circuit court shall pay any law enforcement agency serving the injunction for protection against the exploitation of a vulnerable adult the fee requested by the law enforcement agency. However, the fee may not exceed $20.

(j) The court may require a bond for the entry of an injunction for protection against the exploitation of a vulnerable adult.

(2)(a) A sworn petition filed under this section must allege the existence of exploitation, or the imminent exploitation, of the vulnerable adult and must include the specific facts and circumstances for which relief is sought.

(b) The sworn petition must be in substantially the following form:

PETITION FOR INJUNCTION

FOR Protection against the exploitation of a vulnerable adult

Before me, the undersigned authority, personally appeared Petitioner ...(Name)..., who has been sworn and says that the following statements are true:

1. The vulnerable adult resides at: ...(address)...

(The petitioner may furnish the address to the court in a separate confidential filing if, for safety reasons, the vulnerable adult requests that the location of his or her current residence be kept confidential.)

2. The respondent resides at: ...(last known address)....

3. The respondent's last known place of employment is: ...(name of business and address)....

4. Physical description of the respondent: ....

Race....

Sex....

Date of birth....

Height....

Weight....

Eye color....

Hair color....

Distinguishing marks or scars....

5. Aliases of the respondent: ....

6. The respondent is associated with the vulnerable adult as follows: ....

7. The following describes any other cause of action currently pending between the petitioner and the respondent, any proceeding under chapter 744 concerning the vulnerable adult, and any previous or pending attempts by the petitioner to obtain an injunction for protection against exploitation of the vulnerable adult in this or any other circuit; related case

numbers, if available; and the results of any such attempts:..... .....

8. The following describes the petitioner's knowledge of any reports made to a government agency, including, but not limited to, the Department of Elderly Affairs, the Department of Children and Families, and the adult protective services program relating to the abuse, neglect, or exploitation of the vulnerable adult; any investigations performed by a government agency relating to abuse, neglect, or exploitation of the vulnerable adult; and the results of any such reports or investigations:..... .....

9. The petitioner knows the vulnerable adult is either a victim of exploitation or the petitioner has reasonable cause to believe the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation because the respondent has: ....(describe in the spaces below the incidents of exploitation) .....

10. The petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent.

11. The petitioner seeks an injunction for the protection of the vulnerable adult, including: ...(mark appropriate section or sections)....

....Prohibiting the respondent from having any direct or indirect contact with the vulnerable adult.

....Immediately restraining the respondent from committing any acts of exploitation against the vulnerable adult.

....Freezing the assets of the vulnerable adult held at ...(name and address of depository or financial institution)...

even if titled jointly with the respondent, or in the respondent's name only, in the court's discretion.

....Providing any terms the court deems necessary for the protection of the vulnerable adult or his or her assets, including any injunctions or directives to law enforcement agencies.

(c) Each petition for an injunction for protection against the exploitation of a vulnerable adult must contain, directly above the signature line, a statement in all capital letters and bold type not smaller than the surrounding text, as follows:

I HAVE READ EACH STATEMENT MADE IN THIS PETITION AND EACH SUCH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

(d) Upon the filing of the petition, the court shall schedule a hearing on the petition on the earliest possible date. The respondent shall be personally served, pursuant to chapter 48, with a copy of the petition, financial affidavit, notice of hearing, and temporary injunction, if any, prior to the hearing.

(3)(a) The clerk of the circuit court shall assist the petitioner in filing an injunction for protection against the exploitation of a vulnerable adult and any petition alleging a violation thereof.

(b) The clerk of the circuit court shall provide simplified

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petition forms for the injunction for protection against the exploitation of a vulnerable adult, and any modifications thereto, and for the enforcement thereof, and instructions for completion of such forms.

(c) The clerk of the circuit court shall, to the extent practicable, ensure the petitioner's privacy while completing such forms.

(d) The clerk of the circuit court shall provide the petitioner with at least two certified copies of the order of injunction, one of which is serviceable, and shall inform the petitioner of the process for service and enforcement.

(e) Clerks of the circuit court and appropriate staff in each county shall receive training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks.

(f) The clerk of the circuit court in each county shall make available informational brochures on the exploitation of vulnerable adults when such brochures are provided by local senior centers, local aging and disability resource centers, or appropriate state or federal agencies.

(g) The clerk of the circuit court in each county shall produce an informational brochure and provide it to the petitioner at the time of filing for an injunction for protection against the exploitation of a vulnerable adult. The brochure must include information about the exploitation of vulnerable adults and the effect of providing false information to the court.

(4)(a)1. The court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the

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court deems proper if it appears to the court that:

a. An immediate and present danger of exploitation of the vulnerable adult exists;

b. There is a likelihood of irreparable harm and nonavailability of an adequate remedy at law;

c. There is a substantial likelihood of success on the merits;

d. The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and

e. Granting a temporary injunction will not disserve the public interest.

2. Such relief the court deems proper may include, but is not limited to, injunctions doing any of the following:

a. Restraining the respondent from committing any acts of exploitation against the vulnerable adult.

b. Awarding to the vulnerable adult the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share, or barring the respondent from the residence of the vulnerable adult, if the court finds that the vulnerable adult is able to reside safely without the respondent.

c. Freezing any assets of the vulnerable adult in any depository or financial institution whether titled solely in the vulnerable adult's name, solely in the respondent's name, jointly with the respondent, in guardianship, in trust, or in a Totten trust.

(I) Assets held by a guardian for the vulnerable adult may be frozen only by an order entered by the court overseeing the guardianship proceeding.

(II) Assets held by a trust may be frozen only by an order of the court if all the trustees of the trust are served with process in accordance with Rule 1.070, Florida Rules of Civil Procedure, and are given reasonable notice prior to any hearing on the petition.

d. Prohibiting the respondent from having any direct or indirect contact with the vulnerable adult.

e. Providing any injunctions or directives to law enforcement agencies.

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining an ex parte temporary injunction, only verified pleadings or affidavits may be used as evidence unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction must be by written order and note the legal grounds for denial. When the only ground for denial is failure to demonstrate appearance of an immediate and present danger of exploitation of a vulnerable adult, the court must set a full hearing on the petition for injunction at the earliest possible date. Nothing in this paragraph affects a petitioner's right to promptly amend any petition consistent with the Florida Rules of Civil Procedure.

(c) An ex parte temporary injunction may be effective for a fixed period not to exceed 15 days. A full hearing, as provided by this section, must be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during the hearing for good cause shown by any party, which must include a continuance to obtain service of process.

(5)(a)1. The court may grant such relief as the court deems proper when, upon notice and hearing, it appears to the court that:

a. The vulnerable adult is the victim of exploitation or that the vulnerable adult is in imminent danger of becoming a victim of exploitation;

b. There is a likelihood of irreparable harm and nonavailability of an adequate remedy at law;

c. There is a substantial likelihood of success on the merits;

d. The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and

e. Granting a temporary injunction will not disserve the public interest.

2. Such relief may include, but need not be limited to, injunctions doing any of the following:

a. Restraining the respondent from committing any acts of exploitation.

b. Awarding to the vulnerable adult the exclusive use and possession of the dwelling that the vulnerable adult and the respondent share or excluding the respondent from the residence of the vulnerable adult, if the court finds that the vulnerable adult is able to reside safely without the respondent.

c. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent.

d. Directing that assets under temporary freeze by injunction be returned to the vulnerable adult, or directing that those assets remain frozen until ownership can be

determined.

e. Ordering such other relief as the court deems necessary for the protection of a victim of exploitation, including injunctions or directives to law enforcement agencies, as provided in this section.

(b) In determining whether a petitioner has reasonable cause to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court shall consider and evaluate all relevant factors, including, but not limited to, any of the following:

1. The existence of a verifiable order of protection issued previously or from another jurisdiction.

2. Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.

3. Any history of the vulnerable adult being previously exploited or unduly influenced.

4. The capacity of the vulnerable adult to make decisions related to his or her finances and property.

5. Susceptibility of the vulnerable adult to undue influence.

6. Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.

(c) The court must allow an advocate from a state attorney's office, a law enforcement agency, or the adult protective services program to be present with the petitioner or the respondent during any court proceedings or hearings related to the injunction, provided the petitioner or the respondent has made such a request and the advocate is able to be present.

(d) The terms of an injunction restraining the respondent as provided in paragraph (a) remain in effect until the injunction is modified or dissolved. The petitioner, respondent, or vulnerable adult may move at any time to modify or dissolve the injunction. No specific allegations are required for modification or dissolution of the injunction, which may be granted in addition to other civil or criminal penalties.

(e) A temporary or final judgment on an injunction must, on its face, indicate:

1. That the injunction is valid and enforceable in all counties of this state.

2. That law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction.

3. That the court had jurisdiction over the parties and subject matter under state law and that reasonable notice and opportunity to be heard were given to the person against whom the order was sought, in a manner that was sufficient to protect that person's right to due process.

4. The date the respondent was served with the temporary or final order, if obtainable.

(f) The fact that a separate order of protection is granted to each opposing party is not legally sufficient to deny any remedy to either party or to prove that the parties are equally at fault or equally endangered.

(g) All proceedings conducted pursuant to this subsection must be recorded. Recording may be by electronic means as provided by the Rules of Judicial Administration.

(6)(a)1.a. The clerk of the circuit court shall furnish a

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copy of the petition, the financial affidavit, the notice of hearing, and any temporary injunction to the sheriff or a law enforcement agency of the county in which the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. At the request of the sheriff, the clerk of the circuit court may transmit a facsimile copy of an injunction that has been certified by the clerk of the circuit court pursuant to subparagraph 4., and this facsimile copy may be served in the same manner as a certified copy. The clerk of the circuit court shall also furnish to the sheriff such information on the respondent's physical description and location as is required by the Florida Department of Law Enforcement to comply with the verification procedures set forth in sub-subparagraph b.

b. Upon receiving a facsimile copy, the sheriff must verify receipt with the clerk of the circuit court before attempting to serve it upon the respondent. If the sheriff is in possession of an injunction that has been certified by the clerk of the circuit court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy.

c. Notwithstanding any other provision of law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency performing service pursuant to this section shall use service and verification procedures consistent with those of the sheriff.

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2.a. The clerk of the circuit court shall furnish a copy of the petition, the financial affidavit, the notice of hearing, and any temporary injunction to the sheriff or a law enforcement agency of the county in which the vulnerable adult resides or can be found, who shall serve it upon the vulnerable adult as soon thereafter as possible on any day of the week and at any time of the day or night. At the request of the sheriff, the clerk of the circuit court may transmit a facsimile copy of an injunction that has been certified by the clerk of the circuit court pursuant to subparagraph 4., and this facsimile copy may be served in the same manner as a certified copy. The clerk of the circuit court shall also furnish to the sheriff such information on the vulnerable adult's physical description and location as is required by the Florida Department of Law Enforcement to comply with the verification procedures set forth in sub-subparagraph b.

b. Upon receiving a facsimile copy, the sheriff must verify receipt with the clerk of the circuit court before attempting to serve it upon the vulnerable adult. If the sheriff is in possession of an injunction that has been certified by the clerk of the circuit court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer, who shall serve it in the same manner as a certified copy.

c. Notwithstanding any other provision of law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction of the circuit to effect service. A law enforcement agency performing service pursuant to this section shall use service and verification procedures consistent with those of the

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sheriff.

3. When an injunction for protection against the exploitation of a vulnerable adult is issued, if the petitioner requests that a law enforcement agency assist the vulnerable adult, the court may order that an officer from the appropriate law enforcement agency accompany the vulnerable adult and assist in the service or execution of the injunction, including returning possession of a dwelling or residence to the vulnerable adult. A law enforcement officer shall accept a copy of an injunction, certified by the clerk of the circuit court pursuant to subparagraph 4., from the petitioner and immediately serve it upon a respondent who has been located but not yet served. The law enforcement agency must also serve any injunction freezing assets on the financial institution where assets subject to dissipation are held; the court may waive such service.

4. The clerk of the circuit court shall certify a copy of all orders issued, changed, continued, extended, or vacated subsequent to the original service of the original petition, notice of hearing, or temporary injunction and deliver the certified copy to the parties at the time of the entry of the order. The parties may acknowledge receipt of a certified order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk of the circuit court must note on the original petition that service was effected. If delivery at the hearing during which an order is issued is not possible, the clerk of the circuit court shall mail certified copies of the order to the parties at their respective last known mailing addresses.

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Service by mail is complete upon mailing. When an order is served pursuant to this subparagraph the clerk of the circuit court shall notify the sheriff of the service and prepare a written certification to be placed in the court file specifying the time, date, and method of service.

5. If the respondent has been previously served with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for an injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b)1. Within 24 hours after the court issues an injunction for protection against the exploitation of a vulnerable adult or changes, continues, extends, or vacates such an injunction, the clerk of the circuit court must forward a certified copy of the order to the sheriff with jurisdiction over the residence of the petitioner for service in accordance with this subsection.

2. Within 24 hours after service of an injunction for protection against the exploitation of a vulnerable adult upon a respondent, the law enforcement officer who served the injunction must forward the written proof of service to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against the exploitation of a vulnerable adult, the sheriff must make information related to the injunction available to this state's law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement.

4. Within 24 hours after the sheriff or other law

enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement.

5. Within 24 hours after an injunction for protection against the exploitation of a vulnerable adult is terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the circuit court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 1. The sheriff's agency shall, within 24 hours after receiving such notification from the clerk of the circuit court, notify the Florida Department of Law Enforcement of such action of the court.

(c) The clerk of the court shall provide a copy of all petitions filed pursuant to this section and all orders entered on such petitions to the adult protective services program, which shall treat such petitions in the same manner as a report of abuse, neglect, or exploitation of a vulnerable adult. Within 24 hours after receipt of such orders or petitions, the adult protective services program shall submit to the court overseeing proceedings on the petition the results of any previous investigations relating to the vulnerable adult.

(7)(a) The court may enforce a violation of an injunction for protection against the exploitation of a vulnerable adult through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under s. 825.1036. Any assessment or fine ordered by the court enforcing such injunction shall be collected by the clerk of the circuit

court and transferred on a monthly basis to the Department of Revenue for deposit in the Domestic Violence Trust Fund.

(b) If the respondent is arrested by a law enforcement officer under s. 901.15(6) or for a violation of s. 825.1036, the respondent must be held in custody until he or she is brought before the court, which must occur as expeditiously as possible, for the purpose of enforcing the injunction for protection against the exploitation of a vulnerable adult and for admittance to bail in accordance with chapter 903 and the applicable rules of criminal procedure, pending a hearing.

(8) Nothing in this section may affect the title to any real estate.

Section 3. Section 825.1036, Florida Statutes, is created to read:

825.1036 Violation of an injunction for protection against the exploitation of a vulnerable adult.—

(1) In the event of a violation of an injunction for protection against the exploitation of a vulnerable adult when the person who violated such injunction has not been arrested, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The clerk of the circuit court shall assist the petitioner in the preparation of an affidavit in support of the violation or direct the petitioner to the office operated by the court within the circuit which has been designated by the chief judge of that circuit as the central intake point for injunction violations and where the petitioner can receive assistance in the preparation of the affidavit in support of the violation.

(2) The affidavit shall be immediately forwarded by the

clerk of the circuit court or the office assisting the petitioner to the state attorney of that circuit and to such court or judge as the chief judge of that circuit determines to be the recipient of affidavits of violation. If the affidavit alleges that a crime has been committed, the clerk of the circuit court or the office assisting the petitioner shall also forward a copy of the petitioner's affidavit to the appropriate law enforcement agency for investigation. Within 20 days after receipt of the affidavit, the local law enforcement agency shall complete its investigation and forward the affidavit and a report containing the agency's findings to the state attorney. The state attorney shall determine within 30 working days whether its office will proceed to file criminal charges, prepare a motion for an order to show cause as to why the respondent should not be held in criminal contempt, prepare both as alternative findings, or file notice that the case remains under investigation or is pending subject to another action.

(3) If, based on its familiarity with the case, the court has knowledge that the vulnerable adult is in immediate danger if the court fails to act prior to the decision of the state attorney to prosecute, it should immediately issue an order of appointment of the state attorney to file a motion for an order to show cause as to why the respondent should not be held in contempt. If the court does not issue an order of appointment of the state attorney, it shall immediately notify the state attorney that the court is proceeding to enforce the violation through a ruling of criminal contempt.

(4)(a) Except as provided in paragraph (b), a person who willfully violates an injunction for protection against the

exploitation of a vulnerable adult commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person may violate such injunction by:

1. Refusing to vacate the dwelling shared with the vulnerable adult;

2. Going to, or being within 500 feet of, the vulnerable adult's residence;

3. Exploiting or unduly influencing the vulnerable adult;

4. Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the vulnerable adult;

5. Telephoning, contacting, or otherwise communicating with the vulnerable adult directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

6. Knowingly and intentionally coming within 100 feet of the vulnerable adult's motor vehicle, regardless of whether that vehicle is occupied; or

7. Defacing or destroying the vulnerable adult's personal property.

(b) A person who has two or more prior convictions for violation of an injunction or foreign protection order against the same victim, and who subsequently commits a violation of any injunction or foreign protection order against the same victim, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "conviction" means a determination of guilt which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is

entered.

(5) Any person who suffers an injury or loss as a result of a violation of an injunction for protection against the exploitation of a vulnerable adult may be awarded economic damages for that injury or loss by the court issuing the injunction. Damages include costs and attorney fees for enforcement of such injunction.

Section 4. Subsection (6) of section 901.15, Florida Statutes, is amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(6) There is probable cause to believe that the person has committed a criminal act according to s. 790.233 or according to s. 741.31, ~~or~~ s. 784.047, or s. 825.1036 which violates an injunction for protection entered pursuant to s. 741.30, ~~or~~ s. 784.046, or s. 825.1035 or a foreign protection order accorded full faith and credit pursuant to s. 741.315, over the objection of the petitioner, if necessary.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 1562
Bill Number (if applicable)

Topic Elder Abuse

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

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Tall FL 32301
City *State* *Zip*

Phone 850-228-4243

Email zsmith@aarp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.1.18
Meeting Date

1562
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Elder Abuse

Name Barney Bishop

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Tallahassee FL 32301
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Email Barney@ BarneyBishop.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 1876
INTRODUCER:	Rules Committee; Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Young
SUBJECT:	Trauma Services
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Fav/CS**
4.	Looke	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1876 amends various sections of law related to the selection and approval of trauma centers and the reporting of trauma center data. The bill:

- Eliminates outdated language related to a Department of Health (DOH) assessment of the trauma system and continuing annual reviews of the assignment of counties to trauma service areas (TSA).
- Eliminates TSA 19 and revises the county composition of certain TSAs.
- Restricts the DOH from designating a Level II trauma center as a pediatric or a Level I trauma center in a TSA that has a Level I or pediatric trauma center.
- Designates the number of trauma centers assigned to each TSA for a total of 35 trauma centers statewide and specifies that each TSA may have no more than five total Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers, and no more than one standalone pediatric trauma center.
- Requires the DOH to establish the Florida Trauma System Advisory Council (FTSAC) by October 1, 2018. The bill specifies the composition of the FTSAC and allows the FTSAC to submit recommendations to the DOH on how to maximize existing resources to achieve an inclusive trauma system.
- Requires the DOH to prepare an analysis of the Florida trauma system every three years, beginning August 31, 2020, to include information on the population growth in each TSA,

the caseload levels of high-risk patients for each trauma center and acute care hospital in the TSA, and the percentage of minimum caseload levels established under the bill for each trauma center.
- Defines "high-risk patient" as an injured patient with an International Classification Injury Severity Score (ICISS) of less than 0.85.
- Revises the procedure for the DOH to select and approve new trauma centers if there is statutory capacity within a TSA.
- Allows the DOH to approve new trauma centers that exceed the statutory limit in a TSA if there is a sufficient volume of high-risk patients.
- Provides grandfathering language for currently verified trauma centers and for certain provisionally approved trauma centers and provides that if any of the grandfathering provisions are found to be invalid, the entire act is invalid.
- Requires the DOH to designate any hospital as a Level II trauma center if the hospital receives a final recommended order from the Division of Administrative Hearings (DOAH) or a final determination from the DOH or a court that it was entitled to be a Level II trauma center and was provisionally approved and operating within specified dates.
- Eliminates the trauma registry under the DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. Trauma centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to the DOH.
- Replaces provisions requiring the use of data in the trauma registry with provisions requiring the use of data reported to the Agency for Health Care Administration (AHCA) pursuant to s. 408.061.

The DOH may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of the DOH.

The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of OPPAGA.

The bill takes effect upon becoming a law.

II. Present Situation:

The regulation of trauma centers in Florida is established under part II of ch. 395, F.S. Trauma centers treat individuals who have incurred single or multiple injuries because of blunt or penetrating means or burns, and who require immediate medical intervention or treatment. Currently, there are 36 verified and provisional trauma centers in the state.[1]

Trauma centers in Florida are divided into three categories including Level I, Level II, and Pediatric trauma centers.
- A Level I trauma center is defined as a trauma center that:
  - Has formal research and education programs for the enhancement of trauma care; is verified by the DOH to be in substantial compliance with Level I trauma center and

[1] Department of Health, *Senate Bill 1876 Analysis* (January 17, 2018) (on file with the Senate Committee on Health Policy).

pediatric trauma center standards; and has been approved by the DOH to operate as a Level I trauma center;
    - Serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals through shared outreach, education, and quality improvement activities; and
    - Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.[2]
- A Level II trauma center is defined as a trauma center that:
    - Is verified by the DOH to be in substantial compliance with Level II trauma center standards and has been approved by the DOH to operate as a Level II trauma center or is designated pursuant to s. 395.4025(14), F.S.;
    - Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities; and
    - Participates in an inclusive system of trauma care.[3]
- A Pediatric trauma center is defined as a hospital that is verified by the DOH to be in substantial compliance with pediatric trauma center standards and has been approved by the DOH to operate as a pediatric trauma center.[4,5]

Trauma Center Apportionment

Pursuant to s. 395.402, F.S., Florida is divided into 19 trauma service areas (TSA). A TSA is determined based on population density and an ability to respond to a specified number of patients in a trauma center environment. For purposes of medical response time, the trauma service area should have at least one Level I or Level II trauma center, and the DOH is required to allocate, by rule, the number of trauma centers for each trauma service area. There cannot be more than 44 trauma centers in the state.

Administrative Rule Litigation

Since 2011, the DOH has been involved in litigation involving its annual assessment of need for trauma centers. The majority of this litigation is based on the state's TSA allocation methodology, which imposes limitations on hospitals seeking trauma center verification. Protests have been levied regarding the validity of the DOH's allocation of new trauma centers in specific geographic areas. Despite prevailing in an administrative rule challenge in June 2014 that validated the DOH's allocation methodology, the DOH has been unable to promulgate the required annual rule change since 2014 due to litigation.[6]

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[2] Section 395.4001(6), F.S.
[3] Section 395.4001(7), F.S.
[4] Section 395.4001(9), F.S.
[5] For Level I, Level II, and pediatric trauma center standards *see* http://www.floridahealth.gov/licensing-and-regulation/trauma-system/_documents/traumacntrstandpamphlet150-9-2009rev1-14-10.pdf, (last visited on Jan. 19, 2018).
[6] Shands Teaching Hospital and Clinics, Inc., d/b/a UF Shands Hospital v. Dep't of Health and Osceola Regional Hospital, Inc., d/b/a Osceola Regional Medical Center, DOAH Case No. 14-1022RP (June 20, 2014). This order also resolved the rule challenges filed by The Public Health Trust of Miami-Dade County (DOAH Case No. 14-1027RP); St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (DOAH Case No. 14-1028RP); Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 14-1034RP); and Bayfront HMA Medical Center, LLC, d/b/a Bayfront Medical Center (DOAH Case No. 14-1035RP).

In 2016, the DOH attempted to promulgate an apportionment rule that interpreted need to mean the "minimum" number of trauma centers in a TSA. Several hospitals subsequently challenged the proposed rule.[7] The DOAH issued an order that invalidated the proposed rule in March 2017.[8] The administrative law judge recognized the challenges faced by the DOH and Florida's trauma system in his final order by stating, "[a]fter considering all of the evidence and testimony, the undersigned is of the opinion that it would be impossible to draft a set of rules that would satisfy the concerns/interests of all the relevant stakeholders."[9] The case was appealed to the First District Court of Appeals (DCA) and is awaiting final disposition.[10] Since the invalidation of the rule, the DOH has been unable to promulgate a new rule.

In 2016, an administrative law judge outlined in a recommended order that the DOH must grant provisional trauma center status to all applicants that demonstrate compliance with the critical elements of the trauma center standards, regardless if there is an allocated slot in the TSA.[11] In addition, he indicated the DOH's determination of need happens at the point in which a trauma center is granted verification.[12] On appeal, the First DCA stated that a hospital may apply over multiple years without jeopardizing the previous application.[13] In a separate case, the First DCA addressed the issue of need and concurred that need is not addressed at the provisional licensure and is relevant only upon verification.[14]In combination, a hospital may essentially operate indefinitely as a provisional trauma center so long as they submit and receive approval of their provisional application annually.

The DOH has been unable to promulgate a valid allocation rule since July 2014.[15]

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[7] According to the DOAH's website, the challenges were filed by St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (Tampa) (DOAH Case No. 16-5841RP); Bayfront HMA Medical Center, LLC, d/b/a Bayfront Heath – St. Petersburg (DOAH Case No. 16- 5840RP); Lee Memorial Health System, d/b/a Lee Memorial Hospital (DOAH Case No. 16-5839RP); Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 16-5838RP); and Shands Jacksonville Medical Center, Inc., d/b/a U.F. Hospital Jacksonville (DOAH Case No. 16-5837RP). Intervenors included JFK Medical Center Limited Partnership, d/b/a JFK Medical Center (Atlantis); The Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson South Community Hospital; and Orange Park Medical Center, Inc., d/b/a Orange Park Medical Center.

[8] Shands Jacksonville Medical Center, Inc., d/b/a UF Health Jacksonville v. Dep't of Health, DOAH Case No. 16-5837RP (March 28, 2017). This order also resolved the rule challenges filed by Florida Health Science Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 16-5838RP); Lee Memorial Health System, d/b/a Lee Memorial Hospital (DOAH Case No. 16-5839RP); Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health – St. Petersburg (DOAH Case No. 16-5840RP); and St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (DOAH Case No. 16-5841RP).

[9] Id.

[10] Dep't of Health, et al. v. Shands Jacksonville Medical Center, Inc., et al., Case No. 1D17-1713.

[11] The Public Health Trust of Miami-Dade County, Florida d/b/a Jackson South Community Hospital v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Medical Center, DOAH Case No. 15-3171)

[12] Id. *See also* Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson Medical Center and Jackson South Community Hospital v. Dep't of Health et al., DOAH Case No. 16-3370, 16-3372 ("Order Granting Motion to Partially Dismiss Petition for Administrative Hearing," pg. 4).

[13] The Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson South Community Hospital v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Medical Center, Case No. 1D16-3244.

[14] State of Florida, Department of Health v. Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health-St. Petersburg, Case No. 1D17-2174 (consolidated with Galencare, Inc., d/b/a Northside Hospital v. Bayfront HMA. Medical Center, LLC, d/b/a Bayfront Health-St. Petersburg, Case No. 1D17-2229).

[15] Supra note 1

Trauma Center Approval

Section 395.4025, F.S., provides a scheduled application process and specific criteria for trauma center selection. Standards for verification and approval are based on national guidelines established by the American College of Surgeons.[16] Standards for verification and approval as a pediatric trauma center are developed in conjunction with the DOH's Division of Children's Medical Services.

Acute care hospitals that submit a Letter of Intent to the DOH by October 1 are eligible to submit a trauma center application by April 1.[17] Once an applicant hospital receives the DOH's notification letter of provisional status designation, the hospital may begin operation as a provisional trauma center. During the provisional phase, the DOH conducts an in-depth review of the hospital's application. An onsite visit is conducted by an out-of-state survey team to verify compliance with the *Trauma Center Standards, DH Pamphlet 150-9*.[18] Based on the recommendations from the out-of-state survey team, the DOH makes the decision to approve or deny the hospital to operate as a verified trauma center.[19]

Hospitals verified by the DOH receive a seven-year certificate. A verified trauma center that intends to renew its verification must submit a renewal application form to the DOH at least 14 months prior to the expiration of the certificate. All renewing verified trauma centers receive an onsite visit by an out-of-state survey team after the DOH's receipt of the completed renewal form. Hospitals that have been verified by the DOH to comply with the requirements of s. 395.4025, F.S., are approved to operate as a verified trauma center.[20]

Florida's current trauma center verification process has experienced a number of challenges. Section 395.4025(7), F.S., allows any hospital in the state to protest verification decisions by the DOH. Hypothetically, under this subsection, a 25-bed acute care hospital in northwest Florida can protest the verification of a trauma center in Miami-Dade County. In actual application, the DOH has been involved in litigation numerous times where one or more parties operating a trauma center in one geographic area of the state have challenged trauma center verification in another area of the state.[21]

Florida Trauma Registry

The DOH has maintained a trauma registry since at least 2000. Currently, only a small number of states nationwide do not have a state trauma registry. In 2014, the DOH upgraded the trauma registry to receive patient data from every verified trauma center in the state. Changes made to the registry in 2016, based on feedback received from trauma stakeholders, allow a Florida

[16] The American College of Surgeons requirements for Level I, Level II, and pediatric trauma centers are available at: http://www.facs.org/trauma/verifivisitoutcomes.html, (last visited on Jan. 19, 2018).
[17] The required criteria included in the application package is outlined in the DOH's *Trauma Center Standards, DH Pamphlet 150-9*, in accordance with s. 395.401(2), F.S., and is incorporated by reference in Rule 64J-2.011, F.A.C.
[18] Section 395.4025(5), F.S.
[19] Section 395.4025(6), F.S.
[20] Id.
[21] Supra note 1. A list of current litigation is on file with Senate Health Policy Committee staff.

trauma center to submit the same data elements as those required by the National Trauma Data Bank (NTDB).

The trauma registry serves two critical functions. First, the DOH is able to perform local, regional, and statewide data analysis much faster than the NTDB. The NTDB does not perform local and regional analysis and due to the reporting requirements of the NTDB, data analysis is not available for 18 months after the initial reporting period and is limited to standardized reports provided to all participants. In contrast, the DOH is able to provide information as quickly as six months after the end of the reporting period. The DOH is also able to create customized, analytical reports not currently available from the NTDB. Second, s. 305.4036, F.S., requires that patient volumes from the Florida Trauma Registry be used as part of the formula to calculate the distribution of traffic fine revenues.[22]

International Classification Injury Severity Score (ICISS)

The ICISS is a score that indicates the likelihood of survival and is calculated from the set of injury-related diagnostic codes available in the patient's medical record. The ICISS ranges from 0 to 1, and a patient who has a score of .85 or less is considered a severely injured patient. The score is based on the International Classification of Diseases, 9th revision, with conversion tables in place to allow the use of the International Classification of Diseases, 10th revision.[23]

Health Care Data Submitted to the AHCA

Section 408.061, F.S., requires health care facilities to submit data to the AHCA including:
- Case-mix data;
- Patient admission and discharge data;
- Hospital emergency department data which includes the number of patients treated in the emergency department reported by patient acuity level;
- Data on hospital-acquired infections as specified by rule;
- Data on complications as specified by rule:
- Data on readmissions as specified by rule, with patient and provider-specific identifiers included;
- Actual charge data by diagnostic groups or other bundled groupings as specified by rule;
- Financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, and depreciation expenses based on the expected useful life of the property and equipment involved; and
- Demographic data.

Additionally, s. 408.05, F.S., creates the Florida Center for Health Information and Transparency (Center) within the AHCA to collect, compile, coordinate, analyze, index, and disseminate health-related data and statistics. Among its other duties, the Center is required to promote data sharing through dissemination of state-collected health data by making such data available,

[22] Supra note 1.
[23] Email from Steve A. McCoy, Emergency Services Administrator for the DOH, Feb. 22, 2018, on file with Senate Health Policy Committee staff.

transferable, and readily usable[24] and to develop written agreements with local, state, and federal agencies to facilitate the sharing of data related to health care.[25]

III. Effect of Proposed Changes:

Sections 1 through 4 and 8 amend ss. 318.14, 318.18, 318.21, 395.4001, and 395.4036, F.S., respectively, to replace provisions requiring the use of data in the trauma registry with provisions requiring the use of data reported to the AHCA pursuant to s. 408.061, F.S.

Section 4 amends s. 395.4001, F.S., to:

- Define the term "high-risk patient" to mean an injured patient with an ICISS of less than 0.85.
- Amend the definition of "International Classification Injury Severity Score" to mean the method for computing the severity of injuries sustained by trauma patients, based on the International Statistical Classification of Diseases and Related Health Problems, 10th Revision, Clinical Modification, and adopted by the DOH by rule, in consultation with the FTSAC, along with any conversion tables or analytical tools used in its computation. This change updates the definition of ICISS to refer to the current version of the International Statistical Classification of Diseases and Related Health Problems.

Section 5 amends s. 395.402, F.S., to:

- Delete language requiring Level I and Level II trauma centers to be capable of treating a minimum of 1,000 and 500 patients annually (or 1,000 in a county with 500,000 or more population) with an injury severity score (ISS) of 9 or greater, respectively.
- Delete outdated language requiring the DOH to conduct a one-time assessment of the trauma system.
- Delete a requirement that the DOH conduct annual assessments of the assignment of the counties in TSAs.
- Revise the composition of the TSAs as follows:
  - Eliminate TSA 19 and place Miami-Dade and Monroe counties into TSA 18;
  - Move Broward County from TSA 18 to TSA 17; and
  - Move Collier County from TSA 17 to TSA 15.
- Restrict the DOH from designating a Level II trauma center as a Level I or pediatric trauma center in a TSA that already has a Level I trauma center or pediatric trauma center.
- Delete the delegation of authority to the DOH to allocate the number of trauma centers by TSA and, instead, set by law the number of trauma centers allowed in each TSA for a total of 35, as follows:
  - TSAs 2, 3, 4, 6, 7, 11, 12, 14, and 15 are allocated one trauma center;
  - TSAs 10, 13, and 16 are allocated two trauma centers;
  - TSAs 1, 5, 8, 9, and 17 are allocated three trauma centers; and
  - TSA 18 is allocated five trauma centers.
- Specify that no TSA may have more than five total Level I, Level II, Level II with a pediatric, jointly certified pediatric, and stand-alone pediatric trauma centers, and more than one stand-alone pediatric trauma center.

[24] Section 408.05(3)(b), F.S.
[25] Section 408.05(3)(d), F.S.

- Require the DOH to establish the FTSAC by October 1, 2018. The FSTAC will consist of the following 11 members appointed by the Governor:
  - The State Trauma Medical Director;
  - A standing member of the Emergency Medical Services Advisory Council;
  - A representative of a local or regional trauma agency;
  - A trauma program manager or trauma medical director actively working in a trauma center who represents an investor-owned hospital with a trauma center;
  - A trauma program manager or trauma medical director actively working in a trauma center who represents a nonprofit or public hospital with a trauma center;
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level II trauma center who represents an investor-owned hospital with a trauma center;
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine who represents a nonprofit or public hospital with a trauma center;
  - A representative of the American College of Surgeons Committee on Trauma;
  - A representative of the Safety Net Hospital Alliance of Florida;
  - A representative of the Florida Hospital Association;
  - A Florida-licensed, board-certified emergency medicine physician who is not affiliated with a trauma center; and
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level I trauma center.
- Specify that the DOH must use existing and available resources to administer and support the activities of the FTSAC.
- Specify that members of the FTSAC serve without compensation and are not entitled to reimbursement for per diem and travel expenses.
- Require members of the FTSAC to be appointed for staggered terms and no two members may be employed by the same health care facility.
- Require the FTSAC to conduct its first meeting no later than January 5, 2019 and quarterly thereafter.
- Allow the FTSAC to submit recommendations to the DOH on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.

Section 6 amends s. 395.4025, F.S., to:

- Require the DOH to prepare an analysis of the Florida trauma system every three years, beginning in August 31, 2020. The DOH must use discharge data collected by the AHCA pursuant to s. 408.061, F.S., and the most current five years of population data for Florida available from the American Community Survey Five-Year Estimates by the United States Census Bureau. The DOH must make available all data, formulas, methodologies, calculations, and risk adjustment tools used to prepare the report. The report must include the following:
  - The population growth for each trauma service area and for the state of Florida;
  - The number of high-risk patients treated at each trauma center within each trauma service area, including pediatric trauma centers;
  - The total number of high-risk patients treated at all acute care hospitals inclusive of non-trauma centers in the trauma service area; and

- The percentage of each trauma center's sufficient volume of trauma patients, as described in subparagraph (3)(d)2., in accordance with the Injury Severity Score for the trauma center's designation, inclusive of the additional caseload volume required for those trauma centers with graduate medical education programs.

- Rework how the DOH selects and licenses trauma centers.[26] The process under the bill will proceed under the following steps:

Letter of Intent

The bill requires the DOH to notify hospitals that the DOH is accepting letters of intent from applicants when there is statutory capacity for an additional trauma center based on the limits established in **Section 5** of the bill, the analysis prepared by the DOH as detailed above, and the exception to the statutory capacity limits established in s. 395.4025(3)(d), F.S. The DOH may not accept a letter of intent from a hospital if there is not statutory capacity, in accordance with the limits established in **Section 5** of the bill, the DOH's report, and exceptions to the statutory capacity limits provided in the bill.

Letters of Intent must be postmarked by October 1 of year one. [27]

Application

By October 15 of year one, the DOH must send each hospital that provided a letter of intent an application package. Completed applications must be received by the DOH by April 1 [of year two].[28] Between April 1 and May 1 [of year two], the DOH will conduct an initial review of each application package it received to determine if each application shows that the hospital will be capable of attaining and operating with specified criteria by April 30 of year three. The operating criteria include:

- Equipment and physical facilities necessary to provide trauma services.
- Personnel in sufficient numbers and with proper qualifications to provide trauma services.
- An effective quality assurance process.

The bill specifies that the DOH may not approve an application for a trauma center if the approval would exceed the limits on the number of trauma centers established in **Section 5** of the bill. However, the DOH may approve an application that will exceed the limits if the applicant demonstrates, using the analysis of the Florida trauma system prepared by the DOH, and the DOH determines that:

- Each existing trauma centers' caseload volume of high-risk patients in that TSA is double the minimum volume requirement for Level I and Level II trauma centers and more than triple the minimum volume requirements for stand-alone pediatric trauma centers and the population growth for the trauma service area exceeds the statewide population growth by more than 15 percent based on the American Community Survey Five-Year Estimates by the

[26] Note: Some of the information presented in this section is current law. However, for the sake of providing a timeline for how the process will work after changes are made by SB 1876, the portions that are current law are integrated into the changes made by the bill.

[27] The timeframes in the bill use dates over multiple years. In order to simplify the timeline, the timeframes will be referred to as happening in year one, year two, or year three.

[28] The actual year that this takes place is not specified in the bill; however for the purposes of the timeline in this analysis the year will be assumed to be year two.

United States census data for the five-year period before the date the applicant files its letter of intent; and

- A sufficient volume of potential trauma patients exists within the trauma service area to ensure that existing trauma centers' volumes are at the following levels:[29]

Level I trauma center; In a TSA with a population > 1.5 million.	1,200 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[30]
Level I trauma center; In a TSA with a population < 1.5 million.	1,000 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[31]
Level II or Level II/Pediatric trauma center; In a TSA with a population > 1.25 million.	1,000 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[32]
Level II or Level II/Pediatric trauma center; In a TSA with a population < 1.25 million.	500 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[33]
All pediatric stand-alone trauma centers.	500 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[34]

- The bill specifies that ICISS calculations and caseload volumes must be calculated using the most recent available hospital discharge data collected by the AHCA from all acute care hospitals.
- The AHCA, in consultation with the DOH, must adopt rules for the submission of data from trauma centers and acute care hospitals as required to allow the DOH to perform its duties under ch. 395, F.S.

By May 1 [of year two],[35] the DOH must select one or more hospitals that meet the operating criteria detailed above, up to the statutory capacity designated in s. 395.402, F.S., or allowed by the exception detail above for each TSA. If the DOH receives more applications than available capacity, the DOH must select one or more applicants, as necessary, that the DOH determines will provide the highest quality patient care using the most recent technological, medical, and staffing resources and which is the farthest away from an existing trauma center in the applicant's TSA. At this point, the applicant may begin preparing to operate, but the bill restricts

[29] Calculations of patient caseloads must be based on the most recent available hospital discharge data collected by the AHCA pursuant to s. 408.061, F.S.
[30] These additional patients apply if the hospital has a trauma or critical care residency or fellowship program.
[31] Supra note 30.
[32] Supra note 30.
[33] Supra note 30.
[34] Supra note 30.
[35] Supra note 28.

an applicant from operating until the DOH completes its initial and in-depth review and approves the applicant to operate as a provisional trauma center. A hospital that is not ready to operate by April 30 of year three may not be designated as a trauma center.

In-Depth Evaluation

Following the initial review, the DOH must conduct an in-depth evaluation of each application against the criteria enumerated in the application packages. An applicant may not operate as a provisional trauma center until the DOH completes and approves the applicant through the initial and in-depth review stages. Within the year after the hospital begins operating as a provisional trauma center, the DOH must assemble a review team of out-of-state experts to make onsite visits to all existing trauma centers. The bill maintains current law regarding the survey instrument that the out-of-state experts must use.

Designation as a Trauma Center

Based on the recommendations from the out-of-state review team, the DOH must designate a trauma center that complies with trauma center standards, as established by the DOH in rule, and the requirements in s. 395.4025, F.S. A trauma center is designated for a seven-year approval period after which it must apply for renewal of its designation.

The bill also restricts protests against any decision made by the DOH regarding approval of an application or whether need has been established for a new trauma center unless the protest is made by an applicant or a hospital with an existing trauma center in the same or contiguous TSA.

Grandfathering

Notwithstanding any other provision of the act including statutory capacity limits and the limits placed on protests of DOH decisions, the bill deems certain currently operational trauma centers to be compliant with trauma center application and operational standards as follows:

- A trauma center that was verified by the DOH before December 15, 2017, is deemed to have met the trauma center application and operational requirements of this section and must be verified and designated as a trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, but that was provisionally approved by the DOH to be in substantial compliance with Level II trauma standards before January 1, 2017, and is operating as a Level II trauma center is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level II trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, as a Level I trauma center but that was provisionally approved by the DOH as a Level I trauma center before January 1, 2017, and is operating as a Level I trauma center is deemed to have met the application and operational requirements for a Level I trauma center and must be verified and designated as a Level I trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, as a pediatric trauma center but that was provisionally approved by the DOH to be in substantial compliance with the pediatric trauma standards established by rule before January 1, 2018, and is operating as a pediatric trauma center is deemed to have met the application and operational requirements of this section for a pediatric trauma center and, upon successful

completion of the in-depth and site review process, must be verified and designated as a pediatric trauma center. The bill prohibits protests of the in-depth review, site survey, and verification decisions made by the DOH regarding an applicant that meets the requirements of this paragraph.

Notwithstanding the statutory capacity limits established in s. 395.402(1), F.S., or any other provisions of the act, a hospital operating as a Level II after January 1, 2017, must be designated and verified if all of the following apply:

- The hospital was provisionally approved after January 1, 2017, to operate as a Level II trauma center, and was in operation on or before June 1, 2017;
- The department's decision to approve the hospital to operate a provisional Level II trauma center was in litigation on or before January 1, 2018;
- The hospital receives a recommended order from the Division of Administrative Hearings, a final order from the department, or an order from a court of competent jurisdiction that it was entitled to be designated and verified as a Level II trauma center; and
- The department determines that the hospital is in substantial compliance with the Level II trauma center standards, including the in-depth and site reviews.

A provisional trauma center operating under this provision may not be required to cease operations unless a court of competent jurisdiction or the DOH determines that is has failed to meet the trauma center standards established by the DOH in rule.

The bill specifies that, notwithstanding the statutory capacity limits established in s. 395.402(1), F.S., or any other provision of this act, a joint pediatric trauma center involving a Level II trauma center and a specialty licensed children's hospital which was verified by the DOH before December 15, 2017, is deemed to have met the application and operational requirements of this section for a pediatric trauma center and shall be verified and designated as a pediatric trauma center even if the joint program is dissolved upon the expiration of the existing certificate and the pediatric trauma center continues operations independently through the specialty licensed children's hospital, provided that the pediatric trauma center meets all requirements for verification by the DOH.

The bill specifies that nothing in the grandfathering provisions limits the DOH's authority to review and approve trauma center applications.

Section 9 amends s. 395.404, F.S., to eliminate the trauma registry under the DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. The bill requires the DOH to solely use the National Trauma Data Bank for quality and assessment purposes. Trauma centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to the DOH.

The bill also eliminates a public records exemption for the DOH's trauma registry and eliminates the requirement that pediatric trauma centers report certain data to the DOH's brain and spinal cord injury central registry.

Section 13 creates an undesignated section of Florida law to require that the DOH and the Office of Program Policy Analysis and Government Accountability (OPPAGA) study the DOH's

licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services and compare them to the licensure requirements, rules, regulations, standards, and guidelines for verification of pediatric trauma services by the American College of Surgeons. The OPPAGA must submit a report to the Governor, the Legislature, and the FTSAC by December 31, 2018. The bill specifies that this section expires on January 31, 2019.

Section 14 creates an undesignated section of Florida law to specify that if any provision in the act relating to the grandfathering provisions established in s. 395.4025(16), F.S., is found to be invalid or inoperative for any reason, the remaining provisions of the act shall be deemed void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

Sections 7, 10, 11, and 12 amend ss. 395.403, 395.401, 408.036, and 409.975, F.S., respectively, to make conforming and cross-reference changes.

Section 15 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues

When establishing the grandfathering provisions in s. 395.4025(16), F.S., the bill provides that "notwithstanding the provisions of subsection (8), no existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located may protest the in-depth review, site survey, or verification decision of the department regarding an applicant that meets the requirements of this paragraph." Additionally, the provisions of s. 395.4025(8), F.S., restrict any party from brining protests of DOH decisions related to application approval and need determination unless the party is the applicant or a hospital with a trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located. These provisions together may provide an unconstitutional restriction on access to the courts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive fiscal impact on hospitals that are not currently verified as trauma centers but that become designated as a trauma center due to changes made by the bill.

Hospitals that are currently verified trauma centers in TSAs where new trauma centers are designated under the provisions of the bill may experience a loss in volume of trauma patients and other economic impacts of competition.

C. Government Sector Impact:

The DOH may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of the DOH.

OPPAGA may experience additional workload and costs associated with the report required in Section 13. The costs will be absorbed within existing workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH may need to adopt rules or amend existing rules to implement the bill. Rule authority exists for the DOH in s. 395.405, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 318.14, 318.18, 318.21, 395.4001, 395.401, 395.402, 395.4025, 395.403, 395.4036, 395.404, 408.036, and 409.975.

The bill creates two undesignated sections of Florida law.

IX. Additional Information:

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

CS/CS/CS by Rules on March 1, 2018:
The CS revises the definition of "high-risk patient" to refer to injured patients, rather than trauma patients, with an ICISS of less than 0.85, and amends the definition of

"International Classification Injury Severity Score" to mean the method for computing the severity of injuries sustained by trauma patients, based on the International Statistical Classification of Diseases and Related Health Problems, 10th Revision, Clinical Modification, and adopted by the DOH by rule, in consultation with the FTSAC, along with any conversion tables or analytical tools used in its computation.

This change updates the definition of ICISS to refer to the current version of the International Statistical Classification of Diseases and Related Health Problems.

CS/CS by Appropriations on February 22, 2018:
The committee substitute:

- Adds references to AHCA discharge data collected pursuant to s. 408.061, F.S., to replace data reported to the DOH's Trauma Registry in multiple sections of the Florida Statutes.
- Corrects additional cross-references related to the elimination of the Trauma Registry.
- Defines the term "high risk" to mean a trauma patient with an International Classification Injury Severity Score less than .85 and uses this term in place of referencing "severely injured patients."
- When referencing types of trauma centers throughout the bill, clarifies the list to include a "Level II with a pediatric trauma center" and a "jointly certified pediatric trauma center."
- Specifies that no TSA may have more than five total Level I, Level II, Level II/pediatric, jointly certified pediatric trauma centers, and stand-alone pediatric trauma centers and no more than one stand-alone pediatric trauma center.
- Revises the make-up and duties of the Florida Trauma System Advisory Council (FTSAC).
    - Eliminates the requirement that the Council determine the need for additional trauma centers and the adequacy of the existing trauma system.
    - Eliminates the requirement to submit a biennial report to the Governor and the Legislature on whether to recommend an increase in the number of trauma centers within each service area.
    - Allows the Council to submit recommendations to the DOH on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.
    - Eliminates the following members of the Council: The State Surgeon General, a representative from the AHCA; a trauma program manager recommended by the Florida Teaching Hospital Council of Florida; a trauma surgeon recommended by the Florida Teaching Hospital Council of Florida, a representative of the Associated Industries of Florida, and a trauma program manager or medical director representing a public hospital.
    - Adds the state Trauma Medical Director and a trauma surgeon board-certified in critical care actively practicing medicine in a Level I trauma center to the council.
    - Adds a Florida-licensed, board-certified emergency medicine physician who is not affiliated with a trauma center.
    - Clarifies that the representative from an EMS organization must be a standing member of the Emergency Medical Services Advisory Council.

  - Requires the Council to meet quarterly.
- Specifies that the DOH must use existing resources to administer and support the activities of the FTSAC and the FTSAC members serve without compensation or reimbursement for travel or per diem expenses.
- Requires the DOH to prepare an analysis of the Florida trauma system by August 31, 2020, and every three years thereafter.
- Requires the analysis to use AHCA discharge data and the Florida population data from the American Community Survey Five-Year Estimates by the United States Census Bureau and must include:
  - The population growth for each TSA and for the state of Florida;
  - The number of high-risk patients at each trauma center within each TSA;
  - The total number of high-risk patients at all acute care hospitals, including non-trauma centers in each TSA; and
  - The percentage of each trauma center's sufficient volume of trauma patients as established in the bill.
- Specifies that the DOH must make calculations, data, formulas, methodologies, and risk adjustment tools used in preparing the analysis available.
- Allows the DOH accept a letter of intent and to approve an application for a new trauma center in a TSA that is already at its statutory maximum if each existing trauma centers' case load volume of high-risk patients is double the minimum volume requirement for Level I and Level II trauma centers and more than triple the minimum volume requirements for stand-alone pediatric trauma centers.
  - Specifies that, when demonstrating a need for an additional trauma center in a particular TSA over the statutory caps, the applicant must use the analysis prepared by the DOH.
  - Specifies that the determination for the required population growth must be based on the American Community Survey Five-Year Estimates by the United States Census Bureau for the five-year period before the date the applicant files its letter of intent.
  - Specifies that additional caseload volumes for certain residents and fellows apply to hospitals with a trauma or critical care residency or fellowship program.
- The minimum caseload volumes established in the bill are as follows:
  - Level I trauma center in a TSA with a population > 1.5 million: 1,200 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level I trauma center in a TSA with a population < 1.5 million: 1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level II or Level II/Pediatric trauma center in a TSA with a population > 1.25 million: 1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level II or Level II/Pediatric trauma center in a TSA with a population < 1.25 million: 500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

    - All pediatric stand-alone trauma centers: 500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
- Requires the AHCA, in consultation with the DOH, to develop rules to ensure that hospitals and trauma centers are submitting data required by the DOH to perform its duties under ch. 395, F.S.
- Specifies that, when selecting from a pool of applicants, the DOH must select the highest quality applicant that is farthest away from an existing trauma center in the TSA.
- Allows an applicant to operate as a provisional trauma center after the DOH has completed the initial and in-depth review processes.
- Requires the out-of-state review team to perform an onsite visit within the year after the trauma center has begun provisionally operating.
- Requires (rather than allows) the DOH to designate a trauma center that is in compliance with trauma center standards based on the recommendation from the review team.
- Allows the applicant, as well as hospitals with trauma centers in the same or contiguous TSAs, to protest decisions made by the DOH regarding application approval and determination of need.
- Restricts such protests for the designation of a pediatric trauma center that is grandfathered in.
- Specifies that certain provisional trauma centers must be allowed to continue operations until a court or the DOH determines that they have failed to meet the Florida trauma standards.
- Specifies that none of the grandfathering provisions limit the DOH's authority to review and approve trauma center applications.
- Specifies that if the grandfathering provisions of the act are found to be invalid or inoperative, the entire act becomes invalid.
- Requires the DOH and OPPAGA to study the DOH's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services to compare them with the American College of Surgeon's requirements. The OPPAGA must submit a report to the Governor and the Legislature by December 31, 2018. The section expires on January 31, 2019.
- Makes other technical and conforming changes.

CS by Health Policy on January 23, 2018:
The CS replaces grandfathering language related to Level II trauma centers in ongoing court proceedings to clarify that it is the DOH, and not a court, that must determine that the trauma center has met application and operational requirements; specifies the required court actions that qualify a trauma center under the paragraph; and conforms the title of the bill to changes made by the amendment.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
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The Committee on Rules (Young) recommended the following:

Senate Amendment (with directory amendment)

Delete lines 206 - 208

and insert:

(4) "High-risk patient" means an injured patient with an International Classification Injury Severity Score of less than 0.85.

(6)~~(5)~~ "International Classification Injury Severity Score" means the ~~statistical~~ method for computing the severity of injuries sustained by trauma patients, based on the International Statistical Classification of Diseases and Related

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Health Problems, 10th revision, Clinical Modification, and adopted by the department by rule, in consultation with the Florida Trauma System Advisory Council, along with any conversion tables or analytical tools used in its computation ~~Injury Severity Score shall be the methodology used by the department and trauma centers severity of an injury~~.

====== 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 line 202

and insert:

(7) and present subsections (5), (13), and (14) of that section are

By the Committees on Appropriations; and Health Policy; and Senator Young

576-03559-18 20181876c2

A bill to be entitled

An act relating to trauma services; amending ss. 318.14, 318.18, and 318.21, F.S.; requiring that moneys received from specified penalties be allocated to certain trauma centers by a calculation that uses the Agency for Health Care Administration's hospital discharge data; amending s. 395.4001, F.S.; conforming cross-references; defining and redefining terms; amending s. 395.402, F.S.; revising legislative intent; revising the trauma service areas and provisions relating to the number and location of trauma centers; prohibiting the Department of Health from designating an existing Level II trauma center as a new pediatric trauma center or from designating an existing Level II trauma center as a Level I trauma center in a trauma service area that already has an existing Level I or pediatric trauma center; apportioning trauma centers within each trauma service area; requiring the department to establish the Florida Trauma System Advisory Council by a specified date; authorizing the council to submit certain recommendations to the department; providing for the membership of the council; requiring the council to meet no later than a specified date and to meet at least quarterly; amending s. 395.4025, F.S.; conforming provisions to changes made by the act; requiring the department to periodically prepare an analysis of the state trauma system using the agency's hospital discharge data and specified population data;

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576-03559-18 20181876c2

specifying contents of the report; requiring the department to make available all data, formulas, methodologies, calculations, and risk adjustment tools used in preparing the data in the report; requiring the department to notify each acute care general hospital and local and regional trauma agency in a trauma service area that has an identified need for an additional trauma center that the department is accepting letters of intent; prohibiting the department from accepting a letter of intent and from approving an application for a trauma center if there is not statutory capacity for an additional trauma center; revising the department's review process for hospitals seeking designation as a trauma center; authorizing the department to approve certain applications for designation as a trauma center if specified requirements are met; providing that a hospital applicant that meets such requirements must be ready to operate in compliance with specified trauma standards by a specified date; deleting a provision authorizing the department to grant a hospital applicant an extension of time to meet certain standards and requirements; requiring the department to select one or more hospitals for approval to prepare to operate as a trauma center; providing selection requirements; prohibiting an applicant from operating as a provisional trauma center until the department has completed its review process and approved the application; requiring a

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specified review team to make onsite visits to newly operational trauma centers within a certain timeframe; requiring the department, based on recommendations from the review team, to designate a trauma center that is in compliance with specified requirements; deleting the date by which the department must select trauma centers; providing that only certain hospitals may protest a decision made by the department; providing that certain trauma centers that were verified by the department or determined by the department to be in substantial compliance with specified standards before specified dates are deemed to have met application and operational requirements; requiring the department to designate a certain provisionally approved Level II trauma center as a trauma center if certain criteria are met; prohibiting such designated trauma center from being required to cease trauma operations unless the department or a court determines that it has failed to meet certain standards; providing construction; amending ss. 395.403 and 395.4036, F.S.; conforming provisions to changes made by the act; amending s. 395.404, F.S.; requiring trauma centers to participate in the National Trauma Data Bank; requiring trauma centers and acute care hospitals to report trauma patient transfer and outcome data to the department; deleting provisions relating to the department review of trauma registry data; amending ss. 395.401, 408.036, and 409.975, F.S.; conforming cross-references; requiring

the department to work with the Office of Program Policy Analysis and Government Accountability to study the department's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services and compare them to those of the American College of Surgeons; requiring the office to submit a report of the findings of the study to the Governor, Legislature, and advisory council by a specified date; providing for the expiration of provisions relating to the study; providing for invalidity; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(5) Any person electing to appear before the designated official or who is required so to appear shall be deemed to have waived his or her right to the civil penalty provisions of s. 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed $500, except that in cases involving unlawful speed in a school zone or involving unlawful speed in a construction zone, the civil penalty may not exceed $1,000; or require attendance at a driver improvement school, or both. If the person is required to appear before the

designated official pursuant to s. 318.19(1) and is found to have committed the infraction, the designated official shall impose a civil penalty of $1,000 in addition to any other penalties and the person's driver license shall be suspended for 6 months. If the person is required to appear before the designated official pursuant to s. 318.19(2) and is found to have committed the infraction, the designated official shall impose a civil penalty of $500 in addition to any other penalties and the person's driver license shall be suspended for 3 months. If the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned. Moneys received from the mandatory civil penalties imposed pursuant to this subsection upon persons required to appear before a designated official pursuant to s. 318.19(1) or (2) shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the Agency for Health Care Administration's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 2. Paragraph (h) of subsection (3) of section 318.18, Florida Statutes, is amended to read:

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318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(3)

(h) A person cited for a second or subsequent conviction of speed exceeding the limit by 30 miles per hour and above within a 12-month period shall pay a fine that is double the amount listed in paragraph (b). For purposes of this paragraph, the term "conviction" means a finding of guilt as a result of a jury verdict, nonjury trial, or entry of a plea of guilty. Moneys received from the increased fine imposed by this paragraph shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

1. Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

2. Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the Agency for Health Care Administration's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 3. Paragraph (b) of subsection (15) of section 318.21, Florida Statutes, is amended to read:

318.21 Disposition of civil penalties by county courts.—All

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civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(15) Of the additional fine assessed under s. 318.18(3)(e) for a violation of s. 316.1893, 50 percent of the moneys received from the fines shall be appropriated to the Agency for Health Care Administration as general revenue to provide an enhanced Medicaid payment to nursing homes that serve Medicaid recipients with brain and spinal cord injuries. The remaining 50 percent of the moneys received from the enhanced fine imposed under s. 318.18(3)(e) shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers in the counties where enhanced penalty zones are established to ensure the availability and accessibility of trauma services. Funds deposited into the Emergency Medical Services Trust Fund under this subsection shall be allocated as follows:

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the Agency for Health Care Administration's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 4. Present subsections (4) through (18) of section 395.4001, Florida Statutes, are renumbered as subsections (5) through (19), respectively, paragraph (a) of present subsection (7) and present subsections (13) and (14) of that section are amended, and a new subsection (4) is added to that section, to

read:

395.4001 Definitions.—As used in this part, the term:

(4) "High-risk patient" means a trauma patient with an International Classification Injury Severity Score of less than 0.85.

(8) ~~(7)~~ "Level II trauma center" means a trauma center that:

(a) Is verified by the department to be in substantial compliance with Level II trauma center standards and has been approved by the department to operate as a Level II trauma center or is designated pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

(14) ~~(13)~~ "Trauma caseload volume" means the number of trauma patients calculated by the department using the data reported by each designated trauma center to the hospital discharge database maintained by the agency pursuant to s. 408.061 ~~reported by individual trauma centers to the Trauma Registry and validated by the department~~.

(15) ~~(14)~~ "Trauma center" means a hospital that has been verified by the department to be in substantial compliance with the requirements in s. 395.4025 and has been approved by the department to operate as a Level I trauma center, Level II trauma center, or pediatric trauma center, or is designated by the department as a Level II trauma center pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

Section 5. Section 395.402, Florida Statutes, is amended to read:

395.402 Trauma service areas; number and location of trauma centers.—

(1) The Legislature recognizes the need for a statewide,

cohesive, uniform, and integrated trauma system, as well as the need to ensure the viability of existing trauma centers when designating new trauma centers. Consistent with national standards, future trauma center designations must be based on need as a factor of demand and capacity. ~~Within the trauma service areas, Level I and Level II trauma centers shall each be capable of annually treating a minimum of 1,000 and 500 patients, respectively, with an injury severity score (ISS) of 9 or greater. Level II trauma centers in counties with a population of more than 500,000 shall have the capacity to care for 1,000 patients per year.~~

~~(2) Trauma service areas as defined in this section are to be utilized until the Department of Health completes an assessment of the trauma system and reports its finding to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the substantive legislative committees. The report shall be submitted by February 1, 2005. The department shall review the existing trauma system and determine whether it is effective in providing trauma care uniformly throughout the state. The assessment shall:~~

~~(a) Consider aligning trauma service areas within the trauma region boundaries as established in July 2004.~~

~~(b) Review the number and level of trauma centers needed for each trauma service area to provide a statewide integrated trauma system.~~

~~(c) Establish criteria for determining the number and level of trauma centers needed to serve the population in a defined trauma service area or region.~~

~~(d) Consider including criteria within trauma center~~

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~~approval standards based upon the number of trauma victims served within a service area.~~

~~(e) Review the Regional Domestic Security Task Force structure and determine whether integrating the trauma system planning with interagency regional emergency and disaster planning efforts is feasible and identify any duplication of efforts between the two entities.~~

~~(f) Make recommendations regarding a continued revenue source which shall include a local participation requirement.~~

~~(g) Make recommendations regarding a formula for the distribution of funds identified for trauma centers which shall address incentives for new centers where needed and the need to maintain effective trauma care in areas served by existing centers, with consideration for the volume of trauma patients served, and the amount of charity care provided.~~

~~(3) In conducting such assessment and subsequent annual reviews, the department shall consider:~~

~~(a) The recommendations made as part of the regional trauma system plans submitted by regional trauma agencies.~~

~~(b) Stakeholder recommendations.~~

~~(c) The geographical composition of an area to ensure rapid access to trauma care by patients.~~

~~(d) Historical patterns of patient referral and transfer in an area.~~

~~(e) Inventories of available trauma care resources, including professional medical staff.~~

~~(f) Population growth characteristics.~~

~~(g) Transportation capabilities, including ground and air transport.~~

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~~(h) Medically appropriate ground and air travel times.~~

~~(i) Recommendations of the Regional Domestic Security Task Force.~~

~~(j) The actual number of trauma victims currently being served by each trauma center.~~

~~(k) Other appropriate criteria.~~

~~(4) Annually thereafter, the department shall review the assignment of the 67 counties to trauma service areas, in addition to the requirements of paragraphs (2)(b)-(g) and subsection (3). County assignments are made for the purpose of developing a system of trauma centers. Revisions made by the department shall take into consideration the recommendations made as part of the regional trauma system plans approved by the department and the recommendations made as part of the state trauma system plan. In cases where a trauma service area is located within the boundaries of more than one trauma region, the trauma service area's needs, response capability, and system requirements shall be considered by each trauma region served by that trauma service area in its regional system plan. Until the department completes the February 2005 assessment, the assignment of counties shall remain as established in this section.~~

(a) The following trauma service areas are ~~hereby~~ established:

1. Trauma service area 1 shall consist of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

2. Trauma service area 2 shall consist of Bay, Gulf, Holmes, and Washington Counties.

3. Trauma service area 3 shall consist of Calhoun,

Franklin, Gadsden, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.

4. Trauma service area 4 shall consist of Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.

5. Trauma service area 5 shall consist of Baker, Clay, Duval, Nassau, and St. Johns Counties.

6. Trauma service area 6 shall consist of Citrus, Hernando, and Marion Counties.

7. Trauma service area 7 shall consist of Flagler and Volusia Counties.

8. Trauma service area 8 shall consist of Lake, Orange, Osceola, Seminole, and Sumter Counties.

9. Trauma service area 9 shall consist of Pasco and Pinellas Counties.

10. Trauma service area 10 shall consist of Hillsborough County.

11. Trauma service area 11 shall consist of Hardee, Highlands, and Polk Counties.

12. Trauma service area 12 shall consist of Brevard and Indian River Counties.

13. Trauma service area 13 shall consist of DeSoto, Manatee, and Sarasota Counties.

14. Trauma service area 14 shall consist of Martin, Okeechobee, and St. Lucie Counties.

15. Trauma service area 15 shall consist of Charlotte, Collier, Glades, Hendry, and Lee Counties.

16. Trauma service area 16 shall consist of Palm Beach County.

17. Trauma service area 17 shall consist of Broward ~~Collier~~ County.

18. Trauma service area 18 shall consist of ~~Broward County.~~

~~19. Trauma service area 19 shall consist of~~ Miami-Dade and Monroe Counties.

(b) Each trauma service area must ~~should~~ have at least one Level I or Level II trauma center. Except as otherwise provided in s. 395.4025(16), the department may not designate an existing Level II trauma center as a new pediatric trauma center or designate an existing Level II trauma center as a Level I trauma center in a trauma service area that already has an existing Level I or pediatric trauma center ~~The department shall allocate, by rule, the number of trauma centers needed for each trauma service area~~.

(c) Trauma centers, including Level I, Level II, Level II with a pediatric trauma center, jointly certified pediatric trauma centers, and stand-alone pediatric trauma centers, shall be apportioned as follows:

1. Trauma service area 1 shall have three trauma centers.
2. Trauma service area 2 shall have one trauma center.
3. Trauma service area 3 shall have one trauma center.
4. Trauma service area 4 shall have one trauma center.
5. Trauma service area 5 shall have three trauma centers.
6. Trauma service area 6 shall have one trauma center.
7. Trauma service area 7 shall have one trauma center.
8. Trauma service area 8 shall have three trauma centers.
9. Trauma service area 9 shall have three trauma centers.
10. Trauma service area 10 shall have two trauma centers.
11. Trauma service area 11 shall have one trauma center.

12. Trauma service area 12 shall have one trauma center.
13. Trauma service area 13 shall have two trauma centers.
14. Trauma service area 14 shall have one trauma center.
15. Trauma service area 15 shall have one trauma center.
16. Trauma service area 16 shall have two trauma centers.
17. Trauma service area 17 shall have three trauma centers.
18. Trauma service area 18 shall have five trauma centers.

Notwithstanding other provisions of this chapter, a trauma service area may not have more than a total of five Level I, Level II, Level II with a pediatric trauma center, jointly certified pediatric trauma centers, and stand-alone pediatric trauma centers. A trauma service area may not have more than one stand-alone pediatric trauma center ~~There shall be no more than a total of 44 trauma centers in the state~~.

(2)(a) By October 1, 2018, the department shall establish the Florida Trauma System Advisory Council to promote an inclusive trauma system and enhance cooperation among trauma system stakeholders. The advisory council may submit recommendations to the department on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.

(b)1. The advisory council shall consist of 12 members appointed by the Governor, including:

a. The State Trauma Medical Director;

b. A standing member of the Emergency Medical Services Advisory Council;

c. A representative of a local or regional trauma agency;

d. A trauma program manager or trauma medical director who is actively working in a trauma center and who represents an investor-owned hospital with a trauma center;

e. A trauma program manager or trauma medical director actively working in a trauma center who represents a nonprofit or public hospital with a trauma center;

f. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and who is actively practicing medicine in a Level II trauma center who represents an investor-owned hospital with a trauma center;

g. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and actively practicing medicine who represents a nonprofit or public hospital with a trauma center;

h. A representative of the American College of Surgeons Committee on Trauma who has pediatric expertise;

i. A representative of the Safety Net Hospital Alliance of Florida;

j. A representative of the Florida Hospital Association;

k. A Florida-licensed, board-certified emergency medicine physician who is not affiliated with a trauma center; and

l. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and actively practicing medicine in a Level I trauma center.

2. No two members may be employed by the same health care facility.

3. Each council member shall be appointed to a 3-year term; however, for the purpose of providing staggered terms, of the initial appointments, four members shall be appointed to 1-year

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terms, four members shall be appointed to 2-year terms, and four members shall be appointed to 3-year terms.

(c) The department shall use existing and available resources to administer and support the activities of the advisory council. Members of the advisory council shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(d) The advisory council shall convene no later than January 5, 2019, and shall meet at least quarterly.

Section 6. Section 395.4025, Florida Statutes, is amended to read:

395.4025 Trauma centers; selection; quality assurance; records.—

(1) For purposes of developing a system of trauma centers, the department shall use the 18 ~~19~~ trauma service areas established in s. 395.402. ~~Within each service area and based on the state trauma system plan, the local or regional trauma services system plan, and recommendations of the local or regional trauma agency, the department shall establish the approximate number of trauma centers needed to ensure reasonable access to high-quality trauma services.~~ The department shall designate ~~select~~ those hospitals that are to be recognized as trauma centers.

(2)(a) The department shall prepare an analysis of the Florida trauma system by August 31, 2020, and every 3 years thereafter, using the agency's hospital discharge database described in s. 408.061 for the current year and the most recent 5 years of population data for Florida available from the American Community Survey 5-Year Estimates by the United States

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Census Bureau. The department's report must, at a minimum, include all of the following:

1. The population growth for each trauma service area and for this state;

2. The number of high-risk patients treated at each trauma center within each trauma service area, including pediatric trauma centers;

3. The total number of high-risk patients treated at all acute care hospitals inclusive of nontrauma centers in the trauma service area; and

4. The percentage of each trauma center's sufficient volume of trauma patients, as described in subparagraph (3)(d)2., in accordance with the International Classification Injury Severity Score for the trauma center's designation, inclusive of the additional caseload volume required for those trauma centers with graduate medical education programs.

(b) The department shall make available all data, formulas, methodologies, calculations, and risk adjustment tools used in preparing the report.

(3)(a) ~~(2)(a)~~ The department shall ~~annually~~ notify each acute care general hospital and each local and each regional trauma agency in a trauma service area with an identified need for an additional trauma center ~~the state~~ that the department is accepting letters of intent from hospitals that are interested in becoming trauma centers. The department may accept a letter of intent only if there is statutory capacity for an additional trauma center in accordance with subsection (2), paragraph (d), and s. 395.402 ~~In order to be considered by the department, a hospital that operates within the geographic area of a local or~~

~~regional trauma agency must certify that its intent to operate as a trauma center is consistent with the trauma services plan of the local or regional trauma agency, as approved by the department, if such agency exists~~. Letters of intent must be postmarked no later than midnight October 1 of the year in which the department notifies hospitals that it plans to accept letters of intent.

(b) By October 15, the department shall send to all hospitals that submitted a letter of intent an application package that will provide the hospitals with instructions for submitting information to the department for selection as a trauma center. The standards for trauma centers provided for in s. 395.401(2), as adopted by rule of the department, shall serve as the basis for these instructions.

(c) In order to be considered by the department, applications from those hospitals seeking selection as trauma centers, including those current verified trauma centers that seek a change or redesignation in approval status as a trauma center, must be received by the department no later than the close of business on April 1 of the year following submission of the letter of intent. The department shall conduct an initial ~~a provisional~~ review of each application for the purpose of determining whether ~~that~~ the hospital's application is complete and whether ~~that~~ the hospital is capable of constructing and operating a trauma center that includes ~~has~~ the critical elements required for a trauma center. This critical review must ~~will~~ be based on trauma center standards and must ~~shall~~ include, but need not be limited to, a review as to ~~of~~ whether the hospital is prepared to attain and operate with all of the

following components before April 30 of the following year ~~has~~:

1. Equipment and physical facilities necessary to provide trauma services.

2. Personnel in sufficient numbers and with proper qualifications to provide trauma services.

3. An effective quality assurance process.

~~4. Submitted written confirmation by the local or regional trauma agency that the hospital applying to become a trauma center is consistent with the plan of the local or regional trauma agency, as approved by the department, if such agency exists.~~

(d)~~1.~~ Except as otherwise provided in this section, the department may not approve an application for a Level I, a Level II, a Level II with a pediatric trauma center, a jointly certified pediatric trauma center, or a stand-alone pediatric trauma center if approval of the application would exceed the limits on the numbers of Level I, Level II, Level II with a pediatric trauma center, jointly certified pediatric trauma centers, or stand-alone pediatric trauma centers established in s. 395.402(1). However, the department shall review and may approve an application for a trauma center when approval of the application would result in a number of trauma centers which exceeds the limit on the numbers of trauma centers in a trauma service area imposed in s. 395.402(1), if, using the analysis performed by the department as required in paragraph (2)(a), the applicant demonstrates and the department determines that:

1. The existing trauma center actual caseload volume of high-risk patients exceeds the minimum caseload volume capabilities, inclusive of the additional caseload volume for

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graduate medical education critical care and trauma surgical subspecialty residents or fellows by more than two times the statutory minimums listed in sub-subparagraphs 2.a.-d. or three times the statutory minimum listed in sub-subparagraph 2.e., and the population growth for the trauma service area exceeds the statewide population growth by more than 15 percent based on the American Community Survey 5-Year Estimates by the United States Census Bureau for the 5-year period before the date the applicant files its letter of intent; and

2. A sufficient caseload volume of potential trauma patients exists within the trauma service area to ensure that existing trauma centers caseload volumes are at the following levels:

a. For Level I trauma centers in trauma service areas with a population of greater than 1.5 million, a minimum caseload volume of the greater of 1,200 high-risk patients admitted or greater per year or, for a trauma center with a trauma or critical care residency or fellowship program, 1,200 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

b. For Level I trauma centers in trauma service areas with a population of less than 1.5 million, a minimum caseload volume of the greater of 1,000 high-risk patients admitted per year or, for a trauma center with a critical care or trauma residency or fellowship program, 1,000 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

c. For Level II trauma centers and Level II trauma centers

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with a pediatric trauma center in trauma service areas with a population of greater than 1.25 million, a minimum caseload volume of the greater of 1,000 high-risk patients admitted or for a trauma center with a critical care or trauma residency or fellowship program, 1,000 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

d. For Level II trauma centers and Level II trauma centers with a pediatric trauma center in trauma service areas with a population of less than 1.25 million, a minimum caseload volume of the greater of 500 high-risk patients admitted per year or for a trauma center with a critical care or trauma residency or fellowship program, 500 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

e. For pediatric trauma centers, a minimum caseload volume of the greater of 500 high-risk admitted patients per year or for a trauma center with a critical care or trauma residency or fellowship program, 500 high-risk admitted patients per year plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

The International Classification Injury Severity Score calculations and caseload volume must be calculated using the most recent available hospital discharge data collected by the agency from all acute care hospitals pursuant to s. 408.061. The agency, in consultation with the department, shall adopt rules for trauma centers and acute care hospitals for the submission of data required for the department to perform its duties under

this chapter.

(e) If the department determines that the hospital is capable of attaining and operating with the components required by paragraph (c), the applicant must be ready to operate in compliance with Florida trauma center standards no later than April 30 of the year following the department's initial review and approval of the hospital's application to proceed with preparation to operate as a trauma center. A hospital that fails to comply with this subsection may not be designated as a trauma center ~~Notwithstanding other provisions in this section, the department may grant up to an additional 18 months to a hospital applicant that is unable to meet all requirements as provided in paragraph (c) at the time of application if the number of applicants in the service area in which the applicant is located is equal to or less than the service area allocation, as provided by rule of the department. An applicant that is granted additional time pursuant to this paragraph shall submit a plan for departmental approval which includes timelines and activities that the applicant proposes to complete in order to meet application requirements. Any applicant that demonstrates an ongoing effort to complete the activities within the timelines outlined in the plan shall be included in the number of trauma centers at such time that the department has conducted a provisional review of the application and has determined that the application is complete and that the hospital has the critical elements required for a trauma center.~~

~~2. Timeframes provided in subsections (1)-(8) shall be stayed until the department determines that the application is complete and that the hospital has the critical elements~~

~~required for a trauma center~~.

(4)~~(3)~~ By May 1, the department shall select one or more hospitals ~~After April 30, any hospital~~ that submitted an application found acceptable by the department based on initial ~~provisional~~ review for approval to prepare ~~shall be eligible~~ to operate with the components required by paragraph (3)(c). If the department receives more applications than may be approved, the department must select the best applicant or applicants from the available pool based on the department's determination of the capability of an applicant to provide the highest quality patient care using the most recent technological, medical, and staffing resources available, which is located the farthest away from an existing trauma center in the applicant's trauma service area to maximize access. The number of applicants selected is limited to available statutory need in the specified trauma service area, as designated in paragraph (3)(d) or s. 395.402(1) ~~as a provisional trauma center~~.

(5)~~(4)~~ Following the initial review, ~~Between May 1 and October 1 of each year~~, the department shall conduct an in-depth evaluation of all applications found acceptable in the initial ~~provisional~~ review. The applications shall be evaluated against criteria enumerated in the application packages as provided to the hospitals by the department. An applicant may not operate as a provisional trauma center until the department completes the initial and in-depth review and approves the application.

(6)~~(5)~~ Within ~~Beginning October 1 of each year and ending no later than June 1 of~~ the ~~following~~ year after the hospital begins operating as a provisional trauma center, a review team of out-of-state experts assembled by the department shall make

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onsite visits to all provisional trauma centers. The department shall develop a survey instrument to be used by the expert team of reviewers. The instrument must ~~shall~~ include objective criteria and guidelines for reviewers based on existing trauma center standards such that all trauma centers are assessed equally. The survey instrument must ~~shall~~ also include a uniform rating system that ~~will be used by~~ reviewers must use to indicate the degree of compliance of each trauma center with specific standards, and to indicate the quality of care provided by each trauma center as determined through an audit of patient charts. In addition, hospitals being considered as provisional trauma centers must ~~shall~~ meet all the requirements of a trauma center and must ~~shall~~ be located in a trauma service area that has a need for such a trauma center.

(7)~~(6)~~ Based on recommendations from the review team, the department shall approve for designation a trauma center that is in compliance with trauma center standards, as established by department rule, and with this section ~~shall select trauma centers by July 1. An applicant for designation as a trauma center may request an extension of its provisional status if it submits a corrective action plan to the department. The corrective action plan must demonstrate the ability of the applicant to correct deficiencies noted during the applicant's onsite review conducted by the department between the previous October 1 and June 1. The department may extend the provisional status of an applicant for designation as a trauma center through December 31 if the applicant provides a corrective action plan acceptable to the department. The department or a team of out-of-state experts assembled by the department shall~~

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~~conduct an onsite visit on or before November 1 to confirm that the deficiencies have been corrected. The provisional trauma center is responsible for all costs associated with the onsite visit in a manner prescribed by rule of the department. By January 1, the department must approve or deny the application of any provisional applicant granted an extension~~. Each trauma center shall be granted a 7-year approval period during which time it must continue to maintain trauma center standards and acceptable patient outcomes as determined by department rule. An approval, unless sooner suspended or revoked, automatically expires 7 years after the date of issuance and is renewable upon application for renewal as prescribed by rule of the department.

(8) ~~(7)~~ Only an applicant, or hospital with an existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant has applied to operate a trauma center, may protest a decision made by the department with regard to whether the application should be approved, or whether need has been established through the criteria established in paragraph (3)(d) ~~Any hospital that wishes to protest a decision made by the department based on the department's preliminary or in-depth review of applications or on the recommendations of the site visit review team pursuant to this section shall proceed as provided in chapter 120~~. Hearings held under this subsection shall be conducted in the same manner as provided in ss. 120.569 and 120.57. Cases filed under chapter 120 may combine all disputes between parties.

(9) ~~(8)~~ Notwithstanding any provision of chapter 381, a hospital licensed under ss. 395.001-395.3025 that operates a

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trauma center may not terminate or substantially reduce the availability of trauma service without providing at least 180 days' notice of its intent to terminate such service. Such notice shall be given to the department, to all affected local or regional trauma agencies, and to all trauma centers, hospitals, and emergency medical service providers in the trauma service area. The department shall adopt by rule the procedures and process for notification, duration, and explanation of the termination of trauma services.

(10) ~~(9)~~ Except as otherwise provided in this subsection, the department or its agent may collect trauma care and registry data, as prescribed by rule of the department, from trauma centers, hospitals, emergency medical service providers, local or regional trauma agencies, or medical examiners for the purposes of evaluating trauma system effectiveness, ensuring compliance with the standards, and monitoring patient outcomes. A trauma center, hospital, emergency medical service provider, medical examiner, or local trauma agency or regional trauma agency, or a panel or committee assembled by such an agency under s. 395.50(1) may, but is not required to, disclose to the department patient care quality assurance proceedings, records, or reports. However, the department may require a local trauma agency or a regional trauma agency, or a panel or committee assembled by such an agency to disclose to the department patient care quality assurance proceedings, records, or reports that the department needs solely to conduct quality assurance activities under s. 395.4015, or to ensure compliance with the quality assurance component of the trauma agency's plan approved under s. 395.401. The patient care quality assurance

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proceedings, records, or reports that the department may require for these purposes include, but are not limited to, the structure, processes, and procedures of the agency's quality assurance activities, and any recommendation for improving or modifying the overall trauma system, if the identity of a trauma center, hospital, emergency medical service provider, medical examiner, or an individual who provides trauma services is not disclosed.

(11) ~~(10)~~ Out-of-state experts assembled by the department to conduct onsite visits are agents of the department for the purposes of s. 395.3025. An out-of-state expert who acts as an agent of the department under this subsection is not liable for any civil damages as a result of actions taken by him or her, unless he or she is found to be operating outside the scope of the authority and responsibility assigned by the department.

(12) ~~(11)~~ Onsite visits by the department or its agent may be conducted at any reasonable time and may include but not be limited to a review of records in the possession of trauma centers, hospitals, emergency medical service providers, local or regional trauma agencies, or medical examiners regarding the care, transport, treatment, or examination of trauma patients.

(13) ~~(12)~~ Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports obtained or made pursuant to this section, s. 395.3025(4)(f), s. 395.401, s. 395.4015, s. 395.402, s. 395.403, s. 395.404, s. 395.4045, s. 395.405, s. 395.50, or s. 395.51 must be held confidential by the department or its agent and are exempt from the provisions of s. 119.07(1). Patient care quality assurance proceedings, records, or reports obtained or made

pursuant to these sections are not subject to discovery or introduction into evidence in any civil or administrative action.

(14) ~~(13)~~ The department may adopt, by rule, the procedures and process by which it will select trauma centers. Such procedures and process must be used in ~~annually~~ selecting trauma centers and must be consistent with subsections (1)-(9) ~~(1)-(8)~~ except in those situations in which it is in the best interest of, and mutually agreed to by, all applicants within a service area and the department to reduce the timeframes.

(15) ~~(14)~~ Notwithstanding the procedures established pursuant to subsections (1) through (14) ~~(13)~~, hospitals located in areas with limited access to trauma center services shall be designated by the department as Level II trauma centers based on documentation of a valid certificate of trauma center verification from the American College of Surgeons. Areas with limited access to trauma center services are defined by the following criteria:

(a) The hospital is located in a trauma service area with a population greater than 600,000 persons but a population density of less than 225 persons per square mile;

(b) The hospital is located in a county with no verified trauma center; and

(c) The hospital is located at least 15 miles or 20 minutes travel time by ground transport from the nearest verified trauma center.

(16)(a) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, an adult Level I trauma

center, an adult Level II trauma center, a Level II trauma center with a pediatric trauma center, a jointly certified pediatric trauma center, or a stand-alone pediatric trauma center that was verified by the department before December 15, 2017, is deemed to have met the trauma center application and operational requirements of this section and must be verified and designated as a trauma center.

(b) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, a trauma center that was not verified by the department before December 15, 2017, but that was provisionally approved by the department to be in substantial compliance with Level II trauma standards before January 1, 2017, and which is operating as a Level II trauma center, is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level II trauma center.

(c) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, a trauma center that was not verified by the department before December 15, 2017, as a Level I trauma center but that was provisionally approved by the department to be in substantial compliance with Level I trauma standards before January 1, 2017, and is operating as a Level I trauma center is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level I trauma center.

(d) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8),

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or any other provision of this act, a trauma center that was not verified by the department before December 15, 2017, as a pediatric trauma center but was provisionally approved by the department and found to be in substantial compliance with the pediatric trauma standards established by rule before January 1, 2018, and is operating as a pediatric trauma center is deemed to have met the application and operational requirements of this section for a pediatric trauma center and, upon successful completion of the in-depth and site review process, shall be verified and designated as a pediatric trauma center. Notwithstanding the provisions of subsection (8), no existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located may protest the in-depth review, site survey, or verification decision of the department regarding an applicant that meets the requirements of this paragraph.

(e) Notwithstanding the statutory capacity limits established in s. 395.402(1) or any other provision of this act, any hospital operating as a Level II trauma center after January 1, 2017, must be designated and verified by the department as a Level II trauma center if all of the following apply:

1. The hospital was provisionally approved after January 1, 2017, to operate as a Level II trauma center and was in operation on or before June 1, 2017;

2. The department's decision to approve the hospital to operate a provisional Level II trauma center was in litigation on or before January 1, 2018;

3. The hospital receives a recommended order from the Division of Administrative Hearings, a final order from the

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department, or an order from a court of competent jurisdiction which provides that it was entitled to be designated and verified as a Level II trauma center; and

4. The department determines that the hospital is in substantial compliance with the Level II trauma center standards, including the in-depth and site reviews.

Any provisional trauma center operating under this paragraph may not be required to cease trauma operations unless a court of competent jurisdiction or the department determines that it has failed to meet the trauma center standards, as established by department rule.

(f) Notwithstanding the statutory capacity limits established in s. 395.402(1), or any other provision of this act, a joint pediatric trauma center involving a Level II trauma center and a specialty licensed children's hospital which was verified by the department before December 15, 2017, is deemed to have met the application and operational requirements of this section for a pediatric trauma center and shall be verified and designated as a pediatric trauma center even if the joint program is dissolved upon the expiration of the existing certificate and the pediatric trauma center continues operations independently through the specialty licensed children's hospital, provided that the pediatric trauma center meets all requirements for verification by the department.

(g) Nothing in this subsection shall limit the department's authority to review and approve trauma center applications.

Section 7. Section 395.403, Florida Statutes, is amended to read:

395.403 Reimbursement of trauma centers.—

(1) All verified trauma centers shall be considered eligible to receive state funding when state funds are specifically appropriated for state-sponsored trauma centers in the General Appropriations Act. Effective July 1, 2010, the department shall make payments from the Emergency Medical Services Trust Fund under s. 20.435 to the trauma centers. Payments shall be in equal amounts for the trauma centers approved by the department as of July 1 of the fiscal year in which funding is appropriated. In the event a trauma center does not maintain its status as a trauma center for any state fiscal year in which such funding is appropriated, the trauma center shall repay the state for the portion of the year during which it was not a trauma center.

(2) Trauma centers eligible to receive distributions from the Emergency Medical Services Trust Fund under s. 20.435 in accordance with subsection (1) may request that such funds be used as intergovernmental transfer funds in the Medicaid program.

(3) In order to receive state funding, a hospital must ~~shall~~ be a verified trauma center and shall:

(a) Agree to conform to all departmental requirements as provided by rule to assure high-quality trauma services.

(b) Agree to report trauma data to the National Trauma Data Bank ~~provide information concerning the provision of trauma services to the department, in a form and manner prescribed by rule of the department~~.

(c) Agree to accept all trauma patients, regardless of ability to pay, on a functional space-available basis.

(4) A trauma center that fails to comply with any of the conditions listed in subsection (3) or the applicable rules of the department may ~~shall~~ not receive payments under this section for the period in which it was not in compliance.

Section 8. Section 395.4036, Florida Statutes, is amended to read:

395.4036 Trauma payments.—

(1) Recognizing the Legislature's stated intent to provide financial support to the current verified trauma centers and to provide incentives for the establishment of additional trauma centers as part of a system of state-sponsored trauma centers, the department shall use ~~utilize~~ funds collected under s. 318.18 and deposited into the Emergency Medical Services Trust Fund of the department to ensure the availability and accessibility of trauma services throughout the state as provided in this subsection.

(a) Funds collected under s. 318.18(15) shall be distributed as follows:

1. Twenty percent of the total funds collected during the state fiscal year shall be distributed to verified trauma centers that have a local funding contribution as of December 31. Distribution of funds under this subparagraph shall be based on trauma caseload volume for the most recent calendar year available.

2. Forty percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the agency's hospital

discharge data reported by each trauma center pursuant to s. 408.061 and meeting the criteria for classification as a trauma patient ~~department's Trauma Registry data~~.

3. Forty percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

(b) Funds collected under s. 318.18(5)(c) and (20) shall be distributed as follows:

1. Thirty percent of the total funds collected shall be distributed to Level II trauma centers operated by a public hospital governed by an elected board of directors as of December 31, 2008.

2. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the agency's hospital discharge data reported by each trauma center pursuant to s. 408.061 and meeting the criteria for classification as a trauma patient ~~department's Trauma Registry data~~.

3. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

(2) Funds deposited in the department's Emergency Medical Services Trust Fund for verified trauma centers may be used to maximize the receipt of federal funds that may be available for such trauma centers. Notwithstanding this section and s. 318.14, distributions to trauma centers may be adjusted in a manner to ensure that total payments to trauma centers represent the same proportional allocation as set forth in this section and s. 318.14. For purposes of this section and s. 318.14, total funds distributed to trauma centers may include revenue from the Emergency Medical Services Trust Fund and federal funds for which revenue from the Administrative Trust Fund is used to meet state or local matching requirements. Funds collected under ss. 318.14 and 318.18 and deposited in the Emergency Medical Services Trust Fund of the department shall be distributed to trauma centers on a quarterly basis using the most recent calendar year data available. Such data shall not be used for more than four quarterly distributions unless there are

extenuating circumstances as determined by the department, in which case the most recent calendar year data available shall continue to be used and appropriate adjustments shall be made as soon as the more recent data becomes available.

(3)(a) Any trauma center not subject to audit pursuant to s. 215.97 shall annually attest, under penalties of perjury, that such proceeds were used in compliance with law. The annual attestation shall be made in a form and format determined by the department. The annual attestation shall be submitted to the department for review within 9 months after the end of the organization's fiscal year.

(b) Any trauma center subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules adopted by the Auditor General.

(4) The department, working with the Agency for Health Care Administration, shall maximize resources for trauma services wherever possible.

Section 9. Section 395.404, Florida Statutes, is amended to read:

395.404 Reporting ~~Review~~ of trauma ~~registry~~ data; report to National Trauma Data Bank ~~central registry; confidentiality and limited release~~.—

(1) ~~(a)~~ Each trauma center shall participate in the National Trauma Data Bank, and the department shall solely use the National Trauma Data Bank for quality and assessment purposes.

(2) Each trauma center and acute care hospital shall report to the department all transfers of trauma patients and the outcomes of such patients ~~furnish, and, upon request of the department, all acute care hospitals shall furnish for~~

~~department review trauma registry data as prescribed by rule of the department for the purpose of monitoring patient outcome and ensuring compliance with the standards of approval~~.

~~(b) Trauma registry data obtained pursuant to this subsection are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, the department may provide such trauma registry data to the person, trauma center, hospital, emergency medical service provider, local or regional trauma agency, medical examiner, or other entity from which the data were obtained. The department may also use or provide trauma registry data for purposes of research in accordance with the provisions of chapter 405.~~

(3)~~(2)~~ Each trauma center~~, pediatric trauma center,~~ and acute care hospital shall report to the department's brain and spinal cord injury central registry, consistent with the procedures and timeframes of s. 381.74, any person who has a moderate-to-severe brain or spinal cord injury, and shall include in the report the name, age, residence, and type of disability of the individual and any additional information that the department finds necessary.

Section 10. Paragraph (k) of subsection (1) of section 395.401, Florida Statutes, is amended to read:

395.401 Trauma services system plans; approval of trauma centers and pediatric trauma centers; procedures; renewal.—

(1)

(k) It is unlawful for any hospital or other facility to hold itself out as a trauma center unless it has been so verified or designated pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

Section 11. Paragraph (l) of subsection (3) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(l) For the establishment of:

1. A Level II neonatal intensive care unit with at least 10 beds, upon documentation to the agency that the applicant hospital had a minimum of 1,500 births during the previous 12 months;

2. A Level III neonatal intensive care unit with at least 15 beds, upon documentation to the agency that the applicant hospital has a Level II neonatal intensive care unit of at least 10 beds and had a minimum of 3,500 births during the previous 12 months; or

3. A Level III neonatal intensive care unit with at least 5 beds, upon documentation to the agency that the applicant hospital is a verified trauma center pursuant to s. 395.4001(15) ~~s. 395.4001(14)~~, and has a Level II neonatal intensive care unit,

if the applicant demonstrates that it meets the requirements for quality of care, nurse staffing, physician staffing, physical plant, equipment, emergency transportation, and data reporting found in agency certificate-of-need rules for Level II and Level III neonatal intensive care units and if the applicant commits to the provision of services to Medicaid and charity patients at a level equal to or greater than the district average. Such a commitment is subject to s. 408.040.

Section 12. Paragraph (a) of subsection (1) of section 409.975, Florida Statutes, is amended to read:

409.975 Managed care plan accountability.—In addition to the requirements of s. 409.967, plans and providers participating in the managed medical assistance program shall comply with the requirements of this section.

(1) PROVIDER NETWORKS.—Managed care plans must develop and maintain provider networks that meet the medical needs of their enrollees in accordance with standards established pursuant to s. 409.967(2)(c). Except as provided in this section, managed care plans may limit the providers in their networks based on credentials, quality indicators, and price.

(a) Plans must include all providers in the region that are classified by the agency as essential Medicaid providers, unless the agency approves, in writing, an alternative arrangement for securing the types of services offered by the essential providers. Providers are essential for serving Medicaid enrollees if they offer services that are not available from any other provider within a reasonable access standard, or if they provided a substantial share of the total units of a particular service used by Medicaid patients within the region during the last 3 years and the combined capacity of other service providers in the region is insufficient to meet the total needs of the Medicaid patients. The agency may not classify physicians and other practitioners as essential providers. The agency, at a minimum, shall determine which providers in the following categories are essential Medicaid providers:

1. Federally qualified health centers.

2. Statutory teaching hospitals as defined in s.

408.07(45).

3. Hospitals that are trauma centers as defined in s. 395.4001(15) ~~s. 395.4001(14)~~.

4. Hospitals located at least 25 miles from any other hospital with similar services.

Managed care plans that have not contracted with all essential providers in the region as of the first date of recipient enrollment, or with whom an essential provider has terminated its contract, must negotiate in good faith with such essential providers for 1 year or until an agreement is reached, whichever is first. Payments for services rendered by a nonparticipating essential provider shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. A rate schedule for all essential providers shall be attached to the contract between the agency and the plan. After 1 year, managed care plans that are unable to contract with essential providers shall notify the agency and propose an alternative arrangement for securing the essential services for Medicaid enrollees. The arrangement must rely on contracts with other participating providers, regardless of whether those providers are located within the same region as the nonparticipating essential service provider. If the alternative arrangement is approved by the agency, payments to nonparticipating essential providers after the date of the agency's approval shall equal 90 percent of the applicable Medicaid rate. Except for payment for emergency services, if the alternative arrangement is not approved by the agency, payment to nonparticipating essential providers shall equal 110 percent

of the applicable Medicaid rate.

Section 13. Study on pediatric trauma services; report.—

(1) The Department of Health shall work with the Office of Program Policy Analysis and Government Accountability to study the department's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services and compare them to the licensure requirements, rules, regulations, standards, and guidelines for verification of pediatric trauma services by the American College of Surgeons.

(2) The Office of Program Policy Analysis and Government Accountability shall submit a report of the findings of the study to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Florida Trauma System Advisory Council established under s. 395.402, Florida Statutes, by December 31, 2018.

(3) This section shall expire on January 31, 2019.

Section 14. If the provisions of this act relating to s. 395.4025(16), Florida Statutes, are held to be invalid or inoperative for any reason, the remaining provisions of this act shall be deemed to be void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

Section 15. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

February 23, 2018

Senator Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 1876 regarding Trauma Services has been referred to your committee. I respectfully request that this bill be placed on your next available agenda.

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

Sincerely,

Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Senate Rules Committee

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

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1876
Bill Number (if applicable)

Topic Trauma

Amendment Barcode (if applicable)

Name Jan Gorrie

Job Title lobbyist

Address 205 E. Park Ave.
Street

Phone 813-334-5288

Tallahassee FL 32301
City *State* *Zip*

Email jan@ballardfl.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Safety Net Hospital Alliance of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

SB 1876
Bill Number (if applicable)

Topic Trauma

Amendment Barcode (if applicable)

Name Tom Panza

Job Title

Address 201 East Park Avenue, Ste. 200
Street

Phone 850-681-0980

Tallahassee, FL 32301
City *State* *Zip*

Email tpanza@panzamaurer.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Jackson Memorial Hospital

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1876
Bill Number (if applicable)

Topic trauma

Amendment Barcode (if applicable)

Name Steve Echelis

Job Title

Address P. O. Box 551
Street
Tallahassee FL 32302
City *State* *Zip*

Phone 850-6788

Email steve@renphlaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing HCA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 1880
INTRODUCER:	Rules Committee; Governmental Oversight and Accountability Committee; Banking and Insurance Committee; and Senators Broxson and Mayfield
SUBJECT:	Public Records and Meetings/Security of Data and Information Technology in Citizens Property Insurance Corporation
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Peacock	Caldwell	GO	**Fav/CS**
3.	Matiyow	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/CS/SB 1880 creates a public records exemption for data and information from information technology (IT) systems owned by, under contract with, or maintained by Citizens Property Insurance Corporation (Citizens). The bill exempts from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the following data and information held by Citizens:

- Records that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches.
- Portions of risk assessments, evaluations, audits, and other reports of Citizens' IT security program for its data, information and IT resources.

Such records are confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, or information technology resources including those related to security of IT resources.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information.

The exemptions are similar to those currently in law for state agencies.

The exemptions apply to records or portions of public meetings, recordings, and transcripts held by Citizens. The public records exemption applies retroactively.

The bill has an effective date of upon becoming a law and provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2] In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] The Public Records Act states that

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

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

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So.2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[12] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[13]

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[14] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[15] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[16]

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the "Government in the Sunshine Law"[17] or the "Sunshine Law,"[18] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[19] The board or commission must provide the public reasonable notice of such meetings.[20] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or

[9] FLA. CONST., art. I, s. 24(c).
[10] *Id*.
[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.
[12] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).
[13] *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).
[14] FLA. CONST., art. I, s. 24(b).
[15] *Id*.
[16] FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."
[17] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[18] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[19] Section 286.011(1)-(2), F.S.
[20] *Id*.

economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[21] Minutes of a public meeting must be promptly recorded and open to public inspection.[22] Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[23] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[24]

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.[25] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[26] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[27]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.[28] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[29] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[30] 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;[31]
- 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;[32] or
- It protects trade or business secrets.[33]

[21] Section 286.011(6), F.S.
[22] Section 286.011(2), F.S.
[23] Section 286.011(1), F.S.
[24] Section 286.011(3), F.S.
[25] FLA. CONST., art. I, s. 24(c).
[26] *Id*.
[27] *See supra* note 11.
[28] Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[29] Section 119.15(3), F.S.
[30] Section 119.15(6)(b), F.S.
[31] Section 119.15(6)(b)1., F.S.
[32] Section 119.15(6)(b)2., F.S.
[33] Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.[34] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.[35] 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 otherwise provided for by law.[36]

Public Record Exemptions Related to Information Technology

The Information Technology (IT) Security Act[37] requires the Agency for State Technology and state agencies[38] to meet certain requirements relating to IT security. The IT Security Act provides that the following state agency information is confidential and exempt from public record requirements:

- Risk assessments;[39]
- Evaluations;
- External audits; and
- Other reports of a state agency's IT security program.

Portions of such documents will be confidential and exempt from public disclosure only if the disclosure of such information could facilitate unauthorized access, modification, disclosure or destruction of:

- Data or information, whether physical or virtual; or
- IT resources, including protocols for protecting those resources as well as any existing or proposed IT security systems.

This confidential and exempt information must be made available to the Auditor General, the Cybercrime Office within the Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector

[34] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[35] FLA. CONST., art. I, s. 24(c).
[36] Section 119.15(7), F.S.
[37] Section 282.318, F.S.
[38] Section 282.0041(23), F.S., provides, in part, that "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees, or state universities. For purposes of the Information Technology Security Act, the term "state agency" also includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. *See* s. 282.318(2), F.S.
[39] Section 282.318(5), F.S.

General.[40] In addition, the records may be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.[41]

The IT Security Act also provides that records held by a state agency that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt.[42]

Such confidential and exempt records must be made available to the Auditor General, the Cybercrime Office within Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. These records may also be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.[43]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose mission is to provide property insurance coverage to those unable to find affordable coverage in the private market.[44] It is not a private insurance company.[45]

Records and meetings held by Citizens regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open records and meetings laws. Public disclosure of this information presents a significant security risk and would reveal weaknesses within Citizens' computer networks, raising the potential for exploitation.

Because Citizens is not created within the executive branch, it is not covered by the definition of "state agency"[46] contained in the IT Security Act. Accordingly, Citizens is not subject to the exemptions from open meetings and public records laws for data and information technology systems owned, contracted, or maintained by specified state agencies.

Therefore, Citizens is vulnerable to the disclosure of information and records which, if disclosed, could potentially compromise the confidentiality, integrity, and availability of its information technology system. Such system contains highly sensitive policyholder, insurer, claims, financial, accounting and banking, personnel, and other records.[47]

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[40] Section 282.318(5)(b), F.S.
[41] *Id*.
[42] Section 282.318(4)(j), F.S.
[43] *Id*.
[44] *See* Citizens Property Insurance Corporation, Who We Are, available at https://www.citizensfla.com/who-we-are (last viewed on March 1, 2018). *See also* s. 627.351(6)(a), F.S.
[45] Section 627.351(6)(a).1., F.S.
[46] *See supra* note 38.
[47] Section 627.351(6)(x), F.S., requires Citizens to hold the following records as confidential and exempt from disclosure under Florida's public record laws: underwriting files, claim files, certain audit files, attorney-client privileged material, certain proprietary information licensed to Citizens, employee assistance program information, information relating to the medical condition or medical status of a Citizens employee, certain information relating to contract negotiations, and certain records related to closed meetings.

III. Effect of Proposed Changes:

Section 1 creates public record and public meeting exemptions to protect data and records pertaining to the security of the Citizens information networks from disclosure. The bill provides that records held by Citizens that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt from public record requirements. In addition, portions of risk assessments, evaluations, audits, and other reports of Citizens' IT security program for its data, information, and IT resources that are held by Citizens are confidential and exempt. Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources, including:
  - Information relating to the security of Citizens' technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
  - Physical or virtual security information that relates to Citizens' existing or proposed IT systems.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information. Recordings or transcripts of such closed portions of meetings must be taken. Recordings or transcripts are confidential and exempt from public record requirements, unless a court, following an in-camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. In the event of such a judicial determination, only that portion of a transcript that reveals nonexempt data and information may be disclosed to a third party.

The bill requires the confidential and exempt records related to the public meeting exemption to be available to the Auditor General, the Cybercrime Office of Department of Law Enforcement, and the Office of Insurance Regulation. Such records and portions of meetings, recordings, and transcripts may also be available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

The public record exemptions apply to records or portions of public meetings, recordings, and transcripts held by Citizens. The public records exemption applies retroactively.

This section is subject to the OGSR in accordance with s. 119.15, F.S., and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a public necessity statement as required by the State Constitution, specifying that the public record and public meeting exemptions are necessary to ensure effective investigations of IT security breaches, to prevent identity theft and other crimes, and to prevent the disclosure of weaknesses in Citizens' data security.

Section 3 directs the Division of Law Revision and Information to replace the phrase "effective date of this act" with the date the act becomes a law.

Section 4 provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Voting Requirements
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the public record and public meeting exemptions are necessary to ensure effective investigations of IT security breaches, to prevent identity theft and other crimes, and to prevent the disclosure of weaknesses in Citizens' data security.

Breadth of Exemption
Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates an exemption from public records and public meetings for data and information from IT systems owned by Citizens. The bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.352 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on March 1, 2018:
The CS clarifies retroactivity does not apply to public meetings and makes a technical correction adding the word "exempt" on line 202 that was omitted in error.

CS/CS by Governmental Oversight and Accountability on February 13, 2018:
The CS makes technical changes:

- To add public meetings to the title;
- To add upon becoming a law as effective date for public records and public meetings exemptions; and
- To direct the Division of Law Revision and Information to replace the phrase "effective date of this act" with the date the act becomes a law.

CS by Banking and Insurance on January 30, 2018:
The CS makes a technical change correcting the 5 year sunset review date to October 2, 2023.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Broxson) recommended the following:

Senate Amendment

Delete lines 202 - 265
and insert:
and exempt in order to protect the technology systems, resources, and data of the corporation. The Legislature further finds that this public records exemption be given retroactive application because it is remedial in nature.

(2)(a) The Legislature also finds that it is a public necessity that portions of risk assessments, evaluations, audits, and other reports of the corporation's information



technology security program for its data, information, and information technology resources which are held by the corporation be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the corporation’s technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation’s existing or proposed information technology systems.

(b) The Legislature finds that it is valuable, prudent, and critical to the corporation to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the corporation’s information technology program or related systems. Such documents would likely include an analysis of the corporation’s current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

(3)(a) The Legislature further finds that it is a public necessity that those portions of a public meeting which could reveal information described in this section be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the

354542

State Constitution. It is a public necessity that such meetings be made exempt from the open meetings requirements in order to protect the corporation's information technology systems, resources, and data. The information disclosed during portions of meetings would clearly identify the corporation's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the corporation and compromise the integrity and availability of the corporation's data and information technology resources.

(b) The Legislature further finds that it is a public necessity that the recording and transcript of those portions of meetings specified in paragraph (a) be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution unless a court determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this act. It is a public necessity that the resulting recordings and transcripts be made confidential and exempt from the public records requirements in order to protect the corporation's information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify the corporation's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the corporation and compromise the integrity and availability of the corporation's data and information technology resources.

(c) The Legislature further finds that this public records exemption must be given retroactive

By the Committees on Governmental Oversight and Accountability; and Banking and Insurance; and Senators Broxson and Mayfield

585-03168-18 20181880c2

A bill to be entitled

An act relating to public records and public meetings; creating s. 627.352, F.S.; providing an exemption from public records requirements for certain records held by the Citizens Property Insurance Corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; creating an exemption from public records requirements for certain portions of risk assessments, evaluations, audits, and other reports of the corporation's information technology security program; creating an exemption from public meetings requirements for portions of public meetings which would reveal such data and information; providing an exemption from public records requirements for a specified period for the recording and transcript of a closed meeting; authorizing disclosure of confidential and exempt information to certain agencies and officers; providing for future legislative review and repeal; providing a statement of public necessity; providing retroactive application; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 627.352, Florida Statutes, is created to read:

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

585-03168-18 20181880c2

627.352 Security of data and information technology in Citizens Property Insurance Corporation.—

(1) The following data and information from technology systems owned by, under contract with, or maintained by Citizens Property Insurance Corporation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Records held by the corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, including:

a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(b) Those portions of risk assessments, evaluations, audits, and other reports of the corporation's information technology security program for its data, information, and information technology resources which are held by the corporation, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

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

2. Information technology resources, which include:

a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(2) Those portions of a public meeting as specified in s. 286.011 which would reveal data and information described in subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed to a third party.

(3) The records and portions of public meeting recordings and transcripts described in subsection (2) must be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, and the Office of Insurance Regulation. Such records and portions of meetings, recordings, and transcripts may be made available to a state or federal agency for security

purposes or in furtherance of the agency's official duties.

(4) The exemptions listed in this section apply to such records or portions of public meetings, recordings, and transcripts held by the corporation before, on, or after the effective date of this act.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1)(a) The Legislature finds that it is a public necessity that the following data or information from technology systems owned, under contract, or maintained by the corporation be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Records held by the corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

2. Those portions of risk assessments, evaluations, audits, and other reports of the corporation's information technology security program for its data, information, and information technology resources which are held by the corporation, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack , damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(b) The Legislature also finds that those portions of a public meeting as specified in s. 286.011, Florida Statutes, which would reveal data and information described in subsection (1) are exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and

information may be disclosed to a third party.

(c) The Legislature further finds that it is a public necessity that records held by the corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(d) Such records must be made confidential and exempt for the following reasons:

1. Records held by the corporation which identify information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigations of the incidents or breaches. The release of such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of

such information before an active investigation is completed could jeopardize the ongoing investigation.

2. An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers and personal financial and health information. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.

3. Disclosure of a record, including a computer forensic analysis, or other information that would reveal weaknesses in the corporation's data security could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.

4. Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of the corporation's data and information technology resources. It is a public necessity that this information be made confidential in order to protect the technology systems, resources, and data of the corporation. The Legislature further finds that this

public records exemption be given retroactive application because it is remedial in nature.

(2)(a) The Legislature also finds that it is a public necessity that portions of risk assessments, evaluations, audits, and other reports of the corporation's information technology security program for its data, information, and information technology resources which are held by the corporation be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(b) The Legislature finds that it is valuable, prudent, and critical to the corporation to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the corporation's information technology program or related systems. Such documents would likely include an analysis of the corporation's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose

recommendations to remedy identified vulnerabilities.

(3)(a) The Legislature further finds that it is a public necessity that those portions of a public meeting which could reveal information described in this section be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. It is a public necessity that such meetings be made exempt from the open meetings requirements in order to protect the corporation's information technology systems, resources, and data. The information disclosed during portions of meetings would clearly identify the corporation's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the corporation and compromise the integrity and availability of the corporation's data and information technology resources.

(b) The Legislature further finds that it is a public necessity that the recording and transcript of those portions of meetings specified in paragraph (a) be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution unless a court determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this act. It is a public necessity that the resulting recordings and transcripts be made confidential and exempt from the public records requirements in order to protect the corporation's information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify the corporation's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the corporation and

compromise the integrity and availability of the corporation's data and information technology resources.

(c) The Legislature further finds that this public meeting and public records exemption must be given retroactive application because it is remedial in nature.

Section 3. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18	SB 1880
Meeting Date	*Bill Number (if applicable)*

Topic Citizens Public Records - IT Security

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief - Communications, Legislative + External Affairs

Address 2101 Maryland Circle
Street

Phone (850) 513.3757

Tallahassee
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Citizens Property Insurance Corp.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1348
INTRODUCER:	Judiciary Committee and Senator Perry
SUBJECT:	Community Development Districts
DATE:	February 28, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.	Stallard	Cibula	JU	**Fav/CS**
3.	Present	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1348 authorizes Community Development Districts (CDDs) of less than 2,500 acres and solely in one county or municipality to include a list of parcels in the CDD's establishment petition that the CDD expects to add within the next 10 years. A parcel may only be included with the consent of the landowner. The bill provides a process for expanding the boundaries of the CDD to include these additional parcels. The bill also provides that the expansion of CDD boundaries to include these parcels does not alter the time period for transition from a landowner board to a board composed of qualified electors under s. 190.006, F.S., and states that the parcels may be added even if the resulting CDD is greater than 2,500 acres.

II. Present Situation:

Overview

In general terms, a community development district (CDD) is a "local unit of special-purpose government" which is often created to facilitate the funding and management of new housing developments.

Expanding a CDD involves a somewhat different process depending on its original size. For CDDs that began as less than 2,500 acres in size, a person must file a petition with the county. For larger CDDs, a person must file a petition, along with a $1,500 filing fee, with the Florida

Land and Water Adjudicatory Commission (FLWAC). Then, in either case, a public hearing must be held.

However, special requirements apply if someone is seeking a particularly large expansion of a CDD. Any expansion of more than 50 percent of the initial size of the CDD or more than 1,000 acres must be processed according to the statute that governs creation of a new CDD.

CDDs in General

Chapter 190, F.S., the "Uniform Community Development District Act of 1980,"[1] sets forth the exclusive and uniform procedures for establishing and operating a community development district (CDD).[2] This type of independent special district[3] is an alternative method to manage and finance basic services for community development.[4] There are currently 642 active CDDs in Florida.[5]

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general-purpose government.[6] CDDs have certain general powers, including the authority to:

- Assess and impose ad valorem taxes upon lands in the CDD;
- Bring lawsuits (and be sued);
- Participate in the state retirement system;
- Contract for services;
- Borrow money;
- Accept gifts;
- Adopt rules and orders pursuant to the Administrative Procedure Act (APA);[7]
- Maintain an office;
- Lease;
- Issue bonds;
- Raise money by user charges or fees; and
- Levy and enforce special assessments.[8]

The statutes also authorizes additional special powers pertaining to public improvements and facilities, such as systems for water management, water supply, sewer, and wastewater management, as well as roads, bridges, culverts, street lights, buses, trolleys, transit shelters,

[1] Section 190.001, F.S.
[2] Sections 190.004 and 190.005, F.S.
[3] A "special district" is "a unit of local government created for a special purpose… within a limited geographic boundary … created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." Section 189.012(6), F.S. An "independent special district" is a special district that does not mean any of the criteria listed in s. 189.012(2), F.S. Additionally, any special district including more than one county is an independent special district, unless the district lies wholly within a single municipality. Section 189.012(3), F.S.
[4] Section 190.003(6), F.S.
[5] Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx (last visited Jan. 28, 2017).
[6] Section 190.004(3), F.S.
[7] Ch. 120, F.S.
[8] Section 190.011, F.S.

ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.[9] With the consent of the applicable local general-purpose government with jurisdiction over the affected area, a CDD may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for:

- Improvements such as parks and recreational areas;
- Fire prevention and control;
- School buildings and related structures;
- Security;
- Control and elimination of mosquitoes and other arthropods of public health importance; and
- Waste collection and disposal.[10]

Establishing a CDD

Petition for Rulemaking by the Florida Land and Water Adjudicatory Commission

The process for establishing a CDD depends upon its size. CDDs of 2,500 acres or more are established by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)[11] to adopt an administrative rule creating the district.[12] The statute requires each petition to contain specified information, including the written consent to establishing the CDD by all landowners[13] of real property to be included in the district.[14] Prior to filing, the petitioner must submit copies of the petition and pay separate filing fees of $15,000 each to the county and any municipality in which the proposed CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district.[15] The counties and municipalities required to receive copies of the petition may conduct public hearings and express support or objection to the proposed district by resolution and by stating their position before the FLWAC.[16] Additionally, a public hearing on the petition must be held in the county where the CDD will be located; these hearings are conducted under the requirements of the APA[17] before an administrative law judge.[18] Once the hearing process is complete, the entire record is submitted to the FLWAC, reviewed by staff, and placed on the FLWAC meeting agenda for final

[9] Section 190.012(1), F.S. The rule or ordinance establishing the CDD may restrict the special powers authorized in this subsection. Section 190.005(1)(f) and (2)(d), F.S.
[10] Section 190.012(2), F.S.
[11] Created by s. 380.07, F.S., the FLWAC is comprised of the Administration Commission, which in turn is created by s. 14.202, F.S., and is composed of the Governor and Cabinet. This distinction affects the requirements for an affirmative vote by the FLWAC. Unless otherwise provided in law, the statutory voting requirements for the Administration Commission apply and affirmation by the FLWAC requires approval by the Governor and at least two Cabinet members.
[12] Section 190.005(1), F.S.
[13] "Landowner" means the owner of a freehold estate as appears by the deed record, including a trustee, a private corporation, and an owner of a condominium unit; it does not include a reversioner, remainderman, mortgagee, or any governmental entity, who shall not be counted and need not be notified of proceedings under this act. Landowner shall also mean the owner of a ground lease from a governmental entity, which leasehold interest has a remaining term, excluding all renewal options, in excess of 50 years. Section 190.003(14), F.S.
[14] Section 190.005(1)(a), F.S.
[15] Section 190.005(1)(b), F.S.
[16] Section 190.005(1)(c), F.S.
[17] The general hearing requirements are stated in ss. 120.569 and 120.57(1), F.S.
[18] Section 190.005(1)(d), F.S.; Rules 42-1.009 & 42-1.012, F.A.C. Chapter 42-1, F.A.C., the procedural rules of the FLWAC, remains substantially unchanged since its adoption in 1982.

consideration with the petition.[19] If the petition is approved, staff of the FLWAC initiates proceedings to adopt the rule creating the CDD.

Petition for Ordinance Creating a CDD

CDDs of less than 2,500 acres are generally established by ordinance of the county having jurisdiction over the majority of land in the area in which the CDD is to be located.[20] A petition to establish a CDD is filed with the county commission.[21] After conducting a local public hearing before a hearing officer,[22] the commission may adopt an ordinance creating the CDD.[23] If any of the land proposed for inclusion in the CDD lies within the area of a municipality, the county cannot create the district without approval of the affected municipality.[24]

However, if all the land proposed for inclusion in the CDD lies within the territorial jurisdiction of a municipality, the petition is filed with that municipality which then exercises the duties otherwise performed by the county commission.[25] In this case, the CDD would be created by municipal ordinance. Within 90 days after receiving the petition, the county commission (or municipality, as applicable) may transfer the petition to the FLWAC.[26] Finally, if all the land of the proposed CDD lies within the territorial jurisdiction of two or more municipalities or two or more counties, the petition must be filed with the FLWAC even if the total area is less than 2,500 acres.[27]

Requirements for Notice, Meeting, and Vote of Landowners in a CDD

The powers of a CDD are exercised by the board of supervisors elected by the landowners of the district.[28] The board must have five members serving 2- or 4-year terms.[29] The initial members of the board are designated in the original petition to create the CDD and serve until new members are elected after the district is established.[30] A meeting of landowners for the purpose of electing the board must be held within 90 days after the effective date of the rule or ordinance creating the district.[31] Each landowner is entitled to one vote for each acre owned.[32] The top two candidates are elected to 4-year terms, while the next three candidates are elected to 2-year terms.[33] A new board election, held among the qualified electors of the district, occurs when either the board proposes to exercise its ad valorem taxing authority or 6 years after the

[19] Section 190.005(1)(e), F.S. A similar process is followed when the FLWAC considers a proposed merger of existing CDDs. *See* FLWAC Agenda Item 1 and attachments (Aug. 16, 2011), at http://www.myflorida.com/myflorida/cabinet/agenda11/0816/FLWAC0816.pdf (last visited Jan. 18, 2017).
[20] Section 190.005(2), F.S.
[21] Section 190.005(2)(a), F.S. The petition must contain the same information as required for submission to the FLWAC.
[22] Section 190.005(2)(b), F.S. The hearing must follow the same notice and procedural requirements as the local hearing for petitions before the FLWAC.
[23] *See* s. 190.005(2)(d), F.S.
[24] Section 190.005(2)(e), F.S.
[25] *Id*.
[26] Section 190.005(2)(f), F.S.
[27] Section 190.005(2)(e), F.S.
[28] Section 190.006(1), F.S.
[29] *Id*.
[30] Sections 190.005(1)(a)3., and 190.005(2)(a), F.S.
[31] Section 190.006(2)(a), F.S.
[32] Section 190.006(2)(b), F.S.
[33] *Id*.

formation of the district (10 years for districts exceeding 5,000 acres).[34] Elections of board members by qualified electors are non-partisan general elections conducted by the supervisor of elections.[35]

Financial Reporting by a CDD

CDDs are subject to the financial reporting requirements of Chapters, 189, 190, and 218, F.S.[36] The district manager is responsible for drafting a proposed budget on or before June 15 of each year.[37] The board of the CDD considers the proposed budget, makes amendments as necessary, and adopts the budget by resolution.[38] After the board adopts the budget, a public hearing on the budget is held and the board may make further changes as it deems necessary.[39] At least 60 days prior to adoption, the district is required to submit its budget to the local government entities having jurisdiction over the area.[40] This submission is for the purposes of disclosure and information only, but the local government entities may submit written comments to the CDD board.[41] CDDs are also required to take affirmative steps to provide full disclosure of information related to public financing and maintenance of improvements constructed by the district.[42] The district must provide any developer of residential property in the district with sufficient copies of this information to be able to provide a copy to each prospective initial purchaser of property.[43] Districts must file disclosures of this information in the property records of each county in which the district is located.[44] The Department of Economic Opportunity (DEO) is required to keep a current list of districts and their disclosures of public financing.[45]

CDDs, like other special districts, also must comply with the annual financial reporting and financial audit reporting requirements of Chapter 218, F.S.[46] A CDD with revenues or total expenditures or expenses in excess of $100,000 is required to have an annual audit conducted by an independent certified public accountant.[47] The auditor shall review the financial accounts and records of the district, reports on compliance and internal control, management letters, and financial statements, as required by rules adopted by the Auditor General.[48] The auditor must present these findings to the chair of the district's governing board and submit a copy of the

[34] Sections 190.006(3)(a)1.-2., F.S. For CDDs with less than certain minimum numbers of qualified electors after 6 or 10 years, as applicable, the district landowners shall continue to elect the board members (s. 190.006(3)(a)2.a., F.S.) until the number of qualified electors in the district exceeds the statutory minimum (s. 190.006(3)(a)2.b., F.S.).
[35] Section 190.006(3)(b), F.S. The statute does not specify which supervisor of elections conducts the board election if the district encompasses property in more than one county.
[36] Sections 189.013 and 190.008(1), F.S.
[37] Section 190.008(2)(a), F.S.
[38] *Id*.
[39] *Id*.
[40] Section 190.008(2)(b), F.S.
[41] Section 190.008(2)(b)-(c), F.S.
[42] Section 190.009(1), F.S.
[43] *Id*.
[44] *Id*.
[45] Section 190.009(2), F.S.
[46] Sections 189.016(9), F.S. and 190.008(1), F.S.
[47] Section 218.39(1), F.S. An entity is exempt from this requirement if it is informed by the first day of the fiscal year that the Auditor General will be conducting an audit of the entity for that fiscal year.
[48] Section 218.39(2), F.S. The rules of the Auditor General are Rules 10.550, 10.650, 10.700, 10.800, and 10.850, F.A.C. *See* Rule 61H1-20.0093, F.A.C.

report to the Auditor General.[49] The audit report is a public record once the report is submitted by the auditor to the district.[50] All CDDs are required to file an annual financial report with the Department of Financial Services.[51]

Expansion or Contraction of a CDD

A landowner or the board of a CDD may petition for the boundaries of the district to be expanded or contracted.[52] If the petition seeks to expand the district boundaries, the petition must include a proposed timetable for the construction of any district services in the new area, the estimated cost of constructing the proposed services, and the designation of the future land use plan for the area from the relevant local government local comprehensive plan.[53] If the petition seeks to contract the district boundaries, the petition must include a list of services and facilities currently provided by the district to the removed area, as well as the future land use plan for the area from the relevant local government local comprehensive plan.[54]

For districts established by county ordinance, the petition for expansion or contraction must be filed with the county commission, but there is no filing fee requirement.[55] The county commission then conducts a public hearing on the petition in the same manner as for other ordinance amendments. For districts established by FLWAC rule, the petitioner must pay a $1,500 filing fee to each county or municipality in which the proposed resulting CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district, and the required public meeting is conducted by the board of the CDD instead of a hearing officer.[56]

The amount of land that can be added to a CDD is restricted. Whether a district was initially established by FLWAC rule or county or municipal ordinance, the cumulative additions to the district may not be greater than the lesser of 50 percent of the land area of the initial district or 1,000 acres.[57]

Merger of a CDD

A CDD may be merged with another CDD with the filing of a petition for merger that states the elements for establishing a new CDD, including being evaluated by the criteria for creating a new district and the submission of the filing fee.[58] A CDD may also be merged with other types of special districts using the process for creating a new district, with the CDD inheriting the rights and associated obligations of property and creditors of the merged special district(s).[59] A CDD merging with another type of special district is required to enter a merger agreement to

[49] Sections 218.39(5) and (7), F.S.
[50] *See* s. 119.0713(3), F.S.
[51] Section 218.32(1)(a), F.S.
[52] Section 190.046(1), F.S.
[53] Section 190.046(1)(a), F.S.
[54] *Id.*
[55] Section 190.046(1)(b), F.S.
[56] Section 190.046(1)(d)1.-4., F.S.
[57] Section 190.046(1)(e), F.S.
[58] Section 190.046(3), F.S.
[59] *Id.*

allocate indebtedness to be assumed by the new CDD and the process for retiring the debt.[60] The approval of the merger agreement and the petition by the board of supervisors of the CDD is deemed to constitute the consent of the district landowners.[61]

A CDD may also be merged with up to four other CDDs created by the same local general-purpose government, as long as the membership of each board of directors is composed entirely of qualified electors.[62] This method may be used even if the merged district would have been required to receive FLWAC approval if the CDD was being newly created. The filing of a petition approved by the board of each CDD applying constitutes consent of the landowners within each district.

Before filing the merger petition, each CDD must hold a public hearing to take comment on the proposed merger, the merger agreement, and the assignment of board seats.[63] The hearing must be noticed at least 14 days beforehand. If any CDD withdraws after the public hearing, the remaining districts considering merger must hold a public hearing on a revised merger agreement between the remaining parties. The petition may not be filed for at least 30 days after the last public hearing.

III. Effect of Proposed Changes:

Section 1 amends s. 190.046, F.S., to provide that a petition to establish a new CDD of less than 2,500 acres located solely in one county or municipality may identify "sufficiently contiguous" lands beyond the CDD's boundaries which the petitioner anticipates expanding the CDD to include within 10 years after the effective date of the ordinance establishing the district. However, these additional lands must be within the same county or municipality as the CDD. Additionally, the petition must include the legal description of these contiguous lands, the name of the current landowners, the acreage of each parcel, and the current land use designation of each parcel. The petitioner must provide notice to the current landowners of the filing of the petition, the date and time of the public hearing on the petition, and the name and address of the petitioner at least 14 days before the public hearing concerning the creation of the CDD. A parcel may only be included with written consent of the landowner.

After the district is established, a person may then petition the county or municipality to amend the boundaries of the CDD to include the previously identified parcel that was a proposed addition to the CDD before its establishment. A filing fee may not be charged for this petition. Additionally, each petition must include:

- A metes and bounds description of each parcel to be added;
- A new legal description by metes and bounds of the district with the added parcels;
- Written consent of all landowners of the parcels to be added;
- A map of the district including the parcels to be added;
- A description of the development proposed on each additional parcel; and
- A copy of the original petition identifying the parcel to be added.

[60] *Id.*
[61] *Id.*
[62] Section 190.046(4)(a), F.S.
[63] Section 190.046(4)(c), F.S.

Before filing the petition with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

Once the petition is determined to be sufficient and complete, the county or municipality must process the addition of the parcel to the CDD as an amendment to the ordinance that establishes the district. The county or municipality may process all petitions to amend the ordinance, even if, after adding such parcels, the district exceeds 2,500 acres.

The petitioner must publish a notice of the intent to amend the ordinance that establishes the district in a newspaper of general circulation in the proposed district. This notice is in addition to any notice required for the adoption of the ordinance amendment. The notice must be published at least 10 days before the scheduled hearing on the ordinance amendment and may be published in the section of the newspaper reserved for legal notices. The notice must include a general description of the land to be added to the district and the data and the time of the scheduled hearing to amend the ordinance. The petitioner must mail or hand-deliver the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

The amendment of a district by the addition of a parcel does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, F.S., even if the total size of the district after the addition exceeds 5,000 acres. After adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

The bill provides that this new method of adding lands to a district does not preclude the addition of lands using procedures in other provisions of s. 190.046, F.S.

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Line 62 states that "a person" may petition the county or municipality to amend the boundaries of the CDD to annex property included in the petition creating the district. It is unclear if this provision could be exercised by persons other than the board of the district or the landowner of the property to be added.

Similarly, line 79 states that the "person" must provide the petition to the CDD and to the owner of the proposed additional parcel before filing the county or municipality if the owner is not the petitioner.

VIII. Statutes Affected:

This bill substantially amends section 190.046 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary January 30, 2018:
The underlying bill permitted a petition to create a community development district that met certain criteria to identify "adjacent" parcels of land that a petitioner anticipates expanding the CDD to include within 10 years. The committee substitute instead requires these lands to be "sufficiently contiguous." In light of how this term is used elsewhere in chapter 190, F.S., the wording change may require the lands not only to be connected, but to be connected in such a way that it would be reasonably possible for a CDD function well across the original and additional lands.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Perry

590-02641-18 20181348c1

A bill to be entitled

An act relating to community development districts; amending s. 190.046, F.S.; authorizing sufficiently contiguous lands located within the county or municipality which a petitioner anticipates adding to the boundaries of a new community development district to also be identified in a petition to establish the new district under certain circumstances; providing requirements for the petition; providing notification requirements for the petition; prohibiting a parcel from being included in the district without the written consent of the owner of the parcel; authorizing a person to petition the county or municipality to amend the boundaries of the district to include a certain parcel after establishment of the district; prohibiting a filing fee for such petition; providing requirements for the petition; requiring the person to provide the petition to the district and to the owner of the proposed additional parcel before filing the petition with the county or municipality; requiring the county or municipality to process the addition of the parcel to the district as an amendment to the ordinance that establishes the district once the petition is determined sufficient and complete; authorizing the county or municipality to process all such petitions even if the addition exceeds specified acreage; providing notice requirements for the intent to amend the ordinance establishing the district; providing that the amendment of a district by the

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590-02641-18 20181348c1

addition of a parcel does not alter the transition from landowner voting to qualified elector voting; requiring the petitioner to cause to be recorded a certain notice of boundary amendment upon adoption of the ordinance expanding the district; providing construction; providing an effective date.

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

Section 1. Paragraph (h) is added to subsection (1) of section 190.046, Florida Statutes, to read:

190.046 Termination, contraction, or expansion of district.—

(1) A landowner or the board may petition to contract or expand the boundaries of a community development district in the following manner:

(h) For a petition to establish a new community development district of less than 2,500 acres on land located solely in one county or one municipality, sufficiently contiguous lands located within the county or municipality which the petitioner anticipates adding to the boundaries of the district within 10 years after the effective date of the ordinance establishing the district may also be identified. If such sufficiently contiguous land is identified, the petition must include a legal description of each additional parcel within the sufficiently contiguous land, the current owner of the parcel, the acreage of the parcel, and the current land use designation of the parcel. At least 14 days before the hearing required under s. 190.005(2)(b), the petitioner must give the current owner of

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each such parcel notice of filing the petition to establish the district, the date and time of the public hearing on the petition, and the name and address of the petitioner. A parcel may not be included in the district without the written consent of the owner of the parcel.

1. After establishment of the district, a person may petition the county or municipality to amend the boundaries of the district to include a previously identified parcel that was a proposed addition to the district before its establishment. A filing fee may not be charged for this petition. Each such petition must include:

a. A legal description by metes and bounds of the parcel to be added;

b. A new legal description by metes and bounds of the district;

c. Written consent of all owners of the parcel to be added;

d. A map of the district including the parcel to be added;

e. A description of the development proposed on the additional parcel; and

f. A copy of the original petition identifying the parcel to be added.

2. Before filing with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

3. Once the petition is determined sufficient and complete, the county or municipality must process the addition of the parcel to the district as an amendment to the ordinance that establishes the district. The county or municipality may process

all petitions to amend the ordinance for parcels identified in the original petition, even if, by adding such parcels, the district exceeds 2,500 acres.

4. The petitioner shall cause to be published in a newspaper of general circulation in the proposed district a notice of the intent to amend the ordinance that establishes the district, which notice shall be in addition to any notice required for adoption of the ordinance amendment. Such notice must be published at least 10 days before the scheduled hearing on the ordinance amendment and may be published in the section of the newspaper reserved for legal notices. The notice must include a general description of the land to be added to the district and the date and time of the scheduled hearing to amend the ordinance. The petitioner shall deliver, including by mail or hand delivery, the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

5. The amendment of a district by the addition of a parcel pursuant to this paragraph does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, even if the total size of the district after the addition of the parcel exceeds 5,000 acres. Upon adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

6. This paragraph is intended to facilitate the orderly addition of lands to a district under certain circumstances and does not preclude the addition of lands to any district using the procedures in the other provisions of this section.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #1348**, relating to Community Development Districts , be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/18
Meeting Date

1348
Bill Number (if applicable)

Topic COMMUNITY DEVELOPMENT DISTRICTS

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title ATTORNEY

Address 120 S. MONROE ST
Street

Phone 850-727-7087

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 NEAL COMMUNITIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

CourtSmart Tag Report

Room: KN 412 **Case No.:** **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 3/1/2018 9:03:36 AM
Ends: 3/1/2018 10:58:02 AM Length: 01:54:27

9:03:39 AM Chair Benacquisto calls meeting to order
9:04:02 AM Quorum is present
9:04:30 AM Opening comments
9:04:54 AM tab 1 Public Service Commission sworn in
9:05:45 AM Gary Clark, Chipley to speak
9:06:18 AM Leader Braynon makes motion to approve
9:06:23 AM roll call reported favorably
9:06:53 AM Art Graham, Jacksonville Beach to speak
9:07:27 AM Leader Braynon makes motion to approve
9:07:40 AM roll call reported favorably
9:07:56 AM Andrew Fay, Tallahassee to speak
9:08:46 AM Leader Braynon and Senator Bradley make motion to approve
9:09:02 AM roll call reported favorably
9:10:02 AM tab 10 SB 7010 by Senator Flores
9:11:14 AM roll call reported favorably
9:11:27 AM tab 11 SB 7012 by Senator Flores
9:12:05 AM roll call reported favorably
9:12:44 AM tab 2 SB 1940 by Senator Galvano
9:13:39 AM Senator Thurston asks question regarding confidentiality
9:14:23 AM roll call vote reported favorably
9:14:44 AM tab 3 SPB 7028 by Senator Garcia
9:16:10 AM roll call vote reported favorably
9:16:28 AM tab 4 SPB 7030 by Senator Young
9:17:52 AM roll call vote reported favorably
9:18:03 AM turn Chair to Leader Braynon
9:18:22 AM tab 5 SB 1340 by Senator Benacquisto
9:19:12 AM roll call vote on SB 1340 reported favorably
9:19:32 AM tab 6 SB 1342 by Senator Benacquisto
9:20:07 AM 951290 amendment adopted
9:20:13 AM back on bill as amended
9:20:41 AM roll call vote on SB 1342 reported favorably
9:20:59 AM tab 7 SB 1344 by Senator Benacquisto
9:21:49 AM roll call vote reported favorably
9:22:13 AM tab 8 SB 1346 by Senator Benacquisto
9:22:53 AM roll call vote reported favorably
9:23:09 AM turn Chair back to Chair Benacquisto
9:23:25 AM SB 7008 by Senator Bean
9:24:56 AM substitute amendment adopted
9:25:17 AM roll call vote for CS/SB 7008 reported favorably
9:25:43 AM tab 33 SB 804 by Senator Passidomo
9:26:27 AM 840282 amendment by Senator Passidomo
9:26:38 AM amendment is adopted

9:26:44 AM back on bill as amended
9:27:19 AM roll call vote for SB 804 reported favorably
9:27:49 AM tab 12 SB 7018 by Senator Perry
9:28:20 AM roll call vote for SB 7018 reported favorably
9:28:42 AM tab 28 SB 720 by Senator Young
9:29:29 AM roll call vote for SB 720 reported favorably
9:29:51 AM tab 20 SB 358 by Senator Broxson
9:30:46 AM roll call vote on SB 358 reported favorably
9:31:11 AM tab 56 SB 1876 by Senator Young
9:31:50 AM 517828 amendment adopted
9:32:43 AM roll call vote reported favorably
9:33:01 AM tab 17 CS/SB 260 by Senator Book
9:34:24 AM roll call vote reported favorably
9:34:56 AM tab 43 CS/SB 1042 by Senator Brandes
9:35:29 AM roll call vote on CS/SB 1042 repoted favorably
9:35:58 AM tab 45 SB 1094 by Senator Simmons
9:36:52 AM roll call vote reported favorably
9:37:39 AM tab 41 CS/CS/SB 920 by Senator Bradley
9:38:17 AM 951026 amendment adopted
9:38:24 AM back on bill as amended
9:39:40 AM roll call vote for CS/CS/SB 920 reported favorably
9:40:00 AM tab 21 CS/CS/SB 376 by Senator Book
9:41:50 AM roll call vote reported favorably
9:42:13 AM tab 22 CS/SB 520 by Senator Young
9:42:44 AM 373208 amendment adopted
9:43:25 AM roll call vote reported favorably
9:44:09 AM tab 49 CS/CS SB 1244 by Senator Lee
9:44:57 AM roll call vote reported favorably
9:45:15 AM tab 51 SB 1302 by Senator Brandes
9:46:21 AM roll call vote reported favorably
9:47:19 AM tab 47 CS/CS/SB 1220 by Senator Brandes
9:47:27 AM roll call vote reported favorably
9:47:39 AM tab 15 SB 1862 by Senator Broxson
9:48:22 AM strike all 204760 adopted
9:48:39 AM Senator Brandes amendment to the amendment withdrawn
9:49:12 AM roll call vote on bill as amended reported favorably
9:49:33 AM tab 25 CS/SB 622 by Senator Grimsley
9:51:30 AM amendment 561258 by Senator Flores withdrawn
9:52:02 AM amendment 111816 by Senator Grimsley adopted
9:52:20 AM 138360 amendment by Senator Lee
9:56:13 AM Senator Grimsley makes comment regarding amendment 138360
9:56:37 AM Senator Grimsley asks to withdraw; Senator Lee declines and requests vote
9:56:56 AM amendment is not adopted
9:57:29 AM roll call vote on bill as amended reported favorably
9:57:47 AM tab 27 CS/SB 662 by Senator Stargel
9:59:00 AM roll call vote reported favorably
9:59:29 AM tab 13 SB 1500 by Senator Baxley
10:00:16 AM roll call vote for SB 1500 reported favorably
10:00:39 AM tab 34 SB 806 by Senator Baxley
10:01:53 AM tp'd
10:02:07 AM tab 35 CS/SB 808 by Senator Baxley
10:02:37 AM roll call vote for CS/SB 808 reported favorably

10:03:02 AM tab 34 CS/SB 806 by Senator Baxley
10:03:13 AM amendment 936338 adopted
10:03:39 AM roll call vote on bill as amended reported favorably
10:04:18 AM tab 50 CS/CS/SB 1262 by Senator Hutson
10:04:54 AM Senator Montford asks question
10:05:07 AM Senator Thurston asks question
10:05:59 AM Senator Thurston asks question regarding municipality
10:06:48 AM Rebekka from Florida League of Cities speaks on the bill
10:07:13 AM Senator Thurston asks question to Florida League of Cities
10:07:30 AM Senator Thurston asks if this will increase voter turn out
10:08:07 AM back on bill
10:08:41 AM roll call vote for SB 1262 reported favorably
10:09:26 AM tab 16 CS/SB 28 by Senator Montford
10:10:08 AM roll call vote reported favorably
10:10:27 AM tab 18 SB 266 by Senator Passidomo
10:10:58 AM amendment 313106 adopted
10:11:05 AM back on bill as amended
10:11:31 AM roll call vote reported favorably
10:12:04 AM tab 32 CS/SJR 792 by Senator Lee
10:12:46 AM roll call vote reported favorably
10:13:09 AM tab 14 HB 7045 explained by Leader Simpson
10:14:03 AM roll call vote reported favorably
10:14:28 AM tab 31 CS/SB 776 by Senator Grimsley
10:15:09 AM roll call vote reported favorably
10:15:23 AM tab 38 CS/CS/SB 858 by Senator Steube
10:16:05 AM Senator Brandes asks question about daylight savings time
10:16:30 AM Senator Flores asks question about options
10:17:25 AM roll call vote reported favorably
10:17:52 AM tab 40 CS/SB 918 by Senator Grimsley
10:17:57 AM tp'd
10:18:49 AM tab 42 SB 922 by Senator Bean explained by Senator Brandes
10:19:55 AM roll call vote reported favorably
10:20:08 AM tab 40 CS/SB 918 by Senator Grimsley
10:21:08 AM 923156 amendment adopted
10:21:20 AM bak on bill as amended
10:21:47 AM roll call vote reported favorably
10:22:32 AM tab 46 CS/CS/SB 1134 by Senator Rouson
10:23:40 AM amendment 439506 adopted
10:23:52 AM back on bill as amended
10:25:30 AM Courtney Wilson to speak against the bill
10:26:45 AM Senator Braynon asks question
10:27:27 AM Senator Rouson responds
10:27:43 AM Senator Rouson to close
10:28:04 AM roll call vote reported favorably
10:28:36 AM tab 36 CS/SB 820 by Senator Powell
10:29:59 AM roll call vote reported favorably
10:30:24 AM tab 48 CS/SB 1226 by Senator Book
10:31:57 AM roll call vote reported favorably
10:32:21 AM tab 39 SB 870 by Senator Bracy
10:34:01 AM Senator Brandes makes comment in support of bill
10:34:54 AM Senator Bradley speaks about his concerns
10:35:59 AM roll call vote on SB 870 reported favorably

10:36:13 AM tab 53 SB 1426 by Senator Lee
10:37:50 AM amendment 239684 adopted
10:37:57 AM back on bill as amended
10:38:31 AM Senator Lee to close and speak about working with all parties
10:39:00 AM roll call vote reported favorably
10:39:30 AM tab 54 CS/SB 1460by Senator Montford
10:39:58 AM roll call vote reported favorably
10:40:15 AM tab 55 SB 1562 by Senator Passidomo
10:41:25 AM roll call vote reported favorably
10:42:04 AM tab 23 CS/CS/SB 536 by Senator Passidomo
10:42:19 AM Senator Rodriguez asks question
10:42:44 AM roll call vote reported favorably
10:43:14 AM tab 57 CS/CS/SB 1880 by Senator Broxson
10:43:28 AM 354542 amendment adopted
10:43:35 AM back on bill as amended
10:44:04 AM roll call vote reported favorably
10:44:31 AM tab 19 SB CS/CS/CS/SB 296 by Senator Brandes
10:45:26 AM roll call vote reported favorably
10:45:46 AM tab 29 SB 756 by Senator Grimsley
10:46:26 AM 339504 amendment adopted
10:46:34 AM back on bill as amended
10:47:02 AM roll call vote reported favorably
10:47:25 AM tab 37 CS/CS/SB 822 by Senator Hutson
10:48:10 AM amendment 646760 adopted
10:48:14 AM back on bill
10:48:54 AM roll call vote reported favorably
10:49:15 AM tab 30 CS/CS/SB 762 by Senator Mayfield
10:50:18 AM roll call vote reported favorably
10:50:29 AM tab 58 CS/SB 1348 by Senator Perry
10:51:21 AM roll call vote reported favorably
10:51:40 AM tab 52 CS/SB 1364 by Senator Rader
10:52:36 AM roll call vote reported favorably
10:52:49 AM tab 24 SB 582 by Senator Rader
10:53:14 AM Senator Bradley asks question
10:53:21 AM Senator Rader responds
10:53:55 AM Senator Bradley asks question regarding write in candidates
10:54:45 AM roll call vote reported favorably
10:55:07 AM tab 44 SB 1044 by Senator Book tp'd
10:55:41 AM tab 26 SB 640 by Senator Rouson
10:56:28 AM roll call vote reported favorably
10:56:50 AM Closing comments
10:57:47 AM Senator Brandes moves we rise
10:57:54 AM Meeting adjourned