

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Montford, Chair
Senator Gainer, Vice Chair

MEETING DATE: Tuesday, February 6, 2018
TIME: 9:00—10:30 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Montford, Chair; Senator Gainer, Vice Chair; Senators Gibson, Hutson, Passidomo, Rodriguez, Stargel, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 762 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 licensed insurers and their agents to offer complimentary, or discounted rates on, certain funeral-related services in conjunction with the sale of a group life or health insurance policy, etc. BI 01/23/2018 Fav/CS CM 02/06/2018 Fav/CS RC	Fav/CS Yeas 5 Nays 0
2	SB 894 Garcia (Similar CS/H 935, Compare S 282)	Mortgage Lending; Revising the definition of the term "mortgage loan"; defining the term "hold himself or herself out to the public as being in the mortgage lending business", etc. BI 01/23/2018 Favorable CM 02/06/2018 Favorable RC	Favorable Yeas 6 Nays 0
3	SB 1114 Brandes (Similar CS/H 1041)	Professional Regulation; Authorizing a person to seek a declaratory statement from an agency as to the effect of the person's criminal background on his or her eligibility for certain licenses, registrations, or certificates; prohibiting the conviction of a crime before a specified date from being grounds for the denial of certain licenses, etc. RI 01/24/2018 Favorable CM 02/06/2018 Fav/CS RC	Fav/CS Yeas 3 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 6, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1314 Brandes (Similar H 1181)	Florida Capital Formation Act; Deleting the requirement that the Department of Economic Opportunity manage certain activities related to the commercialization of specified products, services, and ideas; redesignating the Institute for the Commercialization of Public Research as the Institute for Commercialization of Florida Technology; requiring that certain proceeds be returned to the Florida Technology Seed Capital Fund after the payment of certain costs and fees, etc. CM 02/06/2018 Fav/CS ATD AP	Fav/CS Yeas 5 Nays 0
5	SB 1606 Taddeo (Similar H 341, Compare H 343, Linked S 1604)	Film and Television Production; Establishing the Florida Motion Picture Capital Corporation to encourage the use of this state as a site for scripted productions by providing financing to certain productions; requiring the production to use a bonded third-party collection account management firm; requiring the lead producer or production company to have a specified sales record or provide a completion bond; requiring the board to create the Florida Motion Picture Capital Account and maintain exclusive control of the account, etc. CM 02/06/2018 Temporarily Postponed ATD AP	Temporarily Postponed
6	SB 1604 Taddeo (Identical H 343, Compare H 341, Linked S 1606)	Public Records/Florida Motion Picture Capital Corporation; Providing an exemption from public records requirements for certain application information submitted to the Florida Motion Picture Capital Corporation; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc. CM 02/06/2018 Temporarily Postponed GO RC	Temporarily Postponed
7	SM 1658 Farmer (Similar HM 1329)	Income Inequality; Requesting Congress to adopt budgetary and other measures to reduce income inequality, etc. CM 02/06/2018 Temporarily Postponed RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 6, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 822 Regulated Industries / Hutson (Similar H 775)	Beverage Law; Providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer or importer of malt beverages and a licensed vendor; prohibiting the manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors; specifying that a brand naming rights agreement does not obligate or place responsibility upon a distributor, etc. RI 01/10/2018 Fav/CS CM 02/06/2018 Fav/CS RC	Fav/CS Yeas 4 Nays 1
9	SB 1828 Rodriguez (Similar H 225)	Employment Discrimination; Prohibiting an employer from taking retaliatory personnel action against an employee who has left a place of employment to evacuate under an mandatory evacuation order; providing employee remedies and relief, etc. CM 02/06/2018 Temporarily Postponed JU RC	Temporarily Postponed

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 762

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Mayfield

SUBJECT: Permissible Insurance Acts

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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 Act¹ (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.

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 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.



689278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Mayfield) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 54 - 88.

===== **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 23 - 24

and insert:

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



689278

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

And the title is amended as follows:

Delete lines 13 - 18

and insert:

applicability;

By the Committee on Banking and Insurance; and Senator Mayfield

597-02381-18

2018762c1

1 A bill to be entitled
 2 An act relating to permissible insurance acts;
 3 amending s. 626.9541, F.S.; revising the types, value,
 4 and frequency of advertising and promotional gifts
 5 that licensed insurers or their agents may give to
 6 insureds, prospective insureds, or others; authorizing
 7 such insurers and agents to make specified charitable
 8 contributions on behalf of insureds or prospective
 9 insureds; providing that title insurance agents, title
 10 insurance agencies, or title insurers may give
 11 insureds, prospective insureds, or others advertising
 12 gifts up to a specified value; providing
 13 applicability; authorizing licensed insurers and their
 14 agents to offer complimentary, or discounted rates on,
 15 certain funeral-related services in conjunction with
 16 the sale of a group life or health insurance policy;
 17 specifying a requirement for, and a limitation on, the
 18 providers of such services; providing construction;
 19 providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Paragraphs (m) and (t) of subsection (1) of
 24 section 626.9541, Florida Statutes, are amended to read:

25 626.9541 Unfair methods of competition and unfair or
 26 deceptive acts or practices defined.—

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

Page 1 of 4

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

597-02381-18

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30 (m) Advertising and promotional gifts and charitable
 31 contributions permitted.—
 32 1. ~~No provision of~~ Paragraph (f), paragraph (g), or
 33 paragraph (h) ~~does not shall be deemed to~~ prohibit a licensed
 34 insurer or its agent from:
 35 a. Giving to insureds, prospective insureds, or and others,
 36 ~~for the purpose of advertising,~~ any article of merchandise,
 37 goods, wares, store gift cards, gift certificates, event
 38 tickets, anti-fraud or loss mitigation services, or other items
 39 having a total value of \$100 or less per insured or prospective
 40 insured within 1 calendar year; or having a value of not more
 41 than \$25.
 42 b. Making charitable contributions, as defined in s. 170(c)
 43 of the Internal Revenue Code, on behalf of insureds or
 44 prospective insureds of up to \$100 per insured or prospective
 45 insured within 1 calendar year.
 46 2. Paragraph (f), paragraph (g), or paragraph (h) does not
 47 prohibit a title insurance agent or title insurance agency, as
 48 those terms are defined in s. 626.841, or a title insurer, as
 49 defined in s. 627.7711, from giving to insureds, prospective
 50 insureds, or others, for the purpose of advertising, any article
 51 of merchandise having a value of not more than \$25. A person or
 52 entity governed by this subparagraph is not subject to
 53 subparagraph 1.
 54 (t) Certain life insurance relations as to with funeral
 55 directors, funeral services, and grief counseling prohibited.—
 56 1. A No life insurer may not shall permit any funeral
 57 director or direct disposer to act as its representative,
 58 adjuster, claim agent, special claim agent, or agent for such

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

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2018762c1

59 insurer in soliciting, negotiating, or effecting contracts of
 60 life insurance on any plan or of any nature issued by such
 61 insurer or in collecting premiums for holders of any such
 62 contracts except as prescribed in s. 626.785(3).

63 2. ~~A~~ ~~no~~ life insurer ~~may not~~ ~~shall~~:

64 a. Affix, or permit to be affixed, advertising matter of
 65 any kind or character of any licensed funeral director or direct
 66 disposer to such policies of insurance.

67 b. Circulate, or permit to be circulated, any such
 68 advertising matter with such insurance policies.

69 c. Attempt in any manner or form to influence policyholders
 70 of the insurer to employ the services of any particular licensed
 71 funeral director or direct disposer.

72 3. ~~No~~ Such an insurer may not ~~shall~~ maintain, or permit its
 73 agent to maintain, an office or place of business in the office,
 74 establishment, or place of business of any funeral director or
 75 direct disposer in this state.

76 4. A licensed insurer or its agent may offer, in
 77 conjunction with the sale of a group life or health insurance
 78 policy, complimentary grief counseling or funeral planning
 79 services, or discounted rates on funeral services offered by a
 80 third party provider. Funeral planning services or funeral
 81 services must be rendered by persons licensed under chapter 497
 82 or licensed under the applicable laws in another jurisdiction in
 83 which the funeral provider is located. The contact to such
 84 funeral providers must be initiated by the beneficiaries or
 85 family members of the group policy insured and not by the
 86 funeral provider. All such offerings under this paragraph are
 87 not an advertisement, designation, direction, rebate, or

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597-02381-18

2018762c1

88 inducement as described in this section.

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DEBBIE MAYFIELD
17th District

January 24, 2018

The Honorable Bill Montford
Chair, Commerce and Tourism
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 762

Dear Chair Montford,

I am respectfully requesting Senate Bill 762, a bill relating to Permissible Insurance Acts, be placed on the agenda for your committee on Commerce and Tourism.

I appreciate your consideration of this bill and I look forward to working with you and the Banking and Insurance committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

A handwritten signature in cursive script that reads "Debbie Mayfield".

Senator Debbie Mayfield
District 17

Cc: Todd McKay, Gabriella Denton, Marilyn Barnes, Melissa Durham, Varna Mitchell, Taylor Peck

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

COMMITTEES:

Education, Vice Chair
Government Oversight & Accountability, Vice Chair
Appropriations Subcommittee on the
Environment and Natural Resources
Appropriations subcommittee on General
Government
Agriculture
Judiciary

JOINT COMMITTEES:

Joint Legislative Auditing Committee,
Alternating Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/6/18

Meeting Date

762

Bill Number (if applicable)

Topic Unfair Insurance

Amendment Barcode (if applicable)

Name Sohan (John) Mixon

Job Title Consultant

Address 201 So Monroe

Phone 850 528-4441

Street

Tallahassee FL 32301

City

State

Zip

Email jmixon@fasa.net

Speaking: For Against Information

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

Representing Independent Funeral Directors 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/7/18

Meeting Date

762

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Robert Reyes

Job Title _____

Address 417 Ingleside Ave

Phone 858 509 1802

Street

TALL 32303

Email rrays@capitolgrp.

City

State

Zip

Speaking: For Against Information

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

Representing Allstate Insurance Co

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

BILL: SB 894

INTRODUCER: Senator Garcia

SUBJECT: Mortgage Lending

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 894 revises provisions governing non-depository loan originators, mortgage brokers, and mortgage lender businesses subject to regulation by the Office of Financial Regulation (OFR) to provide greater consumer protections for residential loans. The bill amends the definition of “mortgage loan” to include residential mortgage loans made for business purposes. Persons originating, brokering, or lending such loans may be subject to licensure by the OFR, unless they are otherwise exempt. Further, the bill provides a definition of the term “hold himself or herself out to the public as being in the mortgage lending business,” as that term currently exists under two licensing exemption provisions.

Under ch. 494, F.S., conditions requiring licensure by the OFR include whether a person takes part in making a mortgage loan primarily for personal, family, or household use. Under current law, two exemptions in ch. 494, F.S., permit an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell such mortgage loan, without being licensed as a mortgage lender, if the individual does not “hold himself or herself out to the public as being in the mortgage lending business.” However, this term is currently undefined.

The fiscal impact on the OFR is indeterminate.

II. Present Situation:

Shadow Real Estate Transactions

The federal Financial Crimes Enforcement Network (FinCEN)¹ recently announced the renewal of an existing Geographic Targeting Order (GTO) in 2017. This GTO temporarily extends the

¹ Financial Crimes Enforcement Network, a bureau of the U.S. Department of Treasury, serves as the nation’s financial intelligence unit, and is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crime. FinCEN administers the federal Bank Secrecy Act. FinCEN analyzes and shares

requirement that U.S. title insurance companies in six metropolitan areas in the U.S., including Miami-Dade County, Florida, identify the natural persons behind shell companies used to pay “all cash” for high-end residential real estate.² FinCEN has found that about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report. The GTOs are one of the tools that FinCEN uses to combat money laundering. According to FinCEN, this corroborates their concerns about the use of shell companies to buy luxury real estate in “all-cash” transactions. In an earlier GTO issued in January 2016, FinCEN indicated that it was prioritizing anti-money laundering protections on real estate transactions involving lending.

In recent years, private lenders and representatives of a local building association have reported alleged unlicensed mortgage lending activity in South Florida. According to these reports, some lending entities were providing residential loans with usurious interest rates and high fees made under the guise of business purpose loans in order to avoid licensure and disclosure requirements under ch. 494, F.S., as a mortgage lender. These groups also claimed that some of these unscrupulous lenders would not make the “residential loan” unless the borrower formed a limited liability company.³ In another example described by the private lenders and local building association, an offshore shell company buys a parcel of real estate. Shortly thereafter, a Florida corporation, which is formed to participate in the scheme, obtains a mortgage loan on the property through an unlicensed mortgage lender. Next, the shell company pays the Florida corporation’s monthly mortgage payments and ultimately pays off the mortgage. As a result, the perpetrator successfully launders money in the United States.

Federal Oversight of Mortgage Brokerage Industry

Secure and Fair Enforcement for Mortgage Licensing Act of 2008

On July 30, 2008, the federal Housing and Economic Recovery Act of 2008 was enacted.⁴ Title V of this act is titled the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or the “S.A.F.E. Mortgage Licensing Act of 2008” (SAFE Act). The SAFE Act establishes minimum standards for state licensure of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud, and enhance consumer protections. The act required all states to adopt a system of licensure meeting minimum standards for mortgage loan originators by August 1, 2009, or be subject to federal regulation. The act establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. Pursuant to the SAFE Act, states are required to participate in a national licensing registry, the Nationwide Mortgage Licensing System and Registry (registry), which contains employment

financial intelligence with law enforcement and regulatory agencies. In addition, FinCEN works with the financial industry to deter, detect, investigate, and prosecute money laundering, terrorist financing, and other crimes.

² FinCEN Press Release (Feb. 23, 2017) available at <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash> (last viewed Feb. 5, 2018).

³ Latin Builders Association, Letter to Governor Rick Scott (Dec. 19, 2013) (on file with the Senate Committee on Banking and Insurance.).

⁴ Pub. L. No. 110-289.

history as well as disciplinary and enforcement actions against loan originators. Applicants are subject to licensure by the state regulator.⁵

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws.⁶ The Dodd-Frank Act authorizes the CFPB to have rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. Some of the consumer laws under the CFPB include the Truth in Lending Act (TILA)⁷ and the Real Estate Settlement Procedures Act (RESPA).⁸ The TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms, and is implemented by Regulation Z. The RESPA requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process, and is implemented by Regulation X.

Both TILA and RESPA exempt from their regulations a mortgage loan made “primarily for a business, commercial or agricultural purpose.”⁹ Therefore, TILA and RESPA do not cover “business purpose” mortgage loans but rather only “consumer purpose” mortgage loans. When determining whether credit is for a consumer purpose, the creditor must evaluate all of the following factors:

- Any statement obtained from the consumer describing the purpose of the proceeds;
- The primary occupation of the consumer and how it relates to the use of the proceeds;
- Personal management of the assets purchased from proceeds;
- The size of the transaction; and
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower’s total income.

The Dodd-Frank Act mandated that the CFPB adopt an integrated disclosure form for use by lenders and creditors to comply with the disclosure requirements of RESPA and TILA,¹⁰ and the CFPB issued final rules in 2015.¹¹ The integrated rule applies to most closed-end consumer mortgages secured by real property. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). *The Small Entity Guide* published by the CFPB does not specify whether loans for business purposes or for investment properties are exempt from the rule.

⁵ NLMS Resource Center, available at <http://mortgage.nationwidelicencingsystem.org/about/Pages/default.aspx> (last viewed Feb. 5, 2018).

⁶ Pub. L. No. 111-203.

⁷ 15 U.S.C. 1601, *et. seq.*

⁸ 15 U.S.C. 2601, *et. seq.*

⁹ Consumer Financial Protection Bureau, *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/> (last viewed Feb. 5, 2018).

¹⁰ 12 U.S.C. ss. 5532(f), 2603; 15 U.S.C. s. 1604(b).

¹¹ 78 Fed Reg 79730.

However, the guide does provide that creditors are not prohibited from using the integrated disclosure forms on loans that are not covered by the rule.¹²

State Regulation of Mortgage Loans

The Office of Financial Regulation (OFR) regulates a wide range of financial activities, such as state-chartered banks, credit unions, and non-depository loan originators, mortgage brokers and mortgage lenders. In 2009, the Florida Legislature implemented the minimum standards of the SAFE Act, which increased licensure requirements and required licensure through the registry.¹³

Section 494.001(24), F.S., defines the term “mortgage loan” to mean a:

- Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(v) of the federal TILA,¹⁴ or for the purchase of residential real estate upon which a dwelling is to be constructed;
- Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
- Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Licensure of Loan Originators, Mortgage Brokers, and Mortgage Broker Lenders

An individual who acts as a loan originator must obtain a loan originator license.¹⁵ A “loan originator” means an individual who, directly or indirectly:

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.¹⁶

The term “loan originator” includes an individual who is required to be licensed as a loan originator under the SAFE Act. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.¹⁷

¹² See CFPB, *Small Entity Compliance Guide*, available at http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo_smallentitycomplianceguide_v4_10072016.pdf (last viewed Feb. 5, 2018).

¹³ Chapter 2009-241, Laws of Fla.

¹⁴ The term “dwelling” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives. Current law inadvertently references the definition of “material disclosure” under s. 103(v), rather than the term “dwelling,” which is defined under s. 103(w). See 15 U.S.C. 1602.

¹⁵ Section 494.00312, F.S.

¹⁶ Section 494.001(17), F.S.

¹⁷ *Id.*

A “mortgage broker” means a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as an independent contractor to the mortgage broker¹⁸ and such persons are required to be licensed as mortgage brokers.¹⁹

A “mortgage lender” means any person making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a noninstitutional investor,²⁰ and such persons are required to be licensed as mortgage lenders.²¹ “Making a mortgage loan” means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.²²

The following persons are exempt from regulation as a mortgage lender under part III of ch. 494, F.S.:

- A person acting in a fiduciary capacity conferred by the authority of a court;
- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction;
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for servicing mortgage loans;
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors;
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business; and
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.²³

The OFR’s Examination Authority, Administrative Penalties, and Fines

The OFR may conduct investigations, examinations, and investigate complaints.²⁴ The OFR may take disciplinary action against a person licensed or subject to licensure under parts II or III of ch. 494, F.S., if the person violates any provision of RESPA, TILA, or any regulations adopted under such acts, during the course of any mortgage transaction.²⁵

In recent years, the OFR has closed cases relating to information pertaining to approximately 24 entities allegedly making residential mortgage loans for business purposes. Of these cases, the OFR imposed administrative fines on three entities engaging in unlicensed mortgage lending. The OFR was unable to take disciplinary action on 15 other cases because the residential loans were determined to be for business purposes, which is currently outside of the jurisdiction of the OFR.²⁶

¹⁸ Section 494.001(22), F.S.

¹⁹ Section 494.00321, F.S.

²⁰ Section 494.001(23), F.S.

²¹ Section 494.00611, F.S.

²² Section 494.001(20), F.S.

²³ Section 494.00115(2), F.S.

²⁴ Section 494.0012, F.S.

²⁵ See s. 494.00255, F.S.

²⁶ OFR Mortgage Lender Referrals (Nov. 3, 2016) (on file with Senate Banking and Insurance Committee).

III. Effect of Proposed Changes:

Section 1 amends the definition of the term, “mortgage loan” in s. 494.001(24), F.S., by removing the requirement that residential loans be used primarily for personal, family, or household purposes. As a result, the bill allows residential loans made for a business purpose to fall under the definition of a “mortgage loan” and to be subject to regulation by the OFR. The bill may require persons originating, brokering, or lending such loans to obtain licensure under ch. 494, F.S., unless they fall within an exemption under s. 494.00115, F.S.

The bill also makes a technical change to correct a reference to the definition of “dwelling” in s. 103(w) of the federal TILA.

Section 2 amends s. 494.00115, F.S., to define a term currently used under two mortgage lender licensing exemption provisions. The bill defines “hold himself or herself out to the public as being in the mortgage lending business” as any of the following:

- Representing to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or promotional items), by any medium whatsoever, that such individual can or will perform the activities described in s. 494.001(23), F.S., as a mortgage lender;
- Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities described in s. 494.001(23), F.S.;
- Maintaining a commercial business establishment at which, or premises from which, such individual regularly performs the activities described in s. 494.001(23), F.S., or regularly meets with current or prospective borrowers; or
- Advertising, soliciting, or conducting business through use of a name, trademark, service mark, trade name, Internet address, or logo which indicates or reasonably implies that the business being advertised, solicited, or conducted is the kind or character of business transacted or conducted by a licensed mortgage lender or which is likely to lead any person to believe that such business is that of a licensed mortgage lender.

The exemptions from mortgage lender licensure affected by this section are those for:

- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does hold himself or herself out to the public as being in the mortgage lending business.
- An individual selling a mortgage that was made or purchased with that individual’s funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.²⁷

Section 3 provides the effective date of January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ See s. 494.00115(2)(e) and (f), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill affords borrowers obtaining residential mortgage loans for any purpose (not primarily for personal, family, or household use) greater consumer protections under ch. 494, F.S., which also requires compliance with RESPA and TILA.

According to the OFR, the bill will require an indeterminate number of businesses and individuals to become licensed as mortgage lenders, mortgage brokers, and loan originators. The total number of entities operating in the state of Florida in this manner is unknown; however, the OFR has received information suggesting that approximately 24 entities currently make mortgage loans for business purposes.²⁸

²⁸ Office of Financial Regulation, *Analysis of SB 894* (Dec. 17, 2017) (on file with Senate Banking and Insurance Committee).

C. Government Sector Impact:

The OFR has indicated that two additional FTEs²⁹ may be needed to perform licensing and regulatory functions, since additional persons will be required to be licensed and examined.³⁰

	<u>Year 1</u>		<u>Year 2</u>		<u>Year 3</u>	
Salaries & Benefits:	Recurring	Non-Recurring	Recurring	Non-Recurring	Recurring	Non-Recurring
Financial Specialist (Registrations)	\$46,681.50	\$0.00	\$62,242.00	\$0.00	\$62,242.00	\$0.00
Financial Specialist (Enforcement)	\$46,681.50	\$0.00	\$62,242.00	\$0.00	\$62,242.00	\$0.00
	<u>\$93,363.00</u>	<u>\$0.00</u>	<u>\$124,484.00</u>	<u>\$0.00</u>	<u>\$124,484.00</u>	<u>\$0.00</u>
Expenses:	Recurring	Non-Recurring	Recurring	Non-Recurring	Recurring	Non-Recurring
Financial Specialist (Registrations)	\$1,350.00	\$0.00	\$1,800.00	\$0.00	\$1,800.00	\$0.00
Financial Specialist (Enforcement)	\$1,350.00	\$0.00	\$1,800.00	\$0.00	\$1,800.00	\$0.00
	<u>\$2,700.00</u>	<u>\$0.00</u>	<u>\$3,600.00</u>	<u>\$0.00</u>	<u>\$3,600.00</u>	<u>\$0.00</u>
OCO:	Recurring	Non-Recurring	Recurring	Non-Recurring	Recurring	Non-Recurring
Financial Specialist (Registrations)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Financial Specialist (Enforcement)	\$0.00	\$1,500.00	\$0.00	\$0.00	\$0.00	\$0.00
	<u>\$0.00</u>	<u>\$1,500.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
	<u>\$97,563.50</u>	<u>\$1,500.00</u>	<u>\$128,084.00</u>	<u>\$0.00</u>	<u>\$128,084.00</u>	<u>\$0.00</u>

VI. Technical Deficiencies:

Section 2 of the bill amending s. 494.00115, F.S., relating to exemptions from licensure (lines 38 – 41), provides that anyone “soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing activities described in s. 494.001(23).” According to the OFR, this paragraph appears very broad, leaving uncertain who it encompasses, which will likely create confusion for impacted businesses, individuals, and the OFR. Paragraphs (a), (c), and (d) provide more definitive guidance as to the exact activities

²⁹ *Id.*

³⁰ Office of Financial Regulation correspondence (Jan. 2018) (on file with Senate Committee on Banking and Insurance Committee).

or circumstances by which a business or individual is included in the definition. The OFR suggests that paragraph (b) should be clarified or removed in its entirety.

VII. Related Issues:

A violation of RESPA, TILA, or any regulations adopted thereunder committed in any mortgage transaction, is a ground for disciplinary action under ch. 494, F.S. Both RESPA and TILA exclude business purpose loans from the scope of their regulation. Therefore, a person may be subject to licensure under ch. 494, F.S., but might not necessarily be required to provide the disclosures required under RESPA and TILA when a residential mortgage loan is made for business purposes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.001 and 494.00115.

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 Garcia

36-01122-18

2018894__

1 A bill to be entitled
 2 An act relating to mortgage lending; amending s.
 3 494.001, F.S.; revising the definition of the term
 4 "mortgage loan"; amending s. 494.00115, F.S.; defining
 5 the term "hold himself or herself out to the public as
 6 being in the mortgage lending business"; providing an
 7 effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Subsection (24) of section 494.001, Florida
 12 Statutes, is amended to read:
 13 494.001 Definitions.—As used in this chapter, the term:
 14 (24) "Mortgage loan" means any:
 15 (a) Residential loan that primarily for personal, family,
 16 or household use which is secured by a mortgage, deed of trust,
 17 or other equivalent consensual security interest on a dwelling,
 18 as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in
 19 Lending Act, or for the purchase of residential real estate upon
 20 which a dwelling is to be constructed;
 21 (b) Loan on commercial real property if the borrower is an
 22 individual or the lender is a noninstitutional investor; or
 23 (c) Loan on improved real property consisting of five or
 24 more dwelling units if the borrower is an individual or the
 25 lender is a noninstitutional investor.
 26 Section 2. Subsection (4) is added to section 494.00115,
 27 Florida Statutes, to read:
 28 494.00115 Exemptions.—
 29 (4) As used in this section, the term "hold himself or

Page 1 of 2

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

36-01122-18

2018894__

30 herself out to the public as being in the mortgage lending
 31 business" includes any of the following:
 32 (a) Representing to the public, through advertising or
 33 other means of communicating or providing information, and by
 34 any medium whatsoever, including the use of business cards,
 35 stationery, brochures, signs, rate lists, or promotional items,
 36 that such individual can or will perform the activities
 37 described in s. 494.001(23).
 38 (b) Soliciting in a manner that would lead the intended
 39 audience to reasonably believe that such individual is in the
 40 business of performing the activities described in s.
 41 494.001(23).
 42 (c) Maintaining a commercial business establishment at
 43 which, or premises from which, such individual regularly
 44 performs the activities described in s. 494.001(23) or regularly
 45 meets with current or prospective borrowers.
 46 (d) Advertising, soliciting, or conducting business through
 47 use of a name, trademark, service mark, trade name, Internet
 48 address, or logo that indicates or reasonably implies that the
 49 business being advertised, solicited, or conducted is the kind
 50 or character of business transacted or conducted by a licensed
 51 mortgage lender or that is likely to lead any person to believe
 52 that such business is that of a licensed mortgage lender.
 53 Section 3. This act shall take effect January 1, 2019.

Page 2 of 2

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



The Florida Senate
State Senator René García
36th District

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

January 23, 2018

The Honorable Bill Montford
Chair, Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Montford,

Please have this letter serve as my formal request to have **SB 894: Mortgage Lending** be heard during the next scheduled Commerce and Tourism Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 36

CC: Todd McKay
Gabriela Denton

Committees: Children, Families, and Elder Affairs, Chair, Appropriations Subcommittee on Finance and Tax, Vice Chair, Appropriations Subcommittee on the Environment and Natural Resources, Appropriations Subcommittee on General Government, Banking and Insurance, Judiciary, Joint Administrative Procedures Committee.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18
Meeting Date

SB 894
Bill Number (if applicable)

Topic Speaking on SB 894

Amendment Barcode (if applicable)

Name Courtney Larkin

Job Title Government Relations

Address 200 E Gaines Street
Street

Phone 888.209.0061

Tallahassee FL 32399
City State Zip

Email Courtney.larkin@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 Commerce and Tourism

BILL: CS/SB 1114

INTRODUCER: Commerce and Tourism Committee and Senator Brandes and others

SUBJECT: Professional Regulation

DATE: February 7, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1114 addresses licensing, registration, and regulatory requirements for various professions and occupations. The bill:

- Permits a person to submit a petition for declaratory statement to any Florida agency to determine the effect of a criminal background on his or her eligibility for occupational or professional licensure;
- Prohibits an agency from denying an application for licensure for certain professions if a specific duration has passed since the applicant's conviction;
- Specifies accommodations that an agency must make for applicants who are under confinement or supervision at the time of their application;
- Requires pertinent boards under the Department of Business and Professional Regulation to adopt rules that specify crimes that do or do not constitute grounds for licensure denial;
- Eliminates the current licensing required for business entities engaged in certain regulated professions (architecture and interior design, landscape architecture, and asbestos abatement consulting or contracting), while retaining the license required for individuals engaged in those professions;
- Provides that licensed individuals must apply for licensure and act as qualifying agents for business organizations to be licensed to engage in architecture and interior design, landscape architecture, or asbestos abatement consulting or contracting;
- Allows certain boxing match services to be practiced without a license (announcers and knockdown timekeepers);
- Revises the current license requirements for restricted barbers to specify:

- The services that may and may not be provided by restricted barbers; and
- A minimum of 325 training hours;
- Specifies license requirements for specialists in practices defined as “nail specialty,” “facial specialty,” and “full specialty;”
- Eliminates license and registration requirements for those who engage solely in:
 - Hair braiding, hair wrapping, or body wrapping; or
 - The polishing of nails or applying makeup;
- Eliminates registration requirements for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties; and
- Eliminates license requirement for yacht and ship brokers’ branch offices;

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Agency Declaratory Statements

The Administrative Procedure Act provides uniform procedures for agencies to exercise their authority, and is applicable to every Florida administrative agency.¹

A declaratory statement is meant to “enable members of the public to definitively resolve ambiguities of law arising in the conduct of their daily affairs or in the planning of their future affairs’ and ‘to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts.’”² A petition for declaratory statement must include a petitioner’s specific set of circumstances and the applicable law, rule, or order he or she wishes to have interpreted in light of those circumstances.³

When a petitioner files a petition for a declaratory statement with an agency, the agency must file a notice of the petition in the next available issue of the Florida Administrative Register and transmit copies of the petition to the Joint Administrative Procedures Committee.⁴ Within 90 days from the petition’s filing, the agency must either issue a declaratory statement or deny the petition. The agency must give notice of its action in the next available issue of the Florida Administrative Register.⁵

¹ See, ss. 120.50-120.515, F.S.

² Section 120.565(1), F.S.; *Fla. Dept. of Bus. & Pro. Reg., Div. of Pari-Mutuel Wagering v. Invest. Corp. of Palm Bch.*, 747 So. 2d 374 (Fla. 1999), quoting Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 Fla. St. U. L. Rev. 965 (1986)).

³ Section 120.565(2), F.S.

⁴ Section 120.565(3), F.S. The Joint Administrative Procedures Committee (JAPC) is a joint standing committee of the Legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature. It is composed of five Senators appointed by the President of the Senate and six Representatives appointed by the Speaker of the House. The primary function of JAPC is to generally review agency action pursuant to the operation of the Administrative Procedure Act in ch. 120, F.S., related to the rulemaking process, to ensure that rules adopted by the executive branch agencies do not create new law and stay within the authority specifically delegated to them by the Legislature.

⁵ Section 120.565(3), F.S.

Generally, an agency will only issue a declaratory statement on actions that will take place in the future.⁶ However, the fact pattern must not be hypothetical so as to amount to a request for an advisory opinion regarding facts that are only ‘contingent, uncertain, [and] rest in the future.’⁷

Current law does not require a fee for filing a petition for declaratory statement with an agency.

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), which has 12 divisions tasked with the regulation of several professions and businesses.⁸

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ The DBPR may engage in the regulation of professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”¹⁰ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.¹¹

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.¹²

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹³

In Fiscal Year 2016-2017, there were 412,872 active licensees in the Division of Professions,¹⁴ including:

- Architects and interior designers;

⁶ *Fed’n of Mobile Home Owners of Fla., Inc. v. Dept. of Bus. Regulation*, 479 So. 2d 252 (Fla. Dist. Ct. App. 1985).

⁷ *Santa Rosa Cnty. v. Admin. Comm’n., Div. of Admin. Hearings*, 661 So. 2d 1190 (Fla. 1995).

⁸ See s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

⁹ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹⁰ Section 455.201(2), F.S.

¹¹ *Id.*

¹² Section 455.201(4)(b), F.S.

¹³ Section 455.01(4) and (5), F.S.

¹⁴ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2016-2017*, at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199> (last visited Feb. 7, 2018) at pages 21 and 22. Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive. *Id.* at page 22.

- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers (19,098 active and 199 inactive);
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors (71,818 active and 15,004 inactive);
- Cosmetologists (237,090 active and 1,600 inactive);
- Electrical contractors (11,960 active and 1,285 inactive);
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Harbor pilots;
- Landscape architects;
- Mold-related services;
- Talent agencies; and
- Veterinarians.¹⁵

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁶

Yacht and Ship Broker Branch Office Licenses

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.¹⁷ The Yacht and Ship Broker's Section, a unit of the Division of Florida Condominiums, Timeshares and Mobile Homes of the DBPR,¹⁸ requires each yacht or shipbroker to maintain a principal place of business in Florida. The yacht or shipbroker may maintain branch offices, but must obtain a separate license for each branch office, which requires a \$100 application fee.¹⁹ Applicants for a branch office license pay a \$100 fee, and the license must be renewed every two years.²⁰

Labor Organizations

DBPR's Division of Regulation licenses and regulates labor organizations and related business agents pursuant to ch. 447, F.S.²¹ A labor organization is an organization of employees that is

¹⁵ *Id.*

¹⁶ Section 455.219(1), F.S.

¹⁷ Section 326.004(1), F.S.

¹⁸ See Department of Business and Professional Regulation, *Yacht and Ship Brokers; Licensing and Enforcement*, <http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html> (last visited Feb. 7, 2018).

¹⁹ Section 326.004(13), F.S.

²⁰ See Fla. Admin. Code R. 61B-60.002 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61B-60> (last visited Feb. 7, 2018).

²¹ Section 447.01, F.S., and see <http://www.myfloridalicense.com/dbpr/reg/LaborOrganizationsandBusinessAgents.html> (last visited Feb. 7, 2018).

recognized as a unit of bargaining by one or more employers in the state that deals with employers concerning employee's hours, pay, working conditions, and other grievances.²²

A labor organization's business agent is a person who acts, for pecuniary or monetary gain, for any labor organization in:

- The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; and
- Soliciting or receiving from any employer any right or privilege for employees."²³

A labor organization's business agents must be licensed by the DBPR.²⁴ Business agent license applicants must pay a \$25 license fee and meet a number of licensure requirements.²⁵

Asbestos Abatement Business Organizations

The Asbestos Licensing Unit licenses and regulates asbestos abatement pursuant to ch. 469, F.S.; it also responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.²⁶ The Asbestos Licensing Unit operates under the DBPR's Division of Professions.

Only licensed asbestos contractors may perform asbestos abatement,²⁷ unless exempted.²⁸ A person must be a licensed asbestos consultant to:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.²⁹

An asbestos abatement professional applicant must either be currently licensed as an architect, professional engineer, or professional geologist; be a diplomat of the American Board of Industrial Hygiene; or have been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.³⁰

If an applicant wishes to consult or contract on asbestos abatement under any name other than his or her legal name, then the applicant must apply for licensure under the fictitious name.³¹ Similarly, a business organization must apply for licensure as an asbestos abatement consultant

²² Section 447.02(1), F.S.

²³ Section 447.02(2), F.S.

²⁴ Sections 447.04(2) and 447.06, F.S.

²⁵ Section 447.04(2), F.S.

²⁶ See Florida Department of Business and Professional Regulation, *Asbestos Contractors and Consultants*, available at <http://www.myfloridalicense.com/DBPR/asbestos-contractors-and-consultants/>, and Florida Department of Business and Professional Regulation, *DBPR Online Services*, available at <https://www.myfloridalicense.com/intentions2.asp?chBoard=true&boardid=59&SID> (last visited Feb. 7, 2018).

²⁷ Section 469.003(3), F.S.

²⁸ Section 469.002, F.S., provides that in limited circumstances, certain governmental employees with required training may engage in asbestos abatement work solely for maintenance purposes.

²⁹ Section 469.003, F.S.

³⁰ Section 469.004(1), F.S.

³¹ Section 469.006(2), F.S.

or contractor through a qualifying agent who is licensed under ch. 469, F.S. The qualifying agent must have authority to supervise the enterprise, and be financially responsible for the business.³² The business organization licensee must consistently maintain a qualifying agent.³³

Applicants for an asbestos abatement business license pay an application fee of \$300, an unlicensed activity fee of \$5, an initial licensure fee of \$250, and a biennial renewal fee of \$250.³⁴

Barbering

The term “barbering” in ss. 476.014 through 476.254, F.S, (the Barbers’ Act) includes any of the following practices when done for payment: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.³⁵

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must:

- Be at least 16 years of age;
- Pay the application fee; and
- Have held an active valid license in another state for at least one year,³⁶ or have a minimum of 1,200 hours of specified training.³⁷

Alternatively, a person may apply for and receive a “restricted license” to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers’ Board.³⁸

Nail and Facial Specialists, Hair Braiders, Hair Wrappers, and Body Wrappers

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair braiders, hair wrappers, nail specialists, facial specialists, full specialists, body wrappers, and related salons in the state. The Board of Cosmetology, within the DBPR’s Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.³⁹

³² *Id.*

³³ Section 469.006(3), F.S.

³⁴ See Fla. Admin. Code R. 61E1-3.001 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61E1-3> (last visited Feb. 7, 2018).

³⁵ See s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

³⁶ Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. See s. 476.144(5), F.S.

³⁷ See s. 476.114(2), F.S.; the training must include, but is not limited to the completion of services directly related to the practice of barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

³⁸ See s. 476.144(6), F.S.

³⁹ See Department of Business and Professional Regulation, *Cosmetology*, available at <http://www.myfloridalicense.com/DBPR/cosmetology/> (last visited Feb. 7, 2018).

Individuals are prohibited from providing manicures, pedicures, or facials without first becoming licensed as a cosmetologist or registered as a nail specialist, facial specialist, or full specialist.⁴⁰ The application of polish to fingernails and toenails is considered manicuring, even though the individual is not cutting, cleansing, adding, or extending the nails.⁴¹ Therefore, a registration as a specialist or licensure as a cosmetologist is required to apply polish to fingernails and toenails for compensation.

A “specialist” is “any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]”⁴² The term “specialty” is defined as “the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.”⁴³

A nail specialist may complete manicures and pedicures, and a full specialist may complete manicures, pedicures, and facials.⁴⁴ Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.⁴⁵ All cosmetology and specialty salons are subject to inspection by the DBPR.⁴⁶

An applicant for a specialist license must:

- Be at least 16 years of age;
- Obtain a certificate of completion from an approved specialty education program; and
- Submit an application for registration to the DBPR with the registration fee.⁴⁷

A “cosmetologist” is a person who is licensed to engage in the practice of cosmetology.⁴⁸ “Cosmetology” is “the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation.

⁴⁰ See Florida Department of Business and Professional Regulation, *Board of Cosmetology Frequently Asked Questions and Answers* (Aug. 2017), available at: http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf (last visited Feb. 7, 2018).

⁴¹ See s. 477.013(6)(a) and (b), F.S.

⁴² See s. 477.013(5), F.S.

⁴³ See s. 477.013(6), F.S.

⁴⁴ See s. 477.013(6), F.S.

⁴⁵ See s. 477.0263, F.S. Under s. 477.0135(3), F.S., licensing is not required for a person whose occupation is confined solely to cutting, trimming, polishing, or cleansing fingernails of customers in an active, licensed barbershop, and who did so before October 1, 1985.

⁴⁶ See s. 477.025(9), F.S.

⁴⁷ See s. 477.0201, F.S.

⁴⁸ See s. 477.013(3), F.S.

This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.⁴⁹

Certain persons who apply cosmetic products (makeup) are exempt from ch. 477, F.S., under limited conditions, including application of such products in photography studio salons, in connection with certain retail sales, or during the production of qualified films.⁵⁰ In addition, persons who provide makeup in a theme park or entertainment complex to actors and others or the general public are exempt from licensing requirements.⁵¹

An applicant for a cosmetologist license must pass a licensure examination and:

- Be at least 16 years of age;
- Have a high school diploma;
- Submit an application with the applicable fee and examination fee; and
- Be licensed in another state or country for at least one year, or received 1,200 hours training, including completion of an education at an approved cosmetology school or program.⁵²

Architecture or Interior Design Business Organizations

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design, under the DBPR's Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.⁵³

The practice or offering of architectural or interior design services to the public through certain business organizations is authorized for:

- Licensees acting through a corporation, limited liability company, or partnership; or
- A corporation, limited liability company, or partnership acting through licensees as agents, employees, officers, or partners.⁵⁴

A certificate of authorization is required to practice or provide architecture or interior design services to the public.⁵⁵ Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of \$100, an unlicensed activity fee of \$5, and a biennial renewal fee of \$125.⁵⁶ A business entity has no regulatory obligations other than to obtain licensure.

According to the DBPR, during the past four fiscal years through Fiscal Year 2016-2017, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six

⁴⁹ See s. 477.013(4), F.S. A licensed cosmetologist is not required to register separately as a hair braider, hair wrapper, body wrapper, or specialist. See note 40, *supra*.

⁵⁰ See ss. 477.013(11), 477.0135(1)(f), and 477.0135(5), F.S.

⁵¹ See s. 477.0135(6), F.S.

⁵² See ss. 477.019(2) and (4), F.S.

⁵³ See Florida Department of Business and Professional Regulation, *Architecture and Interior Design*, <http://www.myfloridalicense.com/DBPR/architecture-and-interior-design/> (last visited Feb. 7, 2018).

⁵⁴ Section 481.219(1), F.S.; such practice must comply with all the requirements in s. 481.219, F.S.

⁵⁵ Section 481.219(2)-(3), F.S.

⁵⁶ See Fla. Admin. Code R. 61G1-17.001 and R. 61G1-17.002 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61G1-17> (last visited Feb. 7, 2018).

times in cases that did not also involve discipline against the supervising architect. In most cases, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.⁵⁷

The Board of Architecture and Interior Design disciplined licensed interior design businesses only five times during the past four fiscal years through Fiscal Year 2016-2017, in cases that did not also involve discipline against the qualifying interior designer.⁵⁸

Landscape Architecture Business Organization

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in Florida. The Board of Landscape Architecture, under the DBPR's Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.⁵⁹

A person may not knowingly practice landscape architecture⁶⁰ unless the person holds a valid license issued pursuant to ch. 481, Part II, F.S.⁶¹ A corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect; and
- The corporation or partnership has been issued a certificate of authorization by the board.⁶²

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of \$450, an unlicensed activity fee of \$5, and a biennial renewal fee of \$337.50.⁶³ A business entity has no regulatory obligations other than to obtain licensure and notify the DBPR within one month of any change in the information contained in its license application.⁶⁴

⁵⁷ Email from J. Morris, Legislative Affairs Director, DBPR, to Senate Committee on Regulated Industries staff (Jan. 19, 2018) (on file with Senate Committee on Regulated Industries).

⁵⁸ *Id.*

⁵⁹ Florida Department of Business and Professional Regulation, *Landscape Architecture*, <http://www.myfloridalicense.com/DBPR/landscape-architecture/> (last visited Feb. 7, 2018).

⁶⁰ The term "landscape architecture" includes but is not limited to the determination of building siting, drainage, and contouring of land and water forms, and other activities including design in connection with land development for the preservation, conservation, enhancement, or determination of proper land uses, natural features, or naturalistic and aesthetic values. *See* s. 481.303(6)(a)-(d), F.S., relating to the professional services included in landscape architecture.

⁶¹ Section 481.323(1)(a), F.S.

⁶² Section 481.319(1), F.S.

⁶³ *See* Fla. Admin. Code R. 61G10-12.002 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61G10-12.002> (last visited Feb. 7, 2018).

⁶⁴ *See* 481.319(4), F.S.

State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,⁶⁵ and mixed martial arts⁶⁶ by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.⁶⁷

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,⁶⁸ which involves a professional.⁶⁹ Professional matches held in Florida must meet ch. 548, F.S.'s requirements, and the rules adopted by the commission.⁷⁰ Chapter 548, F.S. does not apply to certain professional or amateur "martial arts," such as karate, aikido, judo, and kung fu; the term "martial arts" is distinct from and does not include "mixed martial arts."⁷¹

However, as to amateur matches, the commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.⁷² Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.⁷³ During Fiscal Year 2016-2017, of the 164 amateur events in Florida, the Division of Regulation in the DBPR conducted 26 checks for compliance with health and safety standards and proper supervision of the events.⁷⁴

Under current law, a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter who provides services for a boxing, kickboxing, or mixed martial arts match must be licensed by the commission.⁷⁵

Licensing and Criminal Background

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and

⁶⁵ The term "kickboxing" means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.

⁶⁶ The term "mixed martial arts" means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.

⁶⁷ *See* s. 548.003(1), F.S.

⁶⁸ *See* s. 548.006(1), F.S.

⁶⁹ The term "professional" means a person who has "received or competed for a purse or other article of a value greater than \$50, either for the expenses of training or for participating in a match. *See* s. 548.002(19), F.S.

⁷⁰ *See* s. 548.006(4), F.S.

⁷¹ *See* s. 548.007(6), F.S., and *see supra* note 78 for the definition of "mixed martial arts."

⁷² *See* s. 548.006(3), F.S.

⁷³ Section 548.002(2), F.S.

⁷⁴ *See* Department of Business and Professional Regulation, *Florida State Boxing Commission Annual Report, Fiscal Year 2016-2017* at <http://www.myfloridalicense.com/dbpr/os/documents/FY2016-2017BoxingCommissionAnnualReport.pdf> (Message from Secretary) (last visited Feb. 7, 2018).

⁷⁵ The term "participant" means a professional competing in a boxing, kickboxing, or mixed martial arts match. *See* s. 548.002, F.S., for the definitions of "participant," "manager," "second," "judge," "physician," "matchmaker," and "promoter." The terms "trainer," "timekeeper," "referee," and "announcer" are not defined in ch. 548, F.S.

reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.⁷⁶ Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.⁷⁷

DBPR

The regulatory boards of the DBPR, or the department if there is no board, may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁷⁸ Specifically, the regulatory board, or the department if there is no board, may deny a license application for any person having been:

convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.⁷⁹ (Emphasis added.)

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

Department of Health

The Department of Health (DOH) or an applicable board may deny the licensure of any applicant who has been "convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state"⁸⁰ or related to certain types of fraud,⁸¹ or for other reasons in the applicable practice act.

There are no statutory provisions of rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.⁸²

Certified Nursing Assistants

The Board of Nursing within the DOH is responsible for licensing and regulating the certified nursing assistants (CNA) under part II of ch. 464, F.S.⁸³ In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.⁸⁴

⁷⁶ Section 112.011(1)(b), F.S.

⁷⁷ Section 112.011(1)(c), F.S.

⁷⁸ Section 455.227(2), F.S.

⁷⁹ Section 455.227(1)(c), F.S.

⁸⁰ Sections 456.024(3)(c); 456.072(1)(c), (x), (ii) and (ll); and 456.071(2)(a), F.S.

⁸¹ Section 456.0635, F.S.

⁸² Florida Department of Health, *Agency Analysis of HB 1041*, p. 2 (Jan. 24, 2018) (on file with the Committee on Commerce and Tourism).

⁸³ See s. 489.107, F.S.

⁸⁴ See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited Feb. 7, 2018) at page 13. Of the total 193,637 certified nursing assistants, 42,209 are in-state delinquent, 2,019 are out-of-state delinquent, and are active military.

The “practice of a certified nursing assistant” means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents’ or patients’ rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.⁸⁵

The definition of “practice of a certified nursing assistant” does not restrict a person who is otherwise trained and educated from performing the tasks specified in the definition.⁸⁶

To be certified in Florida, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified in Florida if he or she is certified by another state and has not been found to have committed abuse, neglect, or exploitation in that state.⁸⁷

The qualifications for certification as a CNA do not specifically refer to a person’s criminal background, but an applicant must pass a background screening pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level two background screening, or s. 408.809, F.S.⁸⁸ The background screening must be completed every 5 years following licensure, employment, or entering into contract in a capacity that requires background screening.⁸⁹

Level two background screening ensures that a subject of the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or not entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 prohibited offenses.⁹⁰ The prohibited offenses include violent crimes, property crimes, and sexual offenses.⁹¹

In addition to the crimes specified under s. 435.04, F.S., a CNA may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.⁹²

⁸⁵ Section 464.201(5), F.S.

⁸⁶ *Id.*

⁸⁷ Section 464.203, F.S.

⁸⁸ Section 408.809(1), F.S.

⁸⁹ Section 408.809(2), F.S.

⁹⁰ Section 435.04, F.S.

⁹¹ *See* 435.04(2), F.S.

⁹² *See* 408.809(4), F.S.

A level two background screening includes fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is complete, and the FDLE receives the information from the FBI, the criminal history information is transmitted to DOH. The DOH determines if the screening contains any disqualifying information for employment.

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

- Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.⁹³

However, if the disqualifying crime committed while the applicant was a delinquent would be considered a felony if committed by an adult, and the record has not been sealed or expunged, the DOH may not grant an exemption until at least 3 years have elapsed since the applicant's completion or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for the offense.⁹⁴

An applicant who seeks an exemption must first pay any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.⁹⁵

However, the DOH may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of *nolo contendere* or guilty to, any felony covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.⁹⁶

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).⁹⁷ The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes

⁹³ Section 435.07(1)(a), F.S.

⁹⁴ *Id.*

⁹⁵ Section 435.07(1)(b), F.S.

⁹⁶ *See* s. 435.07(4)(a), F.S.

⁹⁷ *See* s. 435.07(4)(b), F.S.

against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.⁹⁸

III. Effect of Proposed Changes:

Declaratory Statements

Section 1 amends s. 120.565, F.S., to create a new declaratory statement process that permits a person who desires to become licensed in a state-regulated profession or occupation to obtain a binding determination of whether his or her criminal conviction or sanction will prevent such licensure, registration, or certification in the profession or occupation.

A person may seek the agency's opinion prior to the person possessing the training or education required for the license, registration, or certificate in the profession or occupation. Additionally, he or she may request the agency's determination while still under criminal confinement or supervision.

The petition may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility, including, but not limited to:

- The time elapsed since completion of or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; and
- The petitioner's standing in his or her community.

The agency's declaratory statement must further indicate:

- If an agency's determination of disqualification as a result of criminal background may be reversed based on evidence of rehabilitation or mitigation; and
- Whether any federal laws or regulations or any conditions imposed by the court on the petitioner may impede his or her licensure, registration, or certification in the profession or occupation.

The agency's conclusion is binding on the agency as to the petitioner, but any subsequent criminal history may form an independent basis for denial of licensure, registration, or certification.

An agency may require a petitioner to submit the following with his or her petition for declaratory statement:

- A fee of not more than \$100;
- A certified copy of each criminal judgment rendered against the petitioner;
- A complete set of fingerprints; and
- A fingerprint processing fee.

The agency must submit the fingerprints to the FDLE for a state criminal history record check and the FDLE must forward the fingerprints to the FBI for a national criminal history record check.

⁹⁸ See s. 435.07(4)(c), F.S.

Licensing Deregulation

Yacht and Ship Broker Branch Office Licenses

Section 2 amends s. 326.004, F.S., to remove the requirement that a yacht or ship broker obtain separate licenses for each branch office. Current provisions related to licensing for yacht brokers and salespeople are retained.

Labor Organizations

Sections 3 through 11 amend Part I of ch. 447, F.S., to eliminate the registration and regulation of labor organizations and their business agents by the DBPR and the requirement that the Public Employees Relations Commission notify the DBPR of registrations and renewals of such organizations. Provisions relating to the right to work and strike, recordkeeping, rights of franchise for labor organizations, civil causes of action, criminal penalties, and recognition of federal regulations are not affected by the bill.

Asbestos Abatement Business Organizations

Sections 15 and 16 amend ch. 469, F.S., to require an applicant seeking to engage in asbestos abatement as a business organization, or in any name other than the applicant's legal name, to apply for licensure under the name of the business organization. However, the issued license must be in the name of the qualifying agent, and the name of the qualified business organization must be noted on the license. In addition, the bill makes conforming changes associated with qualification of business organizations by licensed qualifying agents.

Barbering

Section 17 amends s. 476.034, F.S., to define the terms "restricted barber" and "restricted barbering." Restricted barbers are licensed to perform, for payment by the public, hair cutting and styling, full facial shaves, mustache and beard trimming, and shampooing, conditioning and blow drying hair; restricted barbers may apply only hair tonics and hair spray and may not apply other chemical preparations or solutions to hair.

Section 18 amends s. 476.114, F.S. to reduce the minimum training hours from 1,200 hours to 325 hours for restricted barbers. The bill specifies the content of the training must be in "sanitation, safety, and laws and rules."

The bill provides an applicant for a restricted barber license must also be at least 16 years of age, pay the application fee, and pass an examination. To be eligible to take the examination, an applicant for restricted barbering must have held an active valid license in another state for at least one year,⁹⁹ or have a minimum of 325 hours of training.¹⁰⁰

⁹⁹ Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. *See* s. 476.144(5), F.S.

¹⁰⁰ The training must include, but is not limited to the completion of services directly related to the practice of restricted barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

Section 19 repeals current law limiting the practice of a restricted license to areas in which the licensee has demonstrated competency.

Nail and Facial Specialists, Hair Braiders, Hair Wrappers, and Body Wrappers

Section 20 amends s. 477.013, F.S., to specify the activities that constitute the practice of a “nail specialty,” a “facial specialty,” and a “full specialty.” A nail specialty, includes:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands, including any procedure for the affixing of artificial nails, except those that are affixed solely by a simple adhesive; and
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

A facial specialty includes facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services. A full specialty includes all manicuring, pedicuring, and facial services.

The bill expands the definition of “hair braiding” to include the weaving of natural human hair with commercial hair, and the use of hair extensions or wefts.¹⁰¹ Under current law, the use of hair extensions or wefts is excluded from “hair braiding.”

Section 21 repeals s. 477.0132, F.S., eliminating registration requirements for hair braiding, hair wrapping, and body wrapping, and requirements that those registrants take specified courses approved by the Board of Cosmetology.

The bill repeals the requirements that persons whose practice is confined solely to:

- Hair braiding take an approved two-day, 16-hour course consisting of five hours of HIV/AIDS and other communicable diseases, five hours of sanitation and sterilization, four hours of disorders and diseases of the scalp, and two hours of studies regarding laws affecting hair braiding.
- Hair wrapping take an approved one-day, 6-hour course consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and studies regarding laws affecting hair wrapping.
- Body wrapping (unless otherwise licensed or exempt from licensing) take an approved two-day, 12-hour course consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.

Additionally, the bill repeals s. 477.0132(2), F.S., which provides that:

- Hair braiding, hair wrapping, and body wrapping are not required to be practiced in a cosmetology salon or specialty salon; and
- Disposable implements must be used, or all implements must be sanitized in a disinfectant approved for hospital use or approved by the federal Environmental Protection Agency,

¹⁰¹ A “weft” of hair is a long curtain of hair that has a seam at the top and is found on wigs and hair extensions. Vogue Wigs, *What is a Weft?*, <https://www.voguewigs.com/what-is-a-weft.html> (last visited Feb. 7, 2018).

when hair braiding, hair wrapping, or body wrapping is practiced outside a cosmetology salon, or specialty salon.

Section 22 amends s. 477.0135, F.S., to eliminate licensure or registration requirements for a person whose occupation or practice is confined solely to hair braiding, hair wrapping, body wrapping, applying polish to fingernails and toenails, or makeup application. The bill also eliminates a current exemption for certain continuing education requirements.

Section 23 deletes s. 477.019(7), F.S., relating to an exemption from continuing education requirements for hair braiders, hair wrappers, and body wrappers.

Section 24 amends s. 477.0201, F.S., on specialist registration, to include registrations for nail, facial, and full specialty practices, and minimum training requirements. As in current law, applicants for any specialist registration must be at least 16 years of age or have received a high school diploma. Training requirements, with a primary focus on sanitation and safety, and completion of services directly related to the particular specialty registration being sought, include a minimum of:

- 150 hours, for a nail specialty practice (current requirement is 240 hours);
- 165 hours, for a facial specialty practice (current requirement is 260 hours); and
- 300 hours for a full specialty practice (current requirement is 500 hours).¹⁰²

Similar to the current law requirement for registration in a specialty within the practice of cosmetology,¹⁰³ completion of services directly related to each specialty must be received from specified types of schools or specialty programs.

Sections 25-27 make conforming changes to ch. 477, F.S., to reflect the deregulation of hair braiders, hair wrappers, and body wrappers.

Architecture or Interior Design Business Organizations

Sections 28 through 31 amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. Architects and interior designers must qualify, or associate, their business organizations with their individual license; they must also disclose any fictitious names under which they operate.

Architects and interior designers who act as qualifying agents must inform the DBPR of any change in their relationship with a business, and if the qualifying agent is the business' only qualifying agent, the business must obtain a replacement within 60 days. A business without a qualifying agent may not engage in the practice of architecture or interior design, unless the executive director or chair of the Board of Architecture and Interior Design authorizes another registered architect or interior designer employed by the business organization to temporarily serve as its qualifying agent for no more than 60 days.

¹⁰² See http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf at page 3 (Question 8) (last visited Feb. 7, 2018) and Department of Business and Professional Regulation, *SB 526 Bill Analysis*, p. 3 (Nov. 3, 2017) (on file with Senate Committee on Regulated Industries).

¹⁰³ See s. 477.0201(1)(b), F.S.

The bill amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design may deny an application to qualify a business organization if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) “has been involved in past disciplinary actions or on any grounds for which an individual registration may be denied.”

Landscape Architecture Business Organization

Sections 32 through 37 amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license (certificate of authorization) in addition to an individual license. A landscape architect must qualify its business organizations by associating it with an individual license, and must disclose operations under a fictitious name.

The bill repeals the Board of Landscape Architecture’s ability to grant a temporary certificate of authorization for a business organization that seeks to work on one project in Florida for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm.

The bill repeals the DBPR’s authority to issue a certificate of authorization to an applicant who wishes to practice as a corporation or partnership that offers landscape architectural services. The bill provides that a corporation or partnership is not required to obtain a certificate of authorization to offer its services to the public, but must:

- Have one or more of the principals of the corporation, or partners in the partnership, and all of the personnel of the business organization who act in its behalf as landscape architects as landscape architects; and
- One or more of the officers, directors, or owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect has applied to be the qualifying agent for the business organization.

Landscape architects who operate under a corporation or partnership must file the names and addresses of specific persons responsible for the business with the DBPR. Such business organizations must also inform the DBPR of any change of the information in its license application, and of the termination of an employee within one month after the termination.

The bill eliminates a duplicate requirement in s. 481.319(5), F.S., for disciplinary action against a corporation or partnership to be administered similar to disciplinary action against a registered landscape architect. Under current law, practicing landscape architecture through a corporation or partnership does not relieve a landscape architect from personal liability for professional acts, unless otherwise agreed to by contract.¹⁰⁴ According to the DBPR, the Board of Landscape Architecture has issued no disciplinary orders against landscape architecture businesses during the past 4 fiscal years through Fiscal Year 2016-2017.¹⁰⁵

¹⁰⁴ See s. 481.319(6), F.S., and s. 558.0035, F.S.

¹⁰⁵ Email from J. Morris, Legislative Affairs Director, DBPR, to Senate Committee on Regulated Industries staff (Jan. 19, 2018) (on file with Senate Committee on Regulated Industries).

State Boxing Commission

Sections 39 and 40 amend s. 548.017, F.S., to eliminate the licensure requirement for persons serving as timekeepers and announcers for a match. The bill also amends s. 548.003(2)(i), F.S., to make conforming changes by deleting a reference to a “knockdown timekeeper.” In Fiscal Year 2016-2017, the Division issued licenses to 13 announcers and six timekeepers.¹⁰⁶

Conforming Revisions

Section 38 amends s. 287.055, F.S., the Consultants’ Competitive Negotiation Act, to conform cross references in the definition of “design-build firm.” The bill substitutes the term “qualified” for “certified,” in references to entities practicing architecture or landscape architecture. *See also Sections 29 and 35.*

Licensing and Criminal Background

Sections 12-14 create a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and the DOH.

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application review process in the bill applies to the following professions and occupations:

- Certified Nursing Assistants.
- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals:
 - Electrical contractors;
 - Alarm system contractors;
 - Septic tank contractors;
 - Swimming pool and spa contractors;
 - Sheet metal contractors;
 - Roofing contractors;
 - Air-conditioning contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Underground utility and excavation contractors;
 - Solar contractors;
 - Pollutant storage systems contractor; and
 - Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The process created in the bill:

¹⁰⁶ See Boxing Commission Annual Report, *supra* note 74 at page 7.

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to 7 years from the date of the criminal conviction.
- Requires each agency to identify by rule the crimes that do not impair a person's qualifications for licensure.
- Requires each agency to identify by rule the crimes that do impair a person's qualifications for licensure.
- Requires an agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.
- Requires the Department of Corrections to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

However, as required under current law, the DOH must deny a certified nursing assistant application, if the applicant has a criminal history of more than seven years from the date of the application and the criminal history includes a violent felony, crime against children, or sexual offense identified in s. 435.07(4), F.S.

Effective Date

Section 41 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:

According to the Department of Business and Professional Regulation (DBPR), the bill will result in a reduction of license fees, license renewal fees, and unlicensed activity fees

paid by the private sector of approximately \$812,130 in Fiscal Year 2018-2019, \$419,505 in Fiscal Year 2019-2020, and \$925,205 in Fiscal Year 2020-2021.¹⁰⁷

The Division of Condominiums, Timeshares, and Mobile Homes (Yacht and Ship Brokers) of the DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector of approximately \$4,300 in Fiscal Year 2018-2019, \$4,300 in Fiscal Year 2019-2020, and \$4,300 in Fiscal Year 2020-2021.¹⁰⁸

The DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector to the Florida State Boxing Commission of approximately \$1,000 in Fiscal Year 2018-2019, \$1,000 in Fiscal Year 2019-2020, and \$1,000 in Fiscal Year 2020-2021.¹⁰⁹

B. Private Sector Impact:

The bill repeals licensing requirements for certain professions. According to the DBPR, the bill will result in a reduction in license fees, license renewal fees, and unlicensed activity fees paid by the private sector of approximately \$812,130 in Fiscal Year 2018-2019, \$419,505 in Fiscal Year 2019-2020, and \$925,205 in Fiscal Year 2020-2021.¹¹⁰

The Division of Condominiums, Timeshares, and Mobile Homes (Yacht and Ship Brokers) of the DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector of approximately \$4,300 in Fiscal Year 2018-2019, \$4,300 in Fiscal Year 2019-2020, and \$4,300 in Fiscal Year 2020-2021.¹¹¹

The DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector to the Florida State Boxing Commission of approximately \$1,000 in Fiscal Year 2018-2019, \$1,000 in Fiscal Year 2019-2020, and \$1,000 in Fiscal Year 2020-2021.¹¹²

Persons who submit a petition for a declaratory statement from an agency to determine whether the petitioner's criminal history affects the person's eligibility for a license, registration, or certificate, must pay a filing fee not to exceed \$100 for the petition and the actual cost of state and federal processing related to the criminal background check. However, such individuals may also forego certain unnecessary schooling, training, or application costs, depending on the agency's determination.

¹⁰⁷ See Department of Business and Professional Regulation, *SB 526 Bill Analysis*, p. 7 (Nov. 3, 2017) (on file with Senate Committee on Regulated Industries).

¹⁰⁸ *Id.* at page 6.

¹⁰⁹ *Id.* at page 7.

¹¹⁰ See Department of Business and Professional Regulation, *SB 526 Bill Analysis*, p. 6 (Nov. 3, 2017) (on file with Senate Committee on Regulated Industries).

¹¹¹ *Id.*

¹¹² *Id.*

C. Government Sector Impact:

According to the DBPR, the total revenue reduction to state government by the elimination of professional licensing requirements is anticipated to be \$817,430 in Fiscal Year 2018-2019, \$424,805 in Fiscal Year 2019-2020, and \$930,505 in Fiscal Year 2020-2021. As a result, revenue from the General Revenue service charge¹¹³ is anticipated to be reduced by \$65,394 in Fiscal Year 2018-2019, \$33,984 in Fiscal Year 2019-2020, and \$74,440 in Fiscal Year 2020-2021.¹¹⁴

The Bureau of Education and Testing in the DBPR also indicates that the bill will have minimal impact on its workload, although some examination content may require updating; such updating is a part of the Bureau's standard procedure to address statutory changes.¹¹⁵

A reduction in the license fees collected by the DBPR paid to the State Boxing Commission could increase the amounts required to be transferred from the General Revenue Fund to the Professional Regulation Trust Fund to support operation of the State Boxing Commission. For Fiscal Year 2016-2017, recurring revenue of \$326,527 and non-recurring revenue of \$178,000, (a total transfer of \$505,027) from the General Revenue Fund was used to support the State Boxing Commission's operations.¹¹⁶ Annual transfers of \$326,527 in recurring revenue are projected for each fiscal year from Fiscal Year 2017-2018 through Fiscal Year 2021-2022.¹¹⁷

All license and registration fees paid by labor organizations and labor organization business agents to the DBPR are credited to the General Revenue Fund.¹¹⁸ According to the DBPR, licensure records for Fiscal Year 2016-2017 reflect:

- 329 licensed labor organizations (a \$1 annual fee);
- 502 licensed labor organization business agents (a \$25 one-time fingerprinting fee) paid fees of \$44,207 annually; and
- 62,116 labor organization business agents (a \$25 fee) paid fees of \$1,552,900 annually.¹¹⁹

A reduction in the license fees collected by the DBPR could increase the amounts required to be transferred from the General Revenue Fund to the Division of Florida

¹¹³ A service charge of eight percent is appropriated from revenue income deposited in specified trust funds, representing the estimated pro rata share of the cost of general government. *See* s. 215.20(1), F.S., relating to the service charge. Section 455.116, F.S., lists the seven trust funds in the DBPR, including the Professional Regulation Trust Fund and the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, which receive revenues from fees paid by licensees in the professions and occupations affected by CS/SB 526.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at page 8.

¹¹⁶ *See* Department of Business and Professional Regulation, *Annual Report, Divisions of Professions, Certified Public Accounting, Real Estate, and Regulation, Fiscal Year 2016-2017*, available at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf>, at page 68 (last visited Feb. 7, 2018).

¹¹⁷ *Id.*

¹¹⁸ *See* 447.12, F.S.

¹¹⁹ Email from J. Morris, Legislative Affairs Director, DBPR, to Senate Committee on Regulated Industries staff (Dec. 15, 2017) (on file with Senate Committee on Regulated Industries).

Condominiums, Timeshares, and Mobile Homes Trust Fund to support the regulation of yacht and ship brokers. According to the DBPR, for Fiscal Year 2016-2017, license fees of \$865,099.45 were collected from yacht and ship brokers, and \$310,200 was transferred to the General Revenue Fund.¹²⁰

Government agencies that provide occupational or professional licenses may see an increase in workload related to an increase in submissions of petitions for declaratory statements.

VI. Technical Deficiencies:

The bill provides new licensure requirements for restricted barbers, but does not delete an old provision that conflicts.

VII. Related Issues:

It is unclear how an agency should proceed if presented with a petition for declaratory statement as described in the bill by a petitioner whose criminal charges have not yet been resolved by a court action, settlement, or other action. It would be difficult for an agency to render an opinion based on hypothetical information.

This bill contains provisions of CS/SB 526, which were amended into the bill in the Commerce and Tourism Committee meeting on February 6, 2018.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.565, 326.004, 400.211, 447.02, 447.09, 447.305, 455.213, 464.203, 469.006, 469.009, 476.034, 476.114, 476.144, 477.013, 477.0135, 477.019, 477.0201, 477.026, 477.0265, 477.029, 481.203, 481.219, 481.221, 481.229, 481.303, 481.311, 481.317, 481.319, 481.321, 481.329, 287.055, 548.003, and 548.017.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, and 477.0132.

IX. Additional Information:

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

CS by Commerce and Tourism on February 6, 2018:

- Eliminates the current licensing required for business entities engaged in certain regulated professions (architecture and interior design, landscape architecture, and asbestos abatement consulting or contracting), while retaining the license required for individuals engaged in those professions.

¹²⁰ *Id.* The DBPR also noted the account balance for yacht and ship brokers funds as of July 1, 2016 was \$759,772.96; actual revenue and expenses for the period were \$898,592.21 and \$521,442.25, respectively; and the account balance as of June 30, 2017 was \$826,722.92.

- Provides that licensed individuals must apply for licensure and act as qualifying agents for business organizations to be licensed to engage in architecture and interior design, landscape architecture, or asbestos abatement consulting or contracting.
- Allows certain boxing match services to be practiced without a license (announcers and knockdown timekeepers).
- Revises the current license requirements for restricted barbers to specify:
 - The services that may and may not be provided by restricted barbers; and
 - A minimum of 325 training hours.
- Specifies license requirements for specialists in practices defined as “nail specialty,” “facial specialty,” and “full specialty.”
- Eliminates license and registration requirements for those who engage solely in:
 - Hair braiding, hair wrapping, or body wrapping; or
 - The polishing of nails or applying makeup.
- Eliminates registration requirements for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties.
- Eliminates license requirement for yacht and ship brokers’ branch offices.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 128 - 283

and insert:

Section 2. Subsection (13) of section 326.004, Florida Statutes, is amended to read:

326.004 Licensing.—

(13) Each broker must maintain a principal place of business in this state and may establish branch offices in the state. ~~A separate license must be maintained for each branch~~



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11 ~~office. The division shall establish by rule a fee not to exceed~~
12 ~~\$100 for each branch office license.~~

13 Section 3. Subsection (3) of section 447.02, Florida
14 Statutes, is amended to read:

15 447.02 Definitions.—The following terms, when used in this
16 chapter, shall have the meanings ascribed to them in this
17 section:

18 ~~(3) The term "department" means the Department of Business~~
19 ~~and Professional Regulation.~~

20 Section 4. Section 447.04, Florida Statutes, is repealed.

21 Section 5. Section 447.041, Florida Statutes, is repealed.

22 Section 6. Section 447.045, Florida Statutes, is repealed.

23 Section 7. Section 447.06, Florida Statutes, is repealed.

24 Section 8. Subsections (6) and (8) of section 447.09,
25 Florida Statutes, are amended to read:

26 447.09 Right of franchise preserved; penalties.—It shall be
27 unlawful for any person:

28 ~~(6) To act as a business agent without having obtained and~~
29 ~~possessing a valid and subsisting license or permit.~~

30 ~~(8) To make any false statement in an application for a~~
31 ~~license.~~

32 Section 9. Section 447.12, Florida Statutes, is repealed.

33 Section 10. Section 447.16, Florida Statutes, is repealed.

34 Section 11. Subsection (4) of section 447.305, Florida
35 Statutes, is amended to read:

36 447.305 Registration of employee organization.—

37 ~~(4) Notification of registrations and renewals of~~
38 ~~registration shall be furnished at regular intervals by the~~
39 ~~commission to the Department of Business and Professional~~



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40 ~~Regulation.~~

41 Section 12. Present subsections (3) through (12) of section
42 455.213, Florida Statutes, are redesignated as subsections (4)
43 through (13), respectively, subsection (2) of that section is
44 amended, and a new subsection (3) is added to that section, to
45 read:

46 455.213 General licensing provisions.-

47 (2) Before the issuance of any license, the department may
48 charge an initial license fee as determined by rule of the
49 applicable board or, if no such board exists, by rule of the
50 department. Upon receipt of the appropriate license fee, except
51 as provided in subsection (4) ~~(3)~~, the department shall issue a
52 license to any person certified by the appropriate board, or its
53 designee, or the department when there is no board, as having
54 met the applicable requirements imposed by law or rule. However,
55 an applicant who is not otherwise qualified for licensure is not
56 entitled to licensure solely based on a passing score on a
57 required examination. Upon a determination by the department
58 that it erroneously issued a license, or upon the revocation of
59 a license by the applicable board, or by the department when
60 there is no board, the licensee must surrender his or her
61 license to the department.

62 (3) (a) Notwithstanding any other provision of law, the
63 board shall use the process in this subsection for review of an
64 applicant's criminal record to determine his or her eligibility
65 for licensure as a:

66 1. Barber under chapter 476;

67 2. Cosmetologist or cosmetology specialist under chapter
68 477; or



69 3. Any of the following construction professions under
70 chapter 489:

- 71 a. Air-conditioning contractor;
- 72 b. Electrical contractor;
- 73 c. Mechanical contractor;
- 74 d. Plumbing contractor;
- 75 e. Pollutant storage systems contractor;
- 76 f. Roofing contractor;
- 77 g. Septic tank contractor;
- 78 h. Sheet metal contractor;
- 79 i. Solar contractor;
- 80 j. Swimming pool and spa contractor;
- 81 k. Underground utility and excavation contractor; and
- 82 l. Other specialty contractors.

83 (b) A conviction for a crime more than 5 years before the
84 date of the application may not be grounds for denial of a
85 license specified in paragraph (a). For purposes of this
86 paragraph, the term "conviction" means a determination of guilt
87 that is the result of a plea or trial, regardless of whether
88 adjudication is withheld.

89 (c)1. A person may apply for a license before his or her
90 lawful release from confinement or supervision. The department
91 may not charge an applicant an additional fee for being confined
92 or under supervision. The board may not deny an application for
93 a license solely on the basis of the applicant's current
94 confinement or supervision.

95 2. After a license application is approved, the board may
96 stay the issuance of a license until the applicant is lawfully
97 released from confinement or supervision and the applicant



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98 notifies the board of such release. The board must verify the
99 applicant's release with the Department of Corrections before it
100 issues a license.

101 3. If an applicant is unable to appear in person due to his
102 or her confinement or supervision, the board must permit the
103 applicant to appear by teleconference or video conference, as
104 appropriate, at any meeting of the board or other hearing by the
105 agency concerning his or her application.

106 4. If an applicant is confined or under supervision, the
107 Department of Corrections and the board shall cooperate and
108 coordinate to facilitate the appearance of the applicant at a
109 board meeting or agency hearing in person, by teleconference, or
110 by video conference, as appropriate.

111 (d) The board shall adopt rules specifying the crimes that,
112 if committed, and regardless of adjudication, do not relate to
113 the practice of the profession or the ability to practice the
114 profession and do not constitute grounds for denial of a
115 license.

116 (e) The board shall adopt rules specifying the crimes that,
117 if committed, and regardless of adjudication, relate to the
118 practice of the profession or the ability to practice the
119 profession and may constitute grounds for denial of a license.

120 Section 13. Present subsections (2) through (8) of section
121 464.203, Florida Statutes, are redesignated as subsections (3)
122 through (9), respectively, and a new subsection (2) is added to
123 that section, to read:

124 464.203 Certified nursing assistants; certification
125 requirement.—

126 (2) (a) 1. Except as provided in s. 435.07(4), a conviction



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127 for a crime more than 7 years before the date of the application
128 may not be grounds for denial of a certificate to practice as a
129 certified nursing assistant.

130 2. Except as provided in s. 435.07(4), a conviction for a
131 crime more than 7 years before the date of the application may
132 not be grounds for failure of a required background screening.

133 3. For purposes of this paragraph, the term "conviction"
134 means a determination of guilt that is the result of a plea or
135 trial, regardless of whether adjudication is withheld.

136 (b)1. A person may apply for a certificate to practice as a
137 certified nursing assistant before his or her lawful release
138 from confinement or supervision. The department may not charge
139 an applicant an additional fee for being confined or under
140 supervision. The board may not deny an application for a
141 certificate solely on the basis of the person's current
142 confinement or supervision.

143 2. After a certification application is approved, the board
144 may stay the issuance of a certificate until the applicant
145 notifies the board of his or her lawful release from confinement
146 or supervision. The board must verify the applicant's release
147 with the Department of Corrections before it issues a license.

148 3. If an applicant is unable to appear in person due to his
149 or her confinement or supervision, the board must permit the
150 applicant to appear by teleconference or video conference, as
151 appropriate, at any meeting of the board or other hearing by the
152 agency concerning his or her application.

153 4. If an applicant is confined or under supervision, the
154 Department of Corrections and the board shall cooperate and
155 coordinate to facilitate the appearance of the applicant at a



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156 board meeting or agency hearing in person, by teleconference, or
157 by video conference, as appropriate.

158 (d) The board shall adopt rules specifying the crimes that,
159 if committed, and regardless of adjudication, do not relate to
160 the practice of the profession or the ability to practice the
161 profession and do not constitute grounds for denial of a
162 certification.

163 (e) The board shall adopt rules specifying the crimes that,
164 if committed, and regardless of adjudication, relate to the
165 practice of the profession or the ability to practice the
166 profession and may constitute grounds for denial of a
167 certification.

168 Section 14. Subsection (4) of section 400.211, Florida
169 Statutes, is amended to read:

170 400.211 Persons employed as nursing assistants;
171 certification requirement.—

172 (4) When employed by a nursing home facility for a 12-month
173 period or longer, a nursing assistant, to maintain
174 certification, shall submit to a performance review every 12
175 months and must receive regular inservice education based on the
176 outcome of such reviews. The inservice training must meet all of
177 the following requirements:

178 (a) Be sufficient to ensure the continuing competence of
179 nursing assistants and must meet the standard specified in s.
180 464.203(8). ~~s. 464.203(7);~~

181 (b) Include, at a minimum:

- 182 1. Techniques for assisting with eating and proper feeding;
183 2. Principles of adequate nutrition and hydration;
184 3. Techniques for assisting and responding to the



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185 cognitively impaired resident or the resident with difficult
186 behaviors;

187 4. Techniques for caring for the resident at the end-of-
188 life; and

189 5. Recognizing changes that place a resident at risk for
190 pressure ulcers and falls. ~~and~~

191 (c) Address areas of weakness as determined in nursing
192 assistant performance reviews and may address the special needs
193 of residents as determined by the nursing home facility staff.

194
195 Costs associated with this training may not be reimbursed from
196 additional Medicaid funding through interim rate adjustments.

197 Section 15. Paragraphs (a) and (e) of subsection (2),
198 subsection (3), paragraph (b) of subsection (4), and subsection
199 (6) of section 469.006, Florida Statutes, are amended to read:

200 469.006 Licensure of business organizations; qualifying
201 agents.-

202 (2) (a) If the applicant proposes to engage in consulting or
203 contracting as a partnership, corporation, business trust, or
204 other legal entity, or in any name other than the applicant's
205 legal name, ~~the legal entity must apply for licensure through a~~
206 ~~qualifying agent or the individual applicant must apply for~~
207 licensure under the ~~fictitious~~ name of the business
208 organization.

209 (e) ~~A~~ The license, ~~when issued upon application of a~~
210 ~~business organization,~~ must be in the name of the qualifying
211 agent business organization, and the name of the business
212 organization ~~qualifying agent~~ must be noted on the license
213 ~~thereon.~~ If there is a change in any information that is



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214 required to be stated on the application, the qualifying agent
215 ~~business organization~~ shall, within 45 days after such change
216 occurs, mail the correct information to the department.

217 (3) The qualifying agent must ~~shall~~ be licensed under this
218 chapter in order for the business organization to be qualified
219 ~~licensed~~ in the category of the business conducted for which the
220 qualifying agent is licensed. If any qualifying agent ceases to
221 be affiliated with such business organization, the agent shall
222 so inform the department. In addition, if such qualifying agent
223 is the only licensed individual affiliated with the business
224 organization, the business organization shall notify the
225 department of the termination of the qualifying agent and has
226 ~~shall have~~ 60 days after ~~from~~ the date of termination of the
227 qualifying agent's affiliation with the business organization ~~in~~
228 ~~which~~ to employ another qualifying agent. The business
229 organization may not engage in consulting or contracting until a
230 qualifying agent is employed, unless the department has granted
231 a temporary nonrenewable license to the financially responsible
232 officer, the president, the sole proprietor, a partner, or, in
233 the case of a limited partnership, the general partner, who
234 assumes all responsibilities of a primary qualifying agent for
235 the entity. This temporary license only allows ~~shall only allow~~
236 the entity to proceed with incomplete contracts.

237 (4)

238 (b) Upon a favorable determination by the department, after
239 investigation of the financial responsibility, credit, and
240 business reputation of the qualifying agent and the new business
241 organization, the department shall issue, without any
242 examination, a new license in the qualifying agent's ~~business~~



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243 ~~organization's~~ name, and the name of the business organization
244 ~~qualifying agent~~ shall be noted thereon.

245 (6) Each qualifying agent shall pay the department an
246 amount equal to the original fee for licensure ~~of a new business~~
247 ~~organization.~~ if the qualifying agent for a business
248 organization desires to qualify additional business
249 organizations. ~~The~~ department shall require the agent to
250 present evidence of supervisory ability and financial
251 responsibility of each such organization. Allowing a licensee to
252 qualify more than one business organization must ~~shall~~ be
253 conditioned upon the licensee showing that the licensee has both
254 the capacity and intent to adequately supervise each business
255 organization. The department may ~~shall~~ not limit the number of
256 business organizations that ~~which~~ the licensee may qualify
257 except upon the licensee's failure to provide such information
258 as is required under this subsection or upon a finding that the
259 ~~such~~ information or evidence ~~as is~~ supplied is incomplete or
260 unpersuasive in showing the licensee's capacity and intent to
261 comply with the requirements of this subsection. A qualification
262 for an additional business organization may be revoked or
263 suspended upon a finding by the department that the licensee has
264 failed in the licensee's responsibility to adequately supervise
265 the operations of the business organization. Failure to
266 adequately supervise the operations of a business organization
267 is ~~shall be~~ grounds for denial to qualify additional business
268 organizations.

269 Section 16. Subsection (1) of section 469.009, Florida
270 Statutes, is amended to read:

271 469.009 License revocation, suspension, and denial of



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272 issuance or renewal.-

273 (1) The department may revoke, suspend, or deny the
274 issuance or renewal of a license; reprimand, censure, or place
275 on probation any contractor, consultant, or financially
276 responsible officer, ~~or business organization~~; require financial
277 restitution to a consumer; impose an administrative fine not to
278 exceed \$5,000 per violation; require continuing education; or
279 assess costs associated with any investigation and prosecution
280 if the contractor or consultant, or business organization or
281 officer or agent thereof, is found guilty of any of the
282 following acts:

283 (a) Willfully or deliberately disregarding or violating the
284 health and safety standards of the Occupational Safety and
285 Health Act of 1970, the Construction Safety Act, the National
286 Emission Standards for Asbestos, the Environmental Protection
287 Agency Asbestos Abatement Projects Worker Protection Rule, the
288 Florida Statutes or rules promulgated thereunder, or any
289 ordinance enacted by a political subdivision of this state.

290 (b) Violating any provision of chapter 455.

291 (c) Failing in any material respect to comply with the
292 provisions of this chapter or any rule promulgated hereunder.

293 (d) Acting in the capacity of an asbestos contractor or
294 asbestos consultant under any license issued under this chapter
295 except in the name of the licensee as set forth on the issued
296 license.

297 (e) Proceeding on any job without obtaining all applicable
298 approvals, authorizations, permits, and inspections.

299 (f) Obtaining a license by fraud or misrepresentation.

300 (g) Being convicted or found guilty of, or entering a plea



301 of nolo contendere to, regardless of adjudication, a crime in
302 any jurisdiction which directly relates to the practice of
303 asbestos consulting or contracting or the ability to practice
304 asbestos consulting or contracting.

305 (h) Knowingly violating any building code, lifesafety code,
306 or county or municipal ordinance relating to the practice of
307 asbestos consulting or contracting.

308 (i) Performing any act which assists a person or entity in
309 engaging in the prohibited unlicensed practice of asbestos
310 consulting or contracting, if the licensee knows or has
311 reasonable grounds to know that the person or entity was
312 unlicensed.

313 (j) Committing mismanagement or misconduct in the practice
314 of contracting that causes financial harm to a customer.
315 Financial mismanagement or misconduct occurs when:

316 1. Valid liens have been recorded against the property of a
317 contractor's customer for supplies or services ordered by the
318 contractor for the customer's job; the contractor has received
319 funds from the customer to pay for the supplies or services; and
320 the contractor has not had the liens removed from the property,
321 by payment or by bond, within 75 days after the date of such
322 liens;

323 2. The contractor has abandoned a customer's job and the
324 percentage of completion is less than the percentage of the
325 total contract price paid to the contractor as of the time of
326 abandonment, unless the contractor is entitled to retain such
327 funds under the terms of the contract or refunds the excess
328 funds within 30 days after the date the job is abandoned; or

329 3. The contractor's job has been completed, and it is shown



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330 that the customer has had to pay more for the contracted job
331 than the original contract price, as adjusted for subsequent
332 change orders, unless such increase in cost was the result of
333 circumstances beyond the control of the contractor, was the
334 result of circumstances caused by the customer, or was otherwise
335 permitted by the terms of the contract between the contractor
336 and the customer.

337 (k) Being disciplined by any municipality or county for an
338 act or violation of this chapter.

339 (l) Failing in any material respect to comply with the
340 provisions of this chapter, or violating a rule or lawful order
341 of the department.

342 (m) Abandoning an asbestos abatement project in which the
343 asbestos contractor is engaged or under contract as a
344 contractor. A project may be presumed abandoned after 20 days if
345 the contractor terminates the project without just cause and
346 without proper notification to the owner, including the reason
347 for termination; if the contractor fails to reasonably secure
348 the project to safeguard the public while work is stopped; or if
349 the contractor fails to perform work without just cause for 20
350 days.

351 (n) Signing a statement with respect to a project or
352 contract falsely indicating that the work is bonded; falsely
353 indicating that payment has been made for all subcontracted
354 work, labor, and materials which results in a financial loss to
355 the owner, purchaser, or contractor; or falsely indicating that
356 workers' compensation and public liability insurance are
357 provided.

358 (o) Committing fraud or deceit in the practice of asbestos



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359 consulting or contracting.

360 (p) Committing incompetency or misconduct in the practice
361 of asbestos consulting or contracting.

362 (q) Committing gross negligence, repeated negligence, or
363 negligence resulting in a significant danger to life or property
364 in the practice of asbestos consulting or contracting.

365 (r) Intimidating, threatening, coercing, or otherwise
366 discouraging the service of a notice to owner under part I of
367 chapter 713 or a notice to contractor under chapter 255 or part
368 I of chapter 713.

369 (s) Failing to satisfy, within a reasonable time, the terms
370 of a civil judgment obtained against the licensee, or the
371 business organization qualified by the licensee, relating to the
372 practice of the licensee's profession.

373

374 For the purposes of this subsection, construction is considered
375 to be commenced when the contract is executed and the contractor
376 has accepted funds from the customer or lender.

377 Section 17. Subsections (2) and (3) of section 476.034,
378 Florida Statutes, are amended, and subsections (6) and (7) are
379 added to that section, to read:

380 476.034 Definitions.—As used in this act:

381 (2) "Barbering" means any of the following practices when
382 done for remuneration and for the public, but not when done for
383 the treatment of disease or physical or mental ailments:
384 shaving, cutting, trimming, coloring, shampooing, arranging,
385 dressing, curling, or waving the hair or beard or applying oils,
386 creams, lotions, or other preparations to the face, scalp, or
387 neck, either by hand or by mechanical appliances, and includes



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388 any services defined as restricted barbering.

389 (3) "Barbershop" means any place of business wherein the
390 practice of barbering or restricted barbering is carried on.

391 (6) "Restricted barber" means a person who is licensed to
392 engage in the practice of restricted barbering in this state
393 under the authority of this chapter and is subject to the same
394 requirements and restrictions as a barber, except as
395 specifically provided in s. 476.114.

396 (7) "Restricted barbering" means any of the following
397 practices when done for remuneration and for the public, but not
398 when done for the treatment of disease or physical or mental
399 ailments:

400 (a) Hair cutting and styling, including the application of
401 hair tonics and hair spray, but not including the application of
402 other chemical preparations or solutions to the hair;

403 (b) Full facial shaves;

404 (c) Mustache and beard trimming; and

405 (d) Shampooing hair, including the application of shampoos
406 and conditioners, and blow drying the hair.

407 Section 18. Section 476.114, Florida Statutes, is amended
408 to read:

409 476.114 Examination; prerequisites.—

410 (1) A person desiring to be licensed as a barber shall
411 apply to the department for licensure ~~and~~—

412 ~~(2) An applicant~~ shall be eligible for licensure by
413 examination to practice barbering if the applicant:

414 (a) Is at least 16 years of age;

415 (b) Pays the required application fee; and

416 (c)1. Holds an active valid license to practice barbering



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417 in another state, has held the license for at least 1 year, and
418 does not qualify for licensure by endorsement as provided for in
419 s. 476.144(5); or

420 2. Has received a minimum of 1,200 hours of training as
421 established by the board, which shall include, but ~~shall~~ not be
422 limited to, the equivalent of completion of services directly
423 related to the practice of barbering at one of the following:

- 424 a. A school of barbering licensed pursuant to chapter 1005;
- 425 b. A barbering program within the public school system; or
- 426 c. A government-operated barbering program in this state.

427
428 The board shall establish by rule procedures whereby the school
429 or program may certify that a person is qualified to take the
430 required examination after the completion of a minimum of 1,000
431 actual school hours. If the person passes the examination, she
432 or he shall have satisfied this requirement; but if the person
433 fails the examination, she or he shall not be qualified to take
434 the examination again until the completion of the full
435 requirements provided by this section.

436 (2) A person desiring to be licensed as a restricted barber
437 shall apply to the department for licensure and shall be
438 eligible for licensure by examination to practice restricted
439 barbering if the applicant:

- 440 (a) Is at least 16 years of age;
- 441 (b) Pays the required application fee; and
- 442 (c)1. Holds an active valid license to practice barbering
443 in another state, has held the license for at least 1 year, and
444 does not qualify for licensure by endorsement as provided for in
445 s. 476.144(5); or



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446 2. Has received a minimum of 325 hours of training in
447 sanitation, safety, and laws and rules, as established by the
448 board, which must include, but not be limited to, the equivalent
449 of completion of services directly related to the practice of
450 restricted barbering at one of the following:

- 451 a. A school of barbering licensed pursuant to chapter 1005;
452 b. A barbering program within the public school system; or
453 c. A government-operated barbering program in this state.

454 (3) An applicant who meets the requirements set forth in
455 subparagraphs (1)(c)1. and 2. subparagraphs ~~(2)(e)1. and 2.~~ who
456 fails to pass the examination may take subsequent examinations
457 as many times as necessary to pass, except that the board may
458 specify by rule reasonable timeframes for rescheduling the
459 examination and additional training requirements for applicants
460 who, after the third attempt, fail to pass the examination.
461 Before ~~Prior to~~ reexamination, the applicant must file the
462 appropriate form and pay the reexamination fee as required by
463 rule.

464 Section 19. Subsections (1) and (6) of section 476.144,
465 Florida Statutes, are amended to read:

466 476.144 Licensure.—

467 (1) The department shall license any applicant who the
468 board certifies is qualified to practice barbering or restricted
469 barbering in this state.

470 (6) A person may apply for a restricted license to practice
471 barbering. The board shall adopt rules specifying procedures for
472 an applicant to obtain a restricted license if the applicant:

473 (a)1. Has successfully completed a restricted barber
474 course, as established by rule of the board, at a school of



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475 barbering licensed pursuant to chapter 1005, a barbering program
476 within the public school system, or a government-operated
477 barbering program in this state; or

478 2.a. Holds or has within the previous 5 years held an
479 active valid license to practice barbering in another state or
480 country or has held a Florida barbering license which has been
481 declared null and void for failure to renew the license, and the
482 applicant fulfilled the requirements of s. 476.114(2)(c)2. for
483 initial licensure; and

484 b. Has not been disciplined relating to the practice of
485 barbering in the previous 5 years; and

486 (b) Passes a written examination on the laws and rules
487 governing the practice of barbering in Florida, as established
488 by the board.

489
490 ~~The restricted license shall limit the licensee's practice to~~
491 ~~those specific areas in which the applicant has demonstrated~~
492 ~~competence pursuant to rules adopted by the board.~~

493 Section 20. Subsections (6) and (9) of section 477.013,
494 Florida Statutes, are amended to read:

495 477.013 Definitions.—As used in this chapter:

496 (6) "Specialty" means the practice of one or more of the
497 following:

498 (a) "Nail specialty" means manicuring, or the cutting,
499 polishing, tinting, coloring, cleansing, adding, or extending of
500 the nails, and massaging of the hands. This term includes any
501 procedure or process for the affixing of artificial nails,
502 except those nails which may be applied solely by use of a
503 simple adhesive; and—



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504 ~~(b)~~ pedicuring, or the shaping, polishing, tinting, or
505 cleansing of the nails of the feet, and massaging or beautifying
506 of the feet.

507 ~~(b)(e)~~ "Facial specialty" means facials, or the massaging
508 or treating of the face or scalp with oils, creams, lotions, or
509 other preparations, and skin care services.

510 (c) "Full specialty" means all services within the
511 definition of nail specialty and facial specialty, including
512 manicuring, pedicuring, and facial services.

513 (9) "Hair braiding" means the weaving or interweaving of
514 natural human hair or commercial hair, including the use of hair
515 extensions or wefts, for compensation without cutting, coloring,
516 permanent waving, relaxing, removing, or chemical treatment and
517 ~~does not include the use of hair extensions or wefts.~~

518 Section 21. Section 477.0132, Florida Statutes, is
519 repealed.

520 Section 22. Subsections (7) through (11) are added to
521 section 477.0135, Florida Statutes, to read:

522 477.0135 Exemptions.—

523 (7) A license or registration is not required for a person
524 whose occupation or practice is confined solely to hair braiding
525 as defined in s. 477.013(9).

526 (8) A license or registration is not required for a person
527 whose occupation or practice is confined solely to hair wrapping
528 as defined in s. 477.013(10).

529 (9) A license or registration is not required for a person
530 whose occupation or practice is confined solely to body wrapping
531 as defined in s. 477.013(12).

532 (10) A license or registration is not required for a person



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533 whose occupation or practice is confined solely to applying
534 polish to fingernails and toenails.

535 (11) A license or registration is not required for a person
536 whose occupation or practice is confined solely to makeup
537 application.

538 Section 23. Paragraph (b) of subsection (7) of section
539 477.019, Florida Statutes, is amended to read:

540 477.019 Cosmetologists; qualifications; licensure;
541 supervised practice; license renewal; endorsement; continuing
542 education.—

543 (7)

544 ~~(b) Any person whose occupation or practice is confined~~
545 ~~solely to hair braiding, hair wrapping, or body wrapping is~~
546 ~~exempt from the continuing education requirements of this~~
547 ~~subsection.~~

548 Section 24. Present subsections (2) through (6) of section
549 477.0201, Florida Statutes, are redesignated as subsections (4)
550 through (8), respectively, new subsections (2) and (3) are added
551 to that section, and subsection (1) of that section is amended
552 to read:

553 477.0201 Specialty registration; qualifications;
554 registration renewal; endorsement.—

555 (1) Any person is qualified for registration as a
556 specialist in a nail ~~any one or more of the specialty practice~~
557 ~~practices~~ within the practice of cosmetology under this chapter
558 who:

559 (a) Is at least 16 years of age or has received a high
560 school diploma.

561 (b) Has received at least 150 hours of training as



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562 established by the board, which must focus primarily on
563 sanitation and safety and must include, but not be limited to,
564 the equivalent of completion of services directly related to the
565 practice of a nail a certificate of completion in a specialty
566 pursuant to s. 477.013(6) (a) 477.013(6) from one of the
567 following:

- 568 1. A school licensed pursuant to s. 477.023.
- 569 2. A school licensed pursuant to chapter 1005 or the
570 equivalent licensing authority of another state.
- 571 3. A specialty program within the public school system.
- 572 4. A specialty division within the Cosmetology Division of
573 the Florida School for the Deaf and the Blind, provided the
574 training programs comply with minimum curriculum requirements
575 established by the board.

576 (2) Any person is qualified for registration as a
577 specialist in a facial specialty practice within the practice of
578 cosmetology under this chapter who:

579 (a) Is at least 16 years of age or has received a high
580 school diploma.

581 (b) Has received at least 165 hours of training as
582 established by the board, which must focus on sanitation and
583 safety and must include, but not be limited to, the equivalent
584 of completion of services directly related to the practice of
585 facial specialty pursuant to s. 477.013(6) (b) from one of the
586 following:

- 587 1. A school licensed pursuant to s. 477.023.
- 588 2. A school licensed pursuant to chapter 1005 or the
589 equivalent licensing authority of another state.
- 590 3. A specialty program within the public school system.



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591 4. A specialty division within the Cosmetology Division of
592 the Florida School for the Deaf and the Blind, provided the
593 training programs comply with minimum curriculum requirements
594 established by the board.

595 (3) Any person is qualified for registration as a
596 specialist in a full specialty practice within the practice of
597 cosmetology under this chapter who:

598 (a) Is at least 16 years of age or has received a high
599 school diploma.

600 (b) Has received at least 300 hours of training as
601 established by the board, which must focus primarily on
602 sanitation and safety and must include, but not be limited to,
603 the equivalent of completion of services directly related to the
604 practice of full specialty pursuant to s. 477.013(6)(c) from one
605 of the following:

606 1. A school licensed pursuant to s. 477.023.

607 2. A school licensed pursuant to chapter 1005 or the
608 equivalent licensing authority of another state.

609 3. A specialty program within the public school system.

610 4. A specialty division within the Cosmetology Division of
611 the Florida School for the Deaf and the Blind, provided the
612 training programs comply with minimum curriculum requirements
613 established by the board.

614 Section 25. Paragraph (f) of subsection (1) of section
615 477.026, Florida Statutes, is amended to read:

616 477.026 Fees; disposition.—

617 (1) The board shall set fees according to the following
618 schedule:

619 ~~(f) For hair braiders, hair wrappers, and body wrappers,~~



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620 ~~fees for registration shall not exceed \$25.~~

621 Section 26. Paragraph (f) of subsection (1) of section
622 477.0265, Florida Statutes, is amended to read:

623 477.0265 Prohibited acts.—

624 (1) It is unlawful for any person to:

625 (f) Advertise or imply that skin care services ~~or body~~
626 ~~wrapping~~, as performed under this chapter, have any relationship
627 to the practice of massage therapy as defined in s. 480.033(3),
628 except those practices or activities defined in s. 477.013.

629 Section 27. Paragraph (a) of subsection (1) of section
630 477.029, Florida Statutes, is amended to read:

631 477.029 Penalty.—

632 (1) It is unlawful for any person to:

633 (a) Hold himself or herself out as a cosmetologist or
634 ~~specialist, hair wrapper, hair braider, or body wrapper~~ unless
635 duly licensed or registered, or otherwise authorized, as
636 provided in this chapter.

637 Section 28. Subsection (5) of section 481.203, Florida
638 Statutes, is amended to read:

639 481.203 Definitions.—As used in this part:

640 (5) “Business organization” means a partnership, a limited
641 liability company, a corporation, or an individual operating
642 under a fictitious name ~~“Certificate of authorization” means a~~
643 ~~certificate issued by the department to a corporation or~~
644 ~~partnership to practice architecture or interior design.~~

645 Section 29. Section 481.219, Florida Statutes, is amended
646 to read:

647 481.219 Business organization; qualifying agents
648 ~~Certification of partnerships, limited liability companies, and~~



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649 ~~corporations.-~~

650 (1) A licensee may ~~The practice of or the offer to practice~~
651 ~~architecture or interior design by licensees through a business~~
652 ~~organization that offers~~ corporation, limited liability company,
653 ~~or partnership offering~~ architectural or interior design
654 services to the public, or through ~~by~~ a business organization
655 that offers ~~corporation, limited liability company, or~~
656 ~~partnership offering~~ architectural or interior design services
657 to the public through such licensees ~~under this part~~ as agents,
658 employees, officers, or partners, ~~is permitted, subject to the~~
659 ~~provisions of this section.~~

660 (2) If a licensee or an applicant proposes to engage in the
661 practice of architecture or interior design as a business
662 organization, the licensee or applicant must apply to qualify
663 the business organization ~~For the purposes of this section, a~~
664 ~~certificate of authorization shall be required for a~~
665 ~~corporation, limited liability company, partnership, or person~~
666 ~~practicing under a fictitious name, offering architectural~~
667 ~~services to the public jointly or separately. However, when an~~
668 ~~individual is practicing architecture in her or his own name,~~
669 ~~she or he shall not be required to be certified under this~~
670 ~~section. Certification under this subsection to offer~~
671 ~~architectural services shall include all the rights and~~
672 ~~privileges of certification under subsection (3) to offer~~
673 ~~interior design services.~~

674 (a) An application to qualify a business organization must:

675 1. If the business is a partnership, state the names of the
676 partnership and its partners.

677 2. If the business is a corporation, state the names of the



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678 corporation and its officers and directors and the name of each
679 of its stockholders who is also an officer or a director.

680 3. If the business is operating under a fictitious name,
681 state the fictitious name under which it is doing business.

682 4. If the business is not a partnership, a corporation, or
683 operating under a fictitious name, state the name of such other
684 legal entity and its members.

685 (b) The board may deny an application to qualify a business
686 organization if the applicant or any person required to be named
687 pursuant to paragraph (a) has been involved in past disciplinary
688 actions or on any grounds for which an individual registration
689 may be denied.

690 (3) (a) A business organization may not engage in the
691 practice of architecture unless its qualifying agent is a
692 registered architect under this part. A business organization
693 may not engage in the practice of interior design unless its
694 qualifying agent is a registered architect or a registered
695 interior designer under this part. A qualifying agent who
696 terminates her or his affiliation with a business organization
697 shall immediately notify the department of such termination. If
698 the qualifying agent who terminates her or his affiliation is
699 the only qualifying agent for a business organization, the
700 business organization must be qualified by another qualifying
701 agent within 60 days after the termination. Except as provided
702 in paragraph (b), the business organization may not engage in
703 the practice of architecture or interior design until it is
704 qualified by a qualifying agent.

705 (b) In the event a qualifying architect or interior
706 designer ceases employment with the business organization, the



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707 executive director or the chair of the board may authorize
708 another registered architect or interior designer employed by
709 the business organization to temporarily serve as its qualifying
710 agent for a period of no more than 60 days. The business
711 organization is not authorized to operate beyond such period
712 under this chapter absent replacement of the qualifying
713 architect or interior designer who has ceased employment.

714 (c) A qualifying agent shall notify the department in
715 writing before engaging in the practice of architecture or
716 interior design in her or his own name or in affiliation with a
717 different business organization, and she or he or such business
718 organization shall supply the same information to the department
719 as required of applicants under this part ~~For the purposes of~~
720 ~~this section, a certificate of authorization shall be required~~
721 ~~for a corporation, limited liability company, partnership, or~~
722 ~~person operating under a fictitious name, offering interior~~
723 ~~design services to the public jointly or separately. However,~~
724 ~~when an individual is practicing interior design in her or his~~
725 ~~own name, she or he shall not be required to be certified under~~
726 ~~this section.~~

727 (4) All final construction documents and instruments of
728 service which include drawings, specifications, plans, reports,
729 or other papers or documents that involve ~~involving~~ the practice
730 of architecture which are prepared or approved for the use of
731 the business organization ~~corporation, limited liability~~
732 ~~company, or partnership~~ and filed for public record within the
733 state must ~~shall~~ bear the signature and seal of the licensee who
734 prepared or approved them and the date on which they were
735 sealed.



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736 (5) All drawings, specifications, plans, reports, or other
737 papers or documents prepared or approved for the use of the
738 business organization ~~corporation, limited liability company, or~~
739 ~~partnership~~ by an interior designer in her or his professional
740 capacity and filed for public record within the state must ~~shall~~
741 bear the signature and seal of the licensee who prepared or
742 approved them and the date on which they were sealed.

743 ~~(6) The department shall issue a certificate of~~
744 ~~authorization to any applicant who the board certifies as~~
745 ~~qualified for a certificate of authorization and who has paid~~
746 ~~the fee set in s. 481.207.~~

747 (6) ~~(7)~~ The board shall allow ~~certify~~ an applicant to
748 qualify one or more business organizations ~~as qualified for a~~
749 ~~certificate of authorization~~ to offer architectural or interior
750 design services, or to use a fictitious name to offer such
751 services, if provided that:

752 (a) One or more of the principal officers of the
753 corporation or limited liability company, or one or more
754 partners of the partnership, and all personnel of the
755 corporation, limited liability company, or partnership who act
756 in its behalf in this state as architects, are registered as
757 provided by this part; or

758 (b) One or more of the principal officers of the
759 corporation or one or more partners of the partnership, and all
760 personnel of the corporation, limited liability company, or
761 partnership who act in its behalf in this state as interior
762 designers, are registered as provided by this part.

763 ~~(8) The department shall adopt rules establishing a~~
764 ~~procedure for the biennial renewal of certificates of~~



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765 ~~authorization.~~

766 ~~(9) The department shall renew a certificate of~~
767 ~~authorization upon receipt of the renewal application and~~
768 ~~biennial renewal fee.~~

769 ~~(7)(10) Each qualifying agent approved to qualify a~~
770 ~~business organization partnership, limited liability company,~~
771 ~~and corporation certified under this section shall notify the~~
772 ~~department within 30 days after of any change in the information~~
773 ~~contained in the application upon which the qualification~~
774 ~~certification is based. Any registered architect or interior~~
775 ~~designer who qualifies the business organization shall ensure~~
776 ~~corporation, limited liability company, or partnership as~~
777 ~~provided in subsection (7) shall be responsible for ensuring~~
778 ~~responsible supervising control of projects of the business~~
779 ~~organization entity and shall notify the department of the upon~~
780 ~~termination of her or his employment with a business~~
781 ~~organization qualified partnership, limited liability company,~~
782 ~~or corporation certified under this section shall notify the~~
783 ~~department of the termination within 30 days after such~~
784 ~~termination.~~

785 ~~(8)(11) A business organization is not No corporation,~~
786 ~~limited liability company, or partnership shall be relieved of~~
787 ~~responsibility for the conduct or acts of its agents, employees,~~
788 ~~or officers by reason of its compliance with this section.~~
789 ~~However, except as provided in s. 558.0035, the architect who~~
790 ~~signs and seals the construction documents and instruments of~~
791 ~~service is shall be liable for the professional services~~
792 ~~performed, and the interior designer who signs and seals the~~
793 ~~interior design drawings, plans, or specifications is shall be~~



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794 liable for the professional services performed.

795 ~~(12) Disciplinary action against a corporation, limited~~
796 ~~liability company, or partnership shall be administered in the~~
797 ~~same manner and on the same grounds as disciplinary action~~
798 ~~against a registered architect or interior designer,~~
799 ~~respectively.~~

800 ~~(9) (13) Nothing in This section may not shall~~ be construed
801 to mean that a certificate of registration to practice
802 architecture or interior design must shall be held by a business
803 organization corporation, limited liability company, or
804 partnership. ~~Nothing in This section does not prohibit a~~
805 business organization from offering prohibits corporations,
806 limited liability companies, and partnerships from joining
807 together to offer architectural, engineering, interior design,
808 surveying and mapping, and landscape architectural services, or
809 any combination of such services, to the public if the business
810 organization, provided that each corporation, limited liability
811 company, or partnership otherwise meets the requirements of law.

812 ~~(10) (14) A business organization that is qualified by a~~
813 registered architect may use Corporations, limited liability
814 companies, or partnerships holding a valid certificate of
815 authorization to practice architecture shall be permitted to use
816 in their title the term "interior designer" or "registered
817 interior designer" in its title. designer."

818 Section 30. Subsection (10) of section 481.221, Florida
819 Statutes, is amended to read:

820 481.221 Seals; display of certificate number.—

821 (10) Each registered architect or interior designer must,
822 ~~and each corporation, limited liability company, or partnership~~



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823 ~~holding a certificate of authorization, shall include her or his~~
824 ~~license its certificate~~ number in any newspaper, telephone
825 directory, or other advertising medium used by the registered
826 ~~licensee. Each business organization must include the license~~
827 ~~number of the registered architect or interior designer who~~
828 ~~serves as the qualifying agent for that business organization in~~
829 ~~any newspaper, telephone directory, or other advertising medium~~
830 ~~used by the business organization, but is not required to~~
831 ~~display the license numbers of other registered architects or~~
832 ~~interior designers employed by the business organization~~
833 ~~architect, interior designer, corporation, limited liability~~
834 ~~company, or partnership. A corporation, limited liability~~
835 ~~company, or partnership is not required to display the~~
836 ~~certificate number of individual registered architects or~~
837 ~~interior designers employed by or working within the~~
838 ~~corporation, limited liability company, or partnership.~~

839 Section 31. Paragraphs (a) and (c) of subsection (5) of
840 section 481.229, Florida Statutes, are amended to read:

841 481.229 Exceptions; exemptions from licensure.-

842 (5) (a) ~~Nothing contained in This part~~ does not prohibit
843 ~~shall prevent~~ a registered architect or a qualified business
844 organization ~~partnership, limited liability company, or~~
845 ~~corporation holding a valid certificate of authorization to~~
846 ~~provide architectural services~~ from performing any interior
847 design service or from using the title "interior designer" or
848 "registered interior designer."

849 (c) Notwithstanding any other provision of this part, a
850 registered architect or business organization qualified any
851 ~~corporation, partnership, or person operating under a fictitious~~



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852 ~~name which holds a certificate of authorization to provide~~
853 ~~architectural services must shall be qualified, without fee, for~~
854 ~~a certificate of authorization to provide interior design~~
855 ~~services upon submission of a completed application for~~
856 ~~qualification therefor. For corporations, partnerships, and~~
857 ~~persons operating under a fictitious name which hold a~~
858 ~~certificate of authorization to provide interior design~~
859 ~~services, satisfaction of the requirements for renewal of the~~
860 ~~certificate of authorization to provide architectural services~~
861 ~~under s. 481.219 shall be deemed to satisfy the requirements for~~
862 ~~renewal of the certificate of authorization to provide interior~~
863 ~~design services under that section.~~

864 Section 32. Section 481.303, Florida Statutes, is reordered
865 and amended to read:

866 481.303 Definitions.—As used in this chapter, the term:

867 (1) "Board" means the Board of Landscape Architecture.

868 (2) "Business organization" means any partnership, limited
869 liability company, corporation, or individual operating under a
870 fictitious name.

871 (4)-(2) "Department" means the Department of Business and
872 Professional Regulation.

873 (7)-(3) "Registered landscape architect" means a person who
874 holds a license to practice landscape architecture in this state
875 under the authority of this act.

876 (3)-(4) "Certificate of registration" means a license issued
877 by the department to a natural person to engage in the practice
878 of landscape architecture.

879 (5) ~~"Certificate of authorization" means a license issued~~
880 ~~by the department to a corporation or partnership to engage in~~



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881 ~~the practice of landscape architecture.~~

882 (5)~~(6)~~ "Landscape architecture" means professional
883 services, including, but not limited to, the following:

884 (a) Consultation, investigation, research, planning,
885 design, preparation of drawings, specifications, contract
886 documents and reports, responsible construction supervision, or
887 landscape management in connection with the planning and
888 development of land and incidental water areas, including the
889 use of Florida-friendly landscaping as defined in s. 373.185,
890 where, and to the extent that, the dominant purpose of such
891 services or creative works is the preservation, conservation,
892 enhancement, or determination of proper land uses, natural land
893 features, ground cover and plantings, or naturalistic and
894 aesthetic values;

895 (b) The determination of settings, grounds, and approaches
896 for and the siting of buildings and structures, outdoor areas,
897 or other improvements;

898 (c) The setting of grades, shaping and contouring of land
899 and water forms, determination of drainage, and provision for
900 storm drainage and irrigation systems where such systems are
901 necessary to the purposes outlined herein; and

902 (d) The design of such tangible objects and features as are
903 necessary to the purpose outlined herein.

904 (6)~~(7)~~ "Landscape design" means consultation for and
905 preparation of planting plans drawn for compensation, including
906 specifications and installation details for plant materials,
907 soil amendments, mulches, edging, gravel, and other similar
908 materials. Such plans may include only recommendations for the
909 conceptual placement of tangible objects for landscape design



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910 projects. Construction documents, details, and specifications
911 for tangible objects and irrigation systems shall be designed or
912 approved by licensed professionals as required by law.

913 Section 33. Subsection (4) of section 481.311, Florida
914 Statutes, is amended to read:

915 481.311 Licensure.—

916 ~~(4) The board shall certify as qualified for a certificate~~
917 ~~of authorization any applicant corporation or partnership who~~
918 ~~satisfies the requirements of s. 481.319.~~

919 Section 34. Subsection (2) of section 481.317, Florida
920 Statutes, is amended to read:

921 481.317 Temporary certificates.—

922 ~~(2) Upon approval by the board and payment of the fee set~~
923 ~~in s. 481.307, the department shall grant a temporary~~
924 ~~certificate of authorization for work on one specified project~~
925 ~~in this state for a period not to exceed 1 year to an out-of-~~
926 ~~state corporation, partnership, or firm, provided one of the~~
927 ~~principal officers of the corporation, one of the partners of~~
928 ~~the partnership, or one of the principals in the fictitiously~~
929 ~~named firm has obtained a temporary certificate of registration~~
930 ~~in accordance with subsection (1).~~

931 Section 35. Section 481.319, Florida Statutes, is amended
932 to read:

933 481.319 Corporate and partnership practice of landscape
934 architecture; ~~certificate of authorization.~~—

935 (1) The practice of or offer to practice landscape
936 architecture by registered landscape architects registered under
937 this part through a corporation or partnership offering
938 landscape architectural services to the public, or through a



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939 corporation or partnership offering landscape architectural
940 services to the public through individual registered landscape
941 architects as agents, employees, officers, or partners, is
942 permitted, subject to the provisions of this section, if:

943 (a) One or more of the principal officers of the
944 corporation, or partners of the partnership, and all personnel
945 of the corporation or partnership who act in its behalf as
946 landscape architects in this state are registered landscape
947 architects; and

948 (b) One or more of the officers, one or more of the
949 directors, one or more of the owners of the corporation, or one
950 or more of the partners of the partnership is a registered
951 landscape architect and has applied to be the qualifying agent
952 for the business organization; ~~and~~

953 ~~(c) The corporation or partnership has been issued a~~
954 ~~certificate of authorization by the board as provided herein.~~

955 (2) All documents involving the practice of landscape
956 architecture which are prepared for the use of the corporation
957 or partnership shall bear the signature and seal of a registered
958 landscape architect.

959 (3) A landscape architect applying to practice in the name
960 of a ~~An applicant~~ corporation must ~~shall~~ file with the
961 department the names and addresses of all officers and board
962 members of the corporation, including the principal officer or
963 officers, duly registered to practice landscape architecture in
964 this state and, also, of all individuals duly registered to
965 practice landscape architecture in this state who shall be in
966 responsible charge of the practice of landscape architecture by
967 the corporation in this state. A landscape architect applying to



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968 practice in the name of a ~~An applicant~~ partnership must ~~shall~~
969 file with the department the names and addresses of all partners
970 of the partnership, including the partner or partners duly
971 registered to practice landscape architecture in this state and,
972 also, of an individual or individuals duly registered to
973 practice landscape architecture in this state who shall be in
974 responsible charge of the practice of landscape architecture by
975 said partnership in this state.

976 (4) Each landscape architect qualifying a partnership or
977 ~~and corporation licensed~~ under this part must ~~shall~~ notify the
978 department within 1 month after ~~of~~ any change in the information
979 contained in the application upon which the license is based.
980 Any landscape architect who terminates her or his ~~or her~~
981 employment with a partnership or corporation licensed under this
982 part shall notify the department of the termination within 1
983 month after such termination.

984 ~~(5) Disciplinary action against a corporation or~~
985 ~~partnership shall be administered in the same manner and on the~~
986 ~~same grounds as disciplinary action against a registered~~
987 ~~landscape architect.~~

988 (5) ~~(6)~~ Except as provided in s. 558.0035, the fact that a
989 registered landscape architect practices landscape architecture
990 through a corporation or partnership as provided in this section
991 does not relieve the landscape architect from personal liability
992 for her or his ~~or her~~ professional acts.

993 Section 36. Subsection (5) of section 481.321, Florida
994 Statutes, is amended to read:

995 481.321 Seals; display of certificate number.—

996 (5) Each registered landscape architect must ~~and each~~



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997 ~~corporation or partnership holding a certificate of~~
998 ~~authorization shall~~ include her or his ~~its~~ certificate number in
999 any newspaper, telephone directory, or other advertising medium
1000 used by the registered landscape architect, corporation, or
1001 partnership. A corporation or partnership must ~~is not required~~
1002 ~~to~~ display the certificate number ~~numbers~~ of at least one
1003 officer, director, owner, or partner who is a individual
1004 registered landscape architect ~~architects~~ employed by or
1005 practicing with the corporation or partnership.

1006 Section 37. Subsection (5) of section 481.329, Florida
1007 Statutes, is amended to read:

1008 481.329 Exceptions; exemptions from licensure.—

1009 (5) This part does not prohibit any person from engaging in
1010 the practice of landscape design, as defined in s. 481.303(6)
1011 ~~481.303(7)~~, or from submitting for approval to a governmental
1012 agency planting plans that are independent of, or a component
1013 of, construction documents that are prepared by a Florida-
1014 registered professional. Persons providing landscape design
1015 services may ~~shall~~ not use the title, term, or designation
1016 "landscape architect," "landscape architectural," "landscape
1017 architecture," "L.A.," "landscape engineering," or any
1018 description tending to convey the impression that she or he is a
1019 landscape architect unless she or he is registered as provided
1020 in this part.

1021 Section 38. Paragraph (h) of subsection (2) of section
1022 287.055, Florida Statutes, is amended to read:

1023 287.055 Acquisition of professional architectural,
1024 engineering, landscape architectural, or surveying and mapping
1025 services; definitions; procedures; contingent fees prohibited;



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1026 penalties.—

1027 (2) DEFINITIONS.—For purposes of this section:

1028 (h) A “design-build firm” means a partnership, corporation,
1029 or other legal entity that:

1030 1. Is certified under s. 489.119 to engage in contracting
1031 through a certified or registered general contractor or a
1032 certified or registered building contractor as the qualifying
1033 agent; or

1034 2. Is certified under s. 471.023 to practice or to offer to
1035 practice engineering; qualified ~~certified~~ under s. 481.219 to
1036 practice or to offer to practice architecture; or qualified
1037 ~~certified~~ under s. 481.319 to practice or to offer to practice
1038 landscape architecture.

1039 Section 39. Present paragraphs (j) and (k) of subsection
1040 (2) of section 548.003, Florida Statutes, are redesignated as
1041 paragraphs (i) and (j), respectively, and present paragraph (i)
1042 of that subsection is amended, to read:

1043 548.003 Florida State Boxing Commission.—

1044 (2) The Florida State Boxing Commission, as created by
1045 subsection (1), shall administer the provisions of this chapter.
1046 The commission has authority to adopt rules pursuant to ss.
1047 120.536(1) and 120.54 to implement the provisions of this
1048 chapter and to implement each of the duties and responsibilities
1049 conferred upon the commission, including, but not limited to:

1050 ~~(i) Designation and duties of a knockdown timekeeper.~~

1051 Section 40. Subsection (1) of section 548.017, Florida
1052 Statutes, is amended to read:

1053 548.017 Participants, managers, and other persons required
1054 to have licenses.—



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1055 (1) A participant, manager, trainer, second, ~~timekeeper,~~
1056 referee, judge, ~~announcer,~~ physician, matchmaker, or promoter
1057 must be licensed before directly or indirectly acting in such
1058 capacity in connection with any match involving a participant. A
1059 physician approved by the commission must be licensed pursuant
1060 to chapter 458 or chapter 459, must maintain an unencumbered
1061 license in good standing, and must demonstrate satisfactory
1062 medical training or experience in boxing, or a combination of
1063 both, to the executive director before working as the ringside
1064 physician.

1065

1066 ===== T I T L E A M E N D M E N T =====

1067 And the title is amended as follows:

1068 Delete lines 19 - 61

1069 and insert:

1070 s. 326.004, F.S.; deleting the requirement for a yacht
1071 broker to maintain a separate license for each branch
1072 office; deleting the requirement for the Division of
1073 Florida Condominiums, Timeshares, and Mobile Homes to
1074 establish a fee; amending s. 447.02, F.S.; conforming
1075 provisions; repealing s. 447.04, F.S., relating to
1076 licensure and permit requirements for business agents;
1077 repealing s. 447.041, F.S., relating to hearings for
1078 persons or labor organizations denied licensure as a
1079 business agent; repealing s. 447.045, F.S., relating
1080 to confidential information obtained during the
1081 application process; repealing s. 447.06, F.S.,
1082 relating to required registration of labor
1083 organizations; amending s. 447.09, F.S.; deleting



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1084 certain prohibited actions relating to the right of
1085 franchise of a member of a labor organization;
1086 repealing s. 447.12, F.S., relating to registration
1087 fees; repealing s. 447.16, F.S., relating to
1088 applicability; amending s. 447.305, F.S.; deleting a
1089 provision that requires notification of registrations
1090 and renewals to the Department of Business and
1091 Professional Regulation; amending s. 455.213, F.S.;
1092 conforming a cross-reference; requiring the board to
1093 use a specified process for the review of an
1094 applicant's criminal record to determine the
1095 applicant's eligibility for certain licenses;
1096 prohibiting the conviction of a crime before a
1097 specified date from being grounds for the denial of
1098 certain licenses; defining the term "conviction";
1099 authorizing a person to apply for a license before his
1100 or her lawful release from confinement or supervision;
1101 prohibiting additional fees for an applicant confined
1102 or under supervision; prohibiting the board from
1103 basing a denial of a license application solely on the
1104 applicant's current confinement or supervision;
1105 authorizing the board to stay the issuance of an
1106 approved license under certain circumstances;
1107 requiring the board to verify an applicant's release
1108 with the Department of Corrections; providing
1109 requirements for the appearance of certain applicants
1110 at certain meetings; requiring the board to adopt
1111 rules specifying how certain crimes affect an
1112 applicant's eligibility for licensure; amending s.



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1113 464.203, F.S.; prohibiting the conviction of a crime
1114 before a specified date from being grounds for the
1115 denial of a certification under certain circumstances;
1116 prohibiting the conviction of a crime before a
1117 specified date from being grounds for the failure of a
1118 background screening; defining the term "conviction";
1119 authorizing a person to apply for certification before
1120 his or her lawful release from confinement or
1121 supervision; prohibiting additional fees for an
1122 applicant confined or under supervision; prohibiting
1123 the board from basing the denial of a certification
1124 solely on the applicant's current confinement or
1125 supervision; authorizing the board to stay the
1126 issuance of an approved certificate under certain
1127 circumstances; requiring the board to verify an
1128 applicant's release with the Department of
1129 Corrections; providing requirements for the appearance
1130 of certain applicants at certain meetings; requiring
1131 the board to adopt rules specifying how certain crimes
1132 may affect an applicant's eligibility for
1133 certification; amending s. 400.211, F.S.; conforming a
1134 cross-reference; amending s. 469.006, F.S.; revising
1135 licensure requirements for asbestos abatement
1136 consulting or contracting as a partnership,
1137 corporation, business trust, or other legal entity;
1138 amending s. 469.009, F.S.; conforming provisions;
1139 amending s. 476.034, F.S.; defining the terms
1140 "restricted barber" and "restricted barbering";
1141 amending s. 476.114, F.S.; providing requirements for



1142 licensure by examination as a restricted barber;
1143 amending s. 476.144, F.S.; requiring the department to
1144 license an applicant who the board certifies is
1145 qualified to practice restricted barbering; amending
1146 s. 477.013, F.S.; revising and providing definitions;
1147 repealing s. 477.0132, F.S., relating to registration
1148 for hair braiding, hair wrapping, and body wrapping;
1149 amending s. 477.0135, F.S.; providing that licensure
1150 or registration is not required for persons whose
1151 occupation or practice is confined solely to hair
1152 braiding, hair wrapping, body wrapping, nail
1153 polishing, and makeup application; amending s.
1154 477.019, F.S.; conforming provisions; amending s.
1155 477.0201, F.S.; providing requirements for
1156 registration as a nail specialist, facial specialist,
1157 or full specialist; amending ss. 477.026, 477.0265,
1158 and 477.029, F.S.; conforming provisions; amending s.
1159 481.203, F.S.; revising a definition; amending s.
1160 481.219, F.S.; revising the process by which a
1161 business organization obtains the requisite license to
1162 perform architectural services or interior design;
1163 requiring that a licensee or an applicant apply to
1164 qualify a business organization to practice
1165 architecture or interior design; providing application
1166 requirements; authorizing the Board of Architecture
1167 and Interior Design to deny an application under
1168 certain circumstances; providing notice requirements;
1169 prohibiting a business organization from engaging in
1170 certain practices until it is qualified by a



1171 qualifying agent; authorizing the executive director
1172 or the chair of the board to authorize a temporary
1173 qualifying agent for a specified timeframe under
1174 certain circumstances; requiring the board to allow an
1175 applicant to qualify one or more business
1176 organizations or to operate using a fictitious name
1177 under certain circumstances; deleting a requirement
1178 for the administration of disciplinary action against
1179 a corporation, limited liability company, or
1180 partnership; conforming provisions to changes made by
1181 the act; amending s. 481.221, F.S.; requiring a
1182 business organization to include the license number of
1183 a certain registered architect or interior designer in
1184 any advertising; providing an exception; conforming
1185 provisions to changes made by the act; amending s.
1186 481.229, F.S.; conforming provisions to changes made
1187 by the act; amending s. 481.303, F.S.; revising
1188 definitions; amending ss. 481.311 and 481.317, F.S.;
1189 conforming provisions; amending s. 481.319, F.S.;
1190 deleting the requirement for a certificate of
1191 authorization; authorizing landscape architects to
1192 practice through a corporation or partnership;
1193 amending s. 481.321, F.S.; revising requirements
1194 related to the display of a certificate number;
1195 amending s. 481.329, F.S.; conforming a cross-
1196 reference; amending s. 287.055, F.S.; conforming a
1197 provision; amending s. 548.003, F.S.; deleting the
1198 requirement that the Florida State Boxing Commission
1199 adopt rules relating to a knockdown timekeeper;



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amending s. 548.017, F.S.; deleting the licensure
requirement for a timekeeper or announcer; providing
an effective date.

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to professional regulation; amending
 3 s. 120.565, F.S.; authorizing a person to seek a
 4 declaratory statement from an agency as to the effect
 5 of the person's criminal background on his or her
 6 eligibility for certain licenses, registrations, or
 7 certificates; specifying that a person may seek a
 8 declaratory statement before meeting any prerequisites
 9 for the license, registration, or certification;
 10 requiring that an agency's conclusion in the
 11 declaratory statement contain certain statements;
 12 providing that the agency's conclusion is binding
 13 except under certain circumstances; requiring a person
 14 seeking a declaratory statement to submit certain
 15 items to the agency and pay certain fees and costs;
 16 providing requirements for the processing of the
 17 fingerprints; requiring the petitioner to pay the
 18 actual cost of processing the fingerprints; amending
 19 s. 455.213, F.S.; conforming a cross-reference;
 20 requiring the board to use a specified process for the
 21 review of an applicant's criminal record to determine
 22 the applicant's eligibility for certain licenses;
 23 prohibiting the conviction of a crime before a
 24 specified date from being grounds for the denial of
 25 certain licenses; defining the term "conviction";
 26 authorizing a person to apply for a license before his
 27 or her lawful release from confinement or supervision;
 28 prohibiting additional fees for an applicant confined
 29 or under supervision; prohibiting the board from

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30 basing a denial of a license application solely on the
 31 applicant's current confinement or supervision;
 32 authorizing the board to stay the issuance of an
 33 approved license under certain circumstances;
 34 requiring the board to verify an applicant's release
 35 with the Department of Corrections; providing
 36 requirements for the appearance of certain applicants
 37 at certain meetings; requiring the board to adopt
 38 rules specifying how certain crimes affect an
 39 applicant's eligibility for licensure; amending s.
 40 464.203, F.S.; prohibiting the conviction of a crime
 41 before a specified date from being grounds for the
 42 denial of a certification under certain circumstances;
 43 prohibiting the conviction of a crime before a
 44 specified date from being grounds for the failure of a
 45 background screening; defining the term "conviction";
 46 authorizing a person to apply for certification before
 47 his or her lawful release from confinement or
 48 supervision; prohibiting additional fees for an
 49 applicant confined or under supervision; prohibiting
 50 the board from basing the denial of a certification
 51 solely on the applicant's current confinement or
 52 supervision; authorizing the board to stay the
 53 issuance of an approved certificate under certain
 54 circumstances; requiring the board to verify an
 55 applicant's release with the Department of
 56 Corrections; providing requirements for the appearance
 57 of certain applicants at certain meetings; requiring
 58 the board to adopt rules specifying how certain crimes

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59 may affect an applicant's eligibility for
60 certification; amending s. 400.211, F.S.; conforming a
61 cross-reference; providing an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Subsection (4) is added to section 120.565,
66 Florida Statutes, to read:

67 120.565 Declaratory statement by agencies.—

68 (4) (a) Any person may seek a declaratory statement
69 regarding an agency's opinion as to the effect of the
70 petitioner's criminal background on his or her eligibility for a
71 specific occupational or professional license, registration, or
72 certificate issued by the agency based on the applicable
73 statutes and rules for the occupation or profession. The
74 petition may include mitigating factors or other information the
75 petitioner believes relevant to establish the petitioner's
76 eligibility, including, but not limited to, the time elapsed
77 since completion of or lawful release from confinement,
78 supervision, or nonmonetary condition imposed by the court for a
79 disqualifying offense, and the petitioner's standing in his or
80 her community. A person may seek a declaratory statement under
81 this subsection before attaining any education, training,
82 experience, or other prerequisites for the license,
83 registration, or certification.

84 (b) The agency's conclusion in the declaratory statement
85 must indicate whether:

86 1. The petitioner is disqualified from obtaining the
87 license, registration, or certification due to the petitioner's

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88 criminal background, regardless of the petitioner's education,
89 training, experience, or other prerequisites required for the
90 license, registration, or certification.

91 2. The petitioner is not eligible for a specified
92 occupational or professional license, registration, or
93 certification because of his or her criminal background, but
94 that the conclusion may be reversed upon the petitioner's
95 presentation of evidence of rehabilitation or mitigation
96 identified by the agency in the declaratory statement at any
97 time subsequent to the issuance of the declaratory statement.

98 3. Federal laws or regulations may impede the petitioner's
99 licensure, registration, or certification in the profession or
100 occupation.

101 4. Conditions or restrictions imposed by the court on the
102 petitioner for a disqualifying offense may impede the
103 petitioner's licensure, registration, or certification in the
104 profession or occupation.

105 (c) The agency's conclusion in the declaratory statement
106 shall be binding on the agency as to the petitioner, unless the
107 petitioner's subsequent criminal history constitutes an
108 independent basis for denial of the petitioner's application for
109 a license, registration, or certification in the profession or
110 occupation. The agency's conclusion is subject to judicial
111 review pursuant to s. 120.68.

112 (d) A person seeking a declaratory statement under this
113 subsection must submit to the agency, in addition to the
114 petition for a declaratory statement:

115 1. A fee set by the agency not to exceed \$100;

116 2. A certified copy of each criminal judgment rendered

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117 against the petitioner; and

118 3. A complete set of electronic fingerprints.

119 (e) The agency shall submit the fingerprints to the
 120 Department of Law Enforcement for a state criminal history
 121 record check and the Department of Law Enforcement shall forward
 122 them to the Federal Bureau of Investigation for a national
 123 criminal history record check. The agency shall review the
 124 criminal history record results to determine if the petitioner
 125 meets licensure, registration, or certification requirements.
 126 The petitioner shall pay the actual cost of state and federal
 127 processing in addition to the fee in subparagraph (d)1.

128 Section 2. Present subsections (3) through (12) of section
 129 455.213, Florida Statutes, are redesignated as subsections (4)
 130 through (13), respectively, subsection (2) of that section is
 131 amended, and a new subsection (3) is added to that section, to
 132 read:

133 455.213 General licensing provisions.—

134 (2) Before the issuance of any license, the department may
 135 charge an initial license fee as determined by rule of the
 136 applicable board or, if no such board exists, by rule of the
 137 department. Upon receipt of the appropriate license fee, except
 138 as provided in subsection (4) ~~(3)~~, the department shall issue a
 139 license to any person certified by the appropriate board, or its
 140 designee, or the department when there is no board, as having
 141 met the applicable requirements imposed by law or rule. However,
 142 an applicant who is not otherwise qualified for licensure is not
 143 entitled to licensure solely based on a passing score on a
 144 required examination. Upon a determination by the department
 145 that it erroneously issued a license, or upon the revocation of

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146 a license by the applicable board, or by the department when
 147 there is no board, the licensee must surrender his or her
 148 license to the department.

149 (3) (a) Notwithstanding any other provision of law, the
 150 board shall use the process in this subsection for review of an
 151 applicant's criminal record to determine his or her eligibility
 152 for licensure as a:

153 1. Barber under chapter 476;

154 2. Cosmetologist or cosmetology specialist under chapter
 155 477; or

156 3. Any of the following construction professions under
 157 chapter 489:

158 a. Air-conditioning contractor;

159 b. Electrical contractor;

160 c. Mechanical contractor;

161 d. Plumbing contractor;

162 e. Pollutant storage systems contractor;

163 f. Roofing contractor;

164 g. Septic tank contractor;

165 h. Sheet metal contractor;

166 i. Solar contractor;

167 j. Swimming pool and spa contractor;

168 k. Underground utility and excavation contractor; and

169 l. Other specialty contractors.

170 (b) A conviction for a crime more than 5 years before the
 171 date of the application may not be grounds for denial of a
 172 license specified in paragraph (a). For purposes of this
 173 paragraph, the term "conviction" means a determination of guilt
 174 that is the result of a plea or trial, regardless of whether

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175 adjudication is withheld.

176 (c)1. A person may apply for a license before his or her
 177 lawful release from confinement or supervision. The department
 178 may not charge an applicant an additional fee for being confined
 179 or under supervision. The board may not deny an application for
 180 a license solely on the basis of the applicant's current
 181 confinement or supervision.

182 2. After a license application is approved, the board may
 183 stay the issuance of a license until the applicant is lawfully
 184 released from confinement or supervision and the applicant
 185 notifies the board of such release. The board must verify the
 186 applicant's release with the Department of Corrections before it
 187 issues a license.

188 3. If an applicant is unable to appear in person due to his
 189 or her confinement or supervision, the board must permit the
 190 applicant to appear by teleconference or video conference, as
 191 appropriate, at any meeting of the board or other hearing by the
 192 agency concerning his or her application.

193 4. If an applicant is confined or under supervision, the
 194 Department of Corrections and the board shall cooperate and
 195 coordinate to facilitate the appearance of the applicant at a
 196 board meeting or agency hearing in person, by teleconference, or
 197 by video conference, as appropriate.

198 (d) The board shall adopt rules specifying the crimes that,
 199 if committed, and regardless of adjudication, do not relate to
 200 the practice of the profession or the ability to practice the
 201 profession and do not constitute grounds for denial of a
 202 license.

203 (e) The board shall adopt rules specifying the crimes that,

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204 if committed, and regardless of adjudication, relate to the
 205 practice of the profession or the ability to practice the
 206 profession and may constitute grounds for denial of a license.

207 Section 3. Present subsections (2) through (8) of section
 208 464.203, Florida Statutes, are redesignated as subsections (3)
 209 through (9), respectively, and a new subsection (2) is added to
 210 that section, to read:

211 464.203 Certified nursing assistants; certification
 212 requirement.—

213 (2)(a)1. Except as provided in s. 435.07(4), a conviction
 214 for a crime more than 7 years before the date of the application
 215 may not be grounds for denial of a certificate to practice as a
 216 certified nursing assistant.

217 2. Except as provided in s. 435.07(4), a conviction for a
 218 crime more than 7 years before the date of the application may
 219 not be grounds for failure of a required background screening.

220 3. For purposes of this paragraph, the term "conviction"
 221 means a determination of guilt that is the result of a plea or
 222 trial, regardless of whether adjudication is withheld.

223 (b)1. A person may apply for a certificate to practice as a
 224 certified nursing assistant before his or her lawful release
 225 from confinement or supervision. The department may not charge
 226 an applicant an additional fee for being confined or under
 227 supervision. The board may not deny an application for a
 228 certificate solely on the basis of the person's current
 229 confinement or supervision.

230 2. After a certification application is approved, the board
 231 may stay the issuance of a certificate until the applicant
 232 notifies the board of his or her lawful release from confinement

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233 or supervision. The board must verify the applicant's release
 234 with the Department of Corrections before it issues a license.

235 3. If an applicant is unable to appear in person due to his
 236 or her confinement or supervision, the board must permit the
 237 applicant to appear by teleconference or video conference, as
 238 appropriate, at any meeting of the board or other hearing by the
 239 agency concerning his or her application.

240 4. If an applicant is confined or under supervision, the
 241 Department of Corrections and the board shall cooperate and
 242 coordinate to facilitate the appearance of the applicant at a
 243 board meeting or agency hearing in person, by teleconference, or
 244 by video conference, as appropriate.

245 (d) The board shall adopt rules specifying the crimes that,
 246 if committed, and regardless of adjudication, do not relate to
 247 the practice of the profession or the ability to practice the
 248 profession and do not constitute grounds for denial of a
 249 certification.

250 (e) The board shall adopt rules specifying the crimes that,
 251 if committed, and regardless of adjudication, relate to the
 252 practice of the profession or the ability to practice the
 253 profession and may constitute grounds for denial of a
 254 certification.

255 Section 4. Subsection (4) of section 400.211, Florida
 256 Statutes, is amended to read:

257 400.211 Persons employed as nursing assistants;
 258 certification requirement.-

259 (4) When employed by a nursing home facility for a 12-month
 260 period or longer, a nursing assistant, to maintain
 261 certification, shall submit to a performance review every 12

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20181114__

262 months and must receive regular inservice education based on the
 263 outcome of such reviews. The inservice training must meet all of
 264 the following requirements:

265 (a) Be sufficient to ensure the continuing competence of
 266 nursing assistants and must meet the standard specified in s.
 267 464.203(8). ~~s. 464.203(7);~~

268 (b) Include, at a minimum:

269 1. Techniques for assisting with eating and proper feeding;
 270 2. Principles of adequate nutrition and hydration;

271 3. Techniques for assisting and responding to the
 272 cognitively impaired resident or the resident with difficult
 273 behaviors;

274 4. Techniques for caring for the resident at the end-of-
 275 life; and

276 5. Recognizing changes that place a resident at risk for
 277 pressure ulcers and falls, ~~and~~

278 (c) Address areas of weakness as determined in nursing
 279 assistant performance reviews and may address the special needs
 280 of residents as determined by the nursing home facility staff.

281

282 Costs associated with this training may not be reimbursed from
 283 additional Medicaid funding through interim rate adjustments.

284 Section 5. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 24, 2018

I respectfully request that **Senate Bill #1114**, relating to **Professional Regulation**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/16

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Deregulation of Cosmetology

Name Monica Rodriguez

Job Title _____

Address 207 E Park Avenue

Street

Phone 850 766-6287

Jalalassie

Fl.

32301

Email monica@ballardfl.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Cosmetology & Technical Schools

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/2018

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulations

Name Vittorio Nastasi

Job Title _____

Address 100 N Duval Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-322-9941

Email snuzzo@jamesmadison.org

Speaking: For Against Information

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

Representing The James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

Feb 6, 2018

Meeting Date

SB 1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic BARBERING / COSMETOLOGY

Name CURTIS AUSTIN

Job Title EXECUTIVE DIRECTOR

Address P.O. Box 13654

Phone 850 - 577-3139

Street

Tallahassee FL 32317-3654

City

State

Zip

Email Curtis@FAPSC.ORG

Speaking: For Against Information

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

Representing FLORIDA ASSN OF POSTSECONDARY SCHOOLS; COLLEGE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

APPEARANCE RECORD

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

2/6/18
Meeting Date

SB 1114
Bill Number (if applicable)

447528
Amendment Barcode (if applicable)

Topic Cosmetology

Name Allen Mortham Jr

Job Title Lobbyist

Address 6675 Weeping Willow Way
allahassee FL 32311
City State Zip

Phone (850) 566-3760

Email Nolas97@aol.com

Speaking: For Against Information

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

Representing Sunstate Academy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulation

Name JOANNE POWERS

Job Title Summit Salon Academy - Tampa

Address 4802 Gunn Hwy suite 114

Phone 813 833 8660

Tampa, FL 33624

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Summit Salon Academy - Tampa

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

APPEARANCE RECORD

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

2/6/18

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulation

Name JONI JARRELL

Job Title President

Address 1717 SE 5th St.

Phone 352 598 8523

Street

Ocala

F

State

34471

Zip

Email jarrell@ssacademygames.com

Speaking: For Against Information

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

Representing Summit Salon Academy - Gainesville

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

jarrell@ssacademygames.com

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulation

Name JANE FARMER

Job Title Legislative Coordinator

Address 227 S Adams St

Street

Phone 352 359 6835

City

Tallahassee

State

FL

Zip

32301

Email Jane@frf.org

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1114

Bill Number (if applicable)

447528

Amendment Barcode (if applicable)

Topic Professional Regulation

Name LISA MERGEL

Job Title

Address 823 Thomasville Rd

Phone 850 224 7467

Tallahassee FL 32303

Email

Speaking: For Against Information

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

Representing @ Kanvas Day Spa - 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/2018

Meeting Date

1114

Bill Number (if applicable)

Topic professional regulations

Amendment Barcode (if applicable)

Name Vittorio Nastasi

Job Title _____

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

Zip

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)

2/16/18 Meeting Date

1114 Bill Number (if applicable)

Topic Occupational Licensing

Amendment Barcode (if applicable)

Name Jorge Charnizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Tallahassee, FL 32301

Email jorge@flapartners.com

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

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

Representing Opportunity Solutions Project

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

Lobbyist registered with Legislature: [] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18

Meeting Date

SB 1114

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Hasek

Job Title Analyst

Address 200 W College Ave

Phone _____

Street

Tallahassee

FL

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
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 Commerce and Tourism

BILL: CS/SB 1314

INTRODUCER: Commerce and Tourism Committee and Senator Brandes

SUBJECT: Florida Capital Formation Act

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1314 creates the Institute for Commercialization of Florida Technology (institute) to increase the availability of seed and early stage investment capital in Florida without requiring an ongoing state expenditure for such support.

The institute will replace the Institute for Commercialization of Public Research (ICPR). The institute will differ from the ICPR in several ways. Namely, the institute will:

- Be operated by a private fund manager who will be paid from fees based on the institute's investment activities, rather than a professional staff;
- No longer partner with publicly supported universities or research institutes to support their commercialization efforts; and
- Not be supported by or function under the Department of Economic Opportunity (department).

Like the ICPR, however, the institute will partner with innovation and target industry businesses to foster investment funding, especially in seed-stage, startup, and early stage companies; advise companies about successful management, operations, and development processes; and provide opportunities to attract further investment.

As part of its annual report, the institute will be subject to an independent audit of its reported net profits.

II. Present Situation:

Venture Capital and Early Stage Business Investments

Venture capital (VC) is money provided by investors who choose to fund young companies that have the potential to develop into profitable businesses. VC is an important source of equity for startup companies because its investment does not typically require security (such as a guarantee of repayment) from the business.¹

VC investments are typically made in lieu of traditional bank loans because the start-up or expansion-oriented companies they fund have a higher level of investment risk. As a result, the investor may eventually share in the risk of a failed business, or the reward of a successful one. VC investments are also characterized by a higher level of equity participation in the business by the investor, including mentorship or networking to assist the company with management and other obstacles.²

VC investment in a technology or idea that has not yet been developed into a fully-fledged product or business is also known as “seed investing” or “early-stage investing.”³

As of September 2017, there were approximately 38 VC firms in Florida.⁴ Although the VC industry has grown in the last 20 years, it has done so only in limited geographic regions—generally limiting the investment of VC in businesses in or near those regions.⁵

Institute for the Commercialization of Public Research

In 2007, the Legislature passed the Florida Capital Formation Act, to address the need to increase the availability of seed capital and early stage venture equity capital for emerging Florida companies.⁶ In part, the act created the ICPR, a private-public partnership that operates as a non-profit corporation. The department’s Division of Strategic Business Development provides support for, and works closely with, the ICPR.⁷ The ICPR also operates with the support of mentors, advisors, and donors.⁸

¹ National Venture Capital Association, *Funding Innovation: How Venture Funded Startups Grow, Transform and Impact the U.S. Economy*, available at <https://nvca.org/ecosystem/funding-innovation/> (last visited Feb. 5, 2018).

² See note 1, *supra* National Venture Capital Association.

³ Florida Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs*, p. 37, (Jan. 2018), available at <http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf> (last visited Feb. 5, 2018).

⁴ Florida Trend, *Business FLORIDA: Your 2018 Florida Opportunity Guide, Florida’s Venture Capital Firms*, (Sept. 22, 2017) available at <http://www.floridatrend.com/article/17615/floridas-venture-capital-firms--2015> (last visited Feb. 5, 2018).

⁵ Cromwell Schmisser, *Program Evaluation of the US Department of Treasury State Small Business Credit Initiative* p. 61 (Oct. 2016), available at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_pe2016_Full_Report.pdf (last visited Feb. 5, 2018).

⁶ Chapter 2007-189, L.O.F., codified as ss. 288.9621-288.9625, F.S.

⁷ Section 20.60, F.S.; Florida Department of Economic Opportunity, *Long Range Program Plan Fiscal Year 2018-2019 through 2022-2023*, p 19 (September 29, 2017) available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=17087&DocType=PDF> (last visited Feb. 5, 2018).

⁸ Florida Department of Economic Opportunity, *Long Range Program Plan Fiscal Year 2018-2019 through 2022-2023*, see note 7, *supra* at p. 42.

The ICPR assists in the commercialization of products developed by research and development activities of innovation businesses, publicly supported universities and colleges, research institutes, and other publicly supported organizations within Florida. Specifically, the ICPR administers company support services and seed capital funding programs to help early-stage businesses or ideas for businesses grow and thrive in Florida.⁹

The ICPR has two primary locations, one at the University of Florida in Gainesville and the other at Florida Atlantic University in Boca Raton. A board of directors governs the ICPR and is responsible for managing the ICPR's funds, presenting the ICPR's annual report, and overseeing the ICPR's general affairs.¹⁰ The board of directors is composed of the executive director of the department; the president of the university where the ICPR is located, or when the ICPR is located at multiple universities, the presidents' agreed upon designee; and three directors appointed by the Governor.

The ICPR matches commercially viable technologies with management talent and capital. Additionally, the ICPR focuses on technologies and companies that originate from publicly supported organizations across the state and companies in Florida's target industries.¹¹

The ICPR accepts business partners through an application process that requires a recommendation from a publicly supported organization and a review of the business' plans and technology information.

Florida Technology Seed Capital Fund¹²

The ICPR also administers the Florida Technology Seed Capital Fund (the Fund) as a corporate subsidiary. The Fund was preceded by the Florida Research Commercialization matching Grant Program and the ICPR's Seed Capital Accelerator Program (SCAP), which expired in 2013 by effect of law.¹³

A company is eligible to receive investment from the Fund only after undergoing a peer-reviewed process undertaken by the Fund's investor advisor board, which examines:¹⁴

- The company's overall health and ability for growth, including its intellectual property position, management capability, paths to market or commercialization, growth-potential, and ability to leverage additional funding;
- Whether the company was identified by a publicly funded research institution;

⁹ See note 7, *supra*, Fla. Dept. of Economic Opportunity at 21; Florida Institute for Commercialization of Public Research, *Who We Are*, <http://www.florida-institute.com/who-we-are> (last visited Feb. 5, 2018).

¹⁰ Section 288.9625, F.S. Florida Institute for Commercialization of Public Research, *Who We Are: Board of Directors*, available at <http://www.florida-institute.com/about/board-of-directors> (last visited Feb. 5, 2018).

¹¹ Section 288.106(2)(g), F.S.

¹² Ch. 2007-189, L.O.F., s. 288.9625, F.S., Florida Institute for Commercialization of Public Research, *Company Funding*, available at <http://www.florida-institute.com/programs/company-funding> (last visited Feb. 5, 2018).

¹³ See s. 288.9552, F.S. (2011), ch. 2010-147, Laws of Fla.

¹⁴ Section 288.96255(3)-(4), F.S.

- If the company is a target industry business, as defined in s. 288.106(2), F.S., relating to the Innovation Incentive Program;¹⁵
- If the company was identified by a private-sector lead investor who has performed industry-standard due diligence; and
- The company's proposal, and found it satisfactory.

Through the Fund, the ICPR provides seed funding in amounts of \$50,000 to \$300,000 to qualified startups, either as debt or equity. As of the end of fiscal year 2015, the ICPR funded 39 companies.¹⁶

Economic Impact

The ICPR reports that, in fiscal year 2017, it contributed to the creation of 2,214 jobs in Florida and generated a total economic impact of \$340 million.¹⁷ Since 2007, the Legislature has appropriated an estimated \$33 million in state funds to the ICPR for operating costs, grants, loans, and seed stage funds.¹⁸ The ICPR did not receive any funding in fiscal year 2017.¹⁹

III. Effect of Proposed Changes:

Institute for Commercialization of Florida Technology

CS/SB 1314 creates the Institute for Commercialization of Florida Technology (institute) as a successor to the ICPR. The institute differs from the ICPR in several ways. Namely, the institute: (1) will be operated by a private fund manager rather than a professional staff; (2) will no longer partner with publicly supported universities or research institutes to support their commercialization efforts; and (3) will not be supported by or function under the department.

Section 3 amends s. 288.9622, F.S., to evince legislative intent to permit the use of a private fund manager in the effort to reduce the operational costs of the Fund and the SCAP in order to increase the availability of investment capital for Florida's emerging businesses. It is the goal of the Legislature to operate these entities without requiring ongoing state expenditures.

¹⁵ An innovation business is "a business expanding or locating in this state that is likely to serve as a catalyst for the growth of an existing or emerging technology cluster or will significantly impact the regional economy in which it is to expand or locate."

¹⁶ Florida Institute for Commercialization of Public Research, *New Study Unveils Economic Impacts of Institute for Commercialization of Public Research*, available at <http://www.florida-institute.com/news/new-study-unveils-economic-impacts-of-institute-commercialization-of-public-research-0> (last visited Feb. 5, 2018). *See also*, Daszkal Bolton, note 14, *supra*.

¹⁷ Washington Economics Group, Inc., *The FY-2017 Economic Development Impacts of the Florida Institute for the Commercialization of Public Research* (Aug. 21, 2017), on file with the Committee on Commerce and Tourism. *See also*, Florida Institute for Commercialization of Public Research, *Institute for Commercialization of Public Research Delivers \$970 Million Impact to Florida Seven-Year Impacts Increased Significantly as Companies Continued to Grow*, available at <http://www.florida-institute.com/news/institute-commercialization-of-public-research-delivers-970-million-impact-florida-seven-year> (last visited Feb. 5, 2018).

¹⁸ Florida Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs* p. 43-45 (Jan. 2018), available at <http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf> (last visited Feb. 5, 2018).

¹⁹ Nancy Dahlberg, Miami Herald, *Tech Funders, Startups Already Feeling Sting of State Budget Cuts*, (Jul. 12, 2017), available at <http://www.miamiherald.com/news/business/article160608399.html> (last visited Feb. 5, 2018).

The institute's mandate is to assist in the commercialization of products developed by innovation businesses, and to advise them about how to restructure existing management, operations, product development, or service development to attract further business opportunities.

Board of Directors

Section 5 reorganizes the Board of Directors (Board) to consist of three members instead of five and provides for succession of directors whose terms have ended. The Board's duties include oversight of the private fund manager's activities; performance of duties as outlined by the institute's bylaws; and provision of an annual report of the institute's activities to the Governor, President of the Senate, and Speaker of the House. Current law requires the Board to manage the ICPR's affairs and to report to the president of the University where the ICPR is located.

The Board must have expertise in selecting and supervising early stage investment managers or in fiduciary management of investment funds and other pertinent areas of expertise.

The directors may not receive compensation for their service, but may be reimbursed for expenses as approved by the private fund manager pursuant to s. 112.061, F.S. Additionally, the directors may not have a financial interest in any investment in any of the institute's portfolio companies, and are subject to any restriction on conflicts of interest as specified in the institute's organizational documents.

Private Fund Manager

Eligibility

Section 5 provides that the private fund manager (fund manager) must be a for-profit limited liability company or a for-profit corporation that was formed and is governed and operated in accordance with ch. 605 or 607, F.S. Additionally, the fund manager may not be a public corporation or instrumentality of the state, is not subject to ch. 287, F.S., regarding procurement of goods and services; and is not governed by code of ethics provisions in part III of ch. 112, F.S.

The fund manager must be experienced in the field, and must specifically have:

- Expertise and experience in the management and operation of early stage companies in Florida;
- Experience with early stage business ventures investments in Florida;
- Working knowledge and understanding of the institute's investment portfolio and relevant industries of those companies; and
- Individuals in its employ who have knowledge of the institute's investment portfolio and its companies, as well as financial, technical, and business expertise to manage the technology fund's activity.

Duties

Current law directs the Board and professional staff to manage the ICPR; the bill grants management duties of the institute to a fund manager.

Section 5 provides for the fund manager's duties as they relate to the institute; **section 6** provides for the duties as they relate to the Fund. They are substantially the same duties.

The fund manager is required to:

- Manage the investment-related affairs of the institute, including management of the assets of the institute's accelerator program and technology fund investment portfolios;
- Conduct activities on the institute's behalf in accordance with law; and
- Issue an annual report to the Board by November 1 each year. The annual report is a public record, and must include information on any assistance provided to an innovation business; a description of the benefits that accrue to the state as a result of the institute's activity; and independently audited financial statements, including statements of the expenditures for personnel, management fees, administration, and operational costs.

The fund manager is permitted, but not required, to:

- Negotiate terms of investment, sale, and liquidation with portfolio and nonportfolio companies;
- Execute contracts and contract amendments with portfolio and nonportfolio companies;
- Seek new qualified companies to participate in the Fund;
- Receive and remit investment capital from the sale or liquidation of any part of the institute's investment portfolio, loan proceeds, or other investment returns;
- Mentor, assist with the development of marketing information or business plans, and assist with attracting capital investment and other resources to a portfolio company in order to foster its growth, marketing, or business success;
- Market the Fund and accelerator program to potential investors;
- Facilitate meetings between prospective investors and the institute's portfolio companies; and
- Collaborate with publicly supported organizations that may be able to provide further resources or special knowledge to the institute's portfolio companies.

The fund manager is paid reasonable fees consistent with the standard practices of the fund management industry, consisting of:

- An operational management fee, including reimbursement of expenses that is paid from the proceeds of loans repaid to the accelerator program, or other capital, proceeds, and returns available in the Fund;
- A portfolio fee paid from proceeds of each sale or asset liquidation from the institute's investment portfolio; and
- A closing fee paid from the investment amount paid by the Fund to a company at the closing of each investment.

Current law prohibits the ICPR from charging for its services unless they are provided to a private company, as compared to a state university or its affiliated organizations.

Portfolio Companies and Organizations

Section 5 outlines the institute's mission, which is to develop partnerships with, in particular, "innovation businesses" as defined in s. 288.1089, F.S., relating to the Innovation Incentive Program. **Section 6** provides that the institute must also strive to invest in target industry

businesses, as defined in s. 288.106(2)(q), F.S., which represent diverse and stable markets. Unlike the ICPR, the institute will also be able to invest in businesses outside these fields.

The institute may select a company or organization for partnership with the institute or for funding from the Fund only after the fund manager, using processes modeled on the investment industry's standard practices, has evaluated whether the company:

- Has a strong intellectual property position and an identifiable method to commercialization of its technology or product;
- Is capable of creating jobs and providing additional capital;
- Will be able to garner additional funding;
- Is a target industry business as defined in s. 288.106(2), F.S., which requires that the business show capacity for future growth and economic stability; contribute toward an expansion or diversification of Florida's economy and be independent from Florida's unique markets or resources; and have an overall positive economic impact on the state, especially by paying relatively high wages to its workers; and
- Was identified by a private-sector lead investor who performed industry-standard due diligence in selecting the company.

Additionally, the company or organization must be based in Florida.

Applicant companies who wish to partner with the institute or receive funding from the Fund are subjected to a substantially similar review process.

Although portfolio companies that receive funding from the current Fund are limited to initial investments of \$50,000-\$300,000, the bill does not impose any such limits on investment under the amended Fund.

Partnership with Florida's Universities, Colleges, and Publicly-Supported Research Institutions

The institute, unlike the ICPR, is required neither to be located at a Florida University or research center, nor to assist such institutions with the commercialization of their developing technology.

Disassociation from the Department

Section 1 amends s. 20.60, F.S. to remove management of the ICPR and promotion of the commercialization of products, services, or ideas developed in public universities or institutions from the department's duties and purposes.

Section 5 amends s. 288.9625 to remove the requirement that the ICPR's articles of incorporation be approved by the department.

Public Records and Meetings Exemption

Section 7 amends s. 288.9627, F.S., to transfer the public records and meetings exemption that previously applied to the ICPR to the institute.

This section makes the following materials held by the institute exempt from disclosure pursuant to s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Documents and materials that related to a business' methods of manufacture or production, potential trade secrets, or patentable material that is provided to the institute by a proprietor;
- Information that would identify an anonymous investor or potential investor;
- Information received from another person, state, nation, or the Federal Government, which is confidential or exempt pursuant to the originator's laws; and
- Proprietary confidential business information.

Additionally, the bill makes exempt from Florida's public meetings laws those portions of the institute's meetings wherein information that is confidential and exempt according to Florida law is discussed.

Miscellaneous

Section 2 makes conforming changes to s. 288.9621, F.S.

Section 4 provides definitions for terms used in the Florida Capital Formation Act.

Section 8 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Depending on the financial performance of the Fund and the institute, there may be a reduction in the funds available for investment in private businesses that seek investment capital.

C. Government Sector Impact:

Although the ICPR did not receive any legislative appropriation in fiscal year 2017-2018, the bill may result in a reduction in appropriations to the successor institute for its management and related expenses, by permitting the institute to fund itself through its activities.

University and other publicly funded research institutes may see a reduction in funds available for the commercialization of their technology because of the privatization of the institute.

The ICPR's staff and related expenses will no longer be necessary. According to an independent audit of the ICPR completed in fiscal year 2016, the total program expenses were \$3,732,937.²⁰ The fund manager will require expenditures pursuant to statute, but these will be made from profits of the institute, rather than state appropriation.

VI. Technical Deficiencies:

It is unclear whether the duties outlined in s. 288.9625(5), F.S., apply to the Board of Directors or the fund manager.

VII. Related Issues:

The bill refers to the SCAP or "Accelerator Program." The Accelerator Program expired in 2013, and therefore does not require any ongoing operational funding. The Accelerator Program, however, does have outstanding loans that will not be due until December 2019, and therefore may require actions by the fund manager for purposes of collection and reinvestment of the funds.²¹

The bill provides that the institute must create the Fund; the Legislature could directly create the Fund.

The bill requires that a company or organization be "based in" Florida to receive assistance from the institute. This term may need to be defined to provide clarity in interpretation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 288.9621, 288.9622, 288.9623, 288.9625, 288.96255, and 288.9627.

²⁰ Daszkal Bolton, *Institute for Commercialization of Public Research, Inc.: Consolidated Financial Statements with Supplemental Schedule and Information* (Jun. 30, 2016), available at https://flauditor.gov/pages/nonprofit_forprofit%20rpts/2016%20institute%20for%20commercialization%20of%20public%20research.pdf (last visited Feb. 5, 2018).

²¹ See note 21, Daszkal Bolton, *supra* at p. 21.

IX. Additional Information:

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

CS by Commerce and Tourism on February 6, 2018:

The CS clarifies the terms for directors appointed before July 1, 2018, and the succession of any director appointed thereafter.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Brandes) recommended the following:

Senate Amendment

Delete lines 265 - 278
and insert:

(a)(e) The board of directors shall consist of three directors appointed pursuant to the procedures and requirements of this section by the Governor to 3-year staggered terms, to which the directors may be reappointed.

(b) For any director appointed before July 1, 2018, the term of service for that director may continue through the end



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11 of his or her current term. The vacancy created by the
12 expiration of such term must be filled pursuant to the
13 procedures and requirements of this section.

14 (c) The bylaws of the institute shall be amended
15 accordingly by the board of directors to reflect the
16 requirements of this section.

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to the Florida Capital Formation Act;
 3 amending s. 20.60, F.S.; deleting the requirement that
 4 the Department of Economic Opportunity manage certain
 5 activities related to the commercialization of
 6 specified products, services, and ideas; specifying
 7 that the Institute for Commercialization of Florida
 8 Technology is not an appropriate direct-support
 9 organization; amending s. 288.9621, F.S.; including s.
 10 288.96255, F.S., in the Florida Capital Formation Act;
 11 amending s. 288.9622, F.S.; revising legislative
 12 intent; amending s. 288.9623, F.S.; defining terms;
 13 amending s. 288.9625, F.S.; redesignating the
 14 Institute for the Commercialization of Public Research
 15 as the Institute for Commercialization of Florida
 16 Technology; deleting provisions regarding the
 17 institute's responsibilities; requiring that the
 18 investment-related affairs of the institute be managed
 19 by the private fund manager and overseen by the board
 20 of directors; restructuring the board of directors and
 21 the selection process for the board of directors;
 22 specifying term limits of the board members under
 23 certain circumstances; requiring the board of
 24 directors to amend the bylaws of the institute under
 25 certain circumstances; providing that a director is
 26 subject to restrictions on certain conflicts of
 27 interest; prohibiting a director from having a
 28 financial interest in certain investments; authorizing
 29 a director to be reimbursed for certain expenses;

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30 granting the institute certain powers; requiring the
 31 institute to indemnify certain persons; delegating
 32 certain duties to the board of directors; revising to
 33 whom the board must provide a copy of the annual
 34 report and who may require and receive supplemental
 35 data relative to the institute's operation; specifying
 36 that certain requirements be met before the private
 37 fund manager is authorized to make an investment in a
 38 company, on behalf of the institute; deleting
 39 provisions relating to certain duties of the
 40 institute; deleting provisions relating to certain
 41 fees charged by the institute and the prohibition on
 42 using capital in support of certain entities;
 43 specifying that the annual report is considered a
 44 public record subject to certain exemptions; revising
 45 the requirements of the institute's annual report;
 46 listing requirements and prohibitions for the private
 47 fund manager; stating the purpose of the institute's
 48 use of the private fund manager; requiring the private
 49 fund manager to assume the management of certain
 50 assets; authorizing the private fund manager to act on
 51 behalf of the institute for certain purposes;
 52 requiring that the private fund manager be paid
 53 certain fees; authorizing the private fund manager to
 54 undertake certain activities on behalf of the
 55 institute; requiring the private fund manager to issue
 56 an annual report to the board of directors by a
 57 specific date; specifying that the annual report is
 58 considered a public record subject to certain

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59 exemptions; requiring that the report contain certain
 60 information; amending s. 288.96255, F.S.; requiring
 61 that certain proceeds be returned to the Florida
 62 Technology Seed Capital Fund after the payment of
 63 certain costs and fees; requiring the institute to
 64 employ a private fund manager; requiring the private
 65 fund manager to perform specific duties; requiring
 66 that the private fund manager receive certain fees and
 67 costs at a specified time; requiring the private fund
 68 manager to use a certain process to evaluate a
 69 proposal; requiring the private fund manager to
 70 consider certain factors when approving a company for
 71 investment; deleting specific requirements for the
 72 investment of funds; authorizing the private fund
 73 manager, in addition to the institute, to perform
 74 certain tasks; amending s. 288.9627, F.S.; conforming
 75 provisions to changes made by this act; providing an
 76 effective date.

77
 78 Be It Enacted by the Legislature of the State of Florida:

79
 80 Section 1. Paragraph (e) of subsection (4) and paragraph
 81 (b) of subsection (9) of section 20.60, Florida Statutes, are
 82 amended to read:

83 20.60 Department of Economic Opportunity; creation; powers
 84 and duties.—

85 (4) The purpose of the department is to assist the Governor
 86 in working with the Legislature, state agencies, business
 87 leaders, and economic development professionals to formulate and

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88 implement coherent and consistent policies and strategies
 89 designed to promote economic opportunities for all Floridians.
 90 To accomplish such purposes, the department shall:

91 (e) Manage the activities of public-private partnerships
 92 and state agencies in order to avoid duplication and promote
 93 coordinated and consistent implementation of programs in areas
 94 including, but not limited to, tourism; international trade and
 95 investment; business recruitment, creation, retention, and
 96 expansion; minority and small business development; rural
 97 community development; ~~commercialization of products, services,~~
 98 ~~or ideas developed in public universities or other public~~
 99 ~~institutions;~~ and the development and promotion of professional
 100 and amateur sporting events.

101 (9) The executive director shall:

102 (b) Serve as the manager for the state with respect to
 103 contracts with Enterprise Florida, Inc., ~~the Institute for the~~
 104 ~~Commercialization of Public Research,~~ and all applicable direct-
 105 support organizations. To accomplish the provisions of this
 106 section and applicable provisions of chapter 288, and
 107 notwithstanding the provisions of part I of chapter 287, the
 108 director shall enter into specific contracts with Enterprise
 109 Florida, Inc., ~~the Institute for the Commercialization of Public~~
 110 ~~Research,~~ and other appropriate direct-support organizations.
 111 Such contracts may be for multiyear terms and must ~~shall~~ include
 112 specific performance measures for each year. For purposes of
 113 this section, the Florida Tourism Industry Marketing Corporation
 114 and the Institute for Commercialization of Florida Technology
 115 are not is not an appropriate direct-support organizations
 116 organization.

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117 Section 2. Section 288.9621, Florida Statutes, is amended
118 to read:

119 288.9621 Short title.—Sections 288.9621-288.9625 Sections
120 ~~288.9621-288.9625~~ may be cited as the "Florida Capital Formation
121 Act."

122 Section 3. Section 288.9622, Florida Statutes, is amended
123 to read:

124 288.9622 Findings and intent.—

125 (1) The Legislature finds and declares that there is a need
126 to increase the availability of seed capital and early stage
127 investment venture equity capital for emerging companies in the
128 state, including, without limitation, businesses enterprises in
129 life sciences, information technology, advanced manufacturing
130 processes, aviation and aerospace, and homeland security and
131 defense, as well as other industries of strategic importance to
132 this state strategic technologies.

133 (2) It is the intent of the Legislature that ss. 288.9621-
134 288.96255 ss. 288.9621-288.9625 serve to mobilize private
135 investment in a broad variety of ~~venture capital~~ partnerships in
136 diversified industries and geographies; retain private sector
137 investment criteria focused on rate of return; allow the use the
138 services of highly qualified private fund managers experienced
139 in the seed and early stage development industry in this state;
140 and outline the use, qualifications, and activities of the
141 private management by a private fund manager of the assets of
142 the Seed Capital Accelerator Program and the Florida Technology
143 Seed Capital Fund investment portfolio of the Institute for
144 Commercialization of Florida Technology venture capital industry
145 regardless of location; facilitate the organization of the

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146 ~~Florida Opportunity Fund as an investor in seed and early stage~~
147 ~~businesses, infrastructure projects, venture capital funds, and~~
148 ~~angel funds; and precipitate capital investment and extensions~~
149 ~~of credit to and in the Florida Opportunity Fund.~~

150 (3) It is the intent of the Legislature to mobilize
151 investment venture equity capital ~~for investment~~ in such a
152 manner as to result in a significant potential to create new
153 businesses and jobs in this state which that are based on high
154 growth potential technologies, products, or services and which
155 that will further diversify the economy of this state.

156 (4) It is the intent of the Legislature to reduce the
157 ongoing operational cost and burden of managing the Florida
158 Technology Seed Capital Fund and the Seed Capital Accelerator
159 Program to this state by engaging a private asset management
160 entity in this state which is familiar with the seed and early
161 stage investment industry in this state. This entity would be
162 responsible for the management of the assets of the Seed Capital
163 Accelerator Program and the Florida Technology Seed Capital Fund
164 investment portfolio without requiring ongoing budget
165 expenditures by this state that an institute be created to
166 mentor, market, and attract capital to such commercialization
167 ventures throughout the state.

168 Section 4. Section 288.9623, Florida Statutes, is amended
169 to read:

170 288.9623 Definitions.—As used in ss. 288.9621-288.96255,
171 the term ss. 288.9621-288.9625:

172 (1) "Accelerator program" means the Seed Capital
173 Accelerator Program managed by the institute.

174 (2) ~~(1)~~ "Board" means the board of directors of the Florida

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175 Opportunity Fund.

176 ~~(3)(2)~~ "Fund" means the Florida Opportunity Fund.177 (4) "Institute" means the Institute for Commercialization
178 of Florida Technology.179 (5) "Investment portfolio" means individual or collective
180 investment assets held under the technology fund.181 (6) "Net profits" means the total gross proceeds received
182 from the sale or liquidation of an asset of the investment
183 portfolio less any costs, legal fees, professional fees,
184 consulting fees, government fees, brokerage fees, taxes,
185 management fees pursuant to s. 288.9625(12)(b), disbursement to
186 private investors pursuant to s. 288.96255(6), or other fees,
187 costs, and expenses incurred in the sale or liquidation of any
188 of the investment portfolio assets.189 (7) "Portfolio companies" means the companies who are part
190 of the Florida Technology Seed Capital Fund investment
191 portfolio.192 (8) "Private fund manager" means the private entity, or its
193 designee, selected to manage the investment portfolio on behalf
194 of the institute.195 (9) "Technology fund" means the Florida Technology Seed
196 Capital Fund managed by the institute.197 Section 5. Section 288.9625, Florida Statutes, is amended
198 to read:199 288.9625 Institute for ~~the~~ Commercialization of Florida
200 Technology Public Research.—There is established at a ~~public~~
201 ~~university or research center~~ in this state the Institute for
202 ~~the~~ Commercialization of Florida Technology Public Research.203 (1) The institute shall be a nonprofit ~~not-for-profit~~

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204 corporation registered, incorporated, and operated in accordance
205 with chapter 617.206 (2) The purpose of the institute is to assist in the
207 commercialization of products developed by the research and
208 development activities of an innovation business, including, but
209 not limited to, those ~~as defined in s. 288.1089, a publicly~~
210 ~~supported college, university, or research institute, or any~~
211 ~~other publicly supported organization in this state.~~ The
212 institute shall fulfill its purpose in the best interests of the
213 state. The institute:214 (a) Is a corporation primarily acting as an instrumentality
215 of the state pursuant to s. 768.28(2), for the purposes of
216 sovereign immunity;

217 (b) Is not an agency within the meaning of s. 20.03(11);

218 (c) Is subject to the open records and meetings
219 requirements of s. 24, Art. I of the State Constitution, chapter
220 119, and s. 286.011;221 (d) Is not subject to ~~the provisions of~~ chapter 287;222 (e) ~~Is~~ shall be governed by the code of ethics for public
223 officers and employees as set forth in part III of chapter 112;
224 and225 (f) May create corporate subsidiaries, ~~+~~226 ~~(g) Shall support existing commercialization efforts at~~
227 ~~state universities, and~~228 ~~(h) May not supplant, replace, or direct existing~~
229 ~~technology transfer operations or other commercialization~~
230 ~~programs, including incubators and accelerators.~~231 (3) The articles of incorporation of the institute must be
232 approved in a written agreement with the department. The

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233 ~~agreement and the articles of incorporation shall:~~

234 (a) Provide that the institute shall provide equal
235 employment opportunities for all persons regardless of race,
236 color, religion, gender, national origin, age, handicap, or
237 marital status;

238 (b) Provide that the institute is subject to the public
239 records and meeting requirements of s. 24, Art. I of the State
240 Constitution;

241 (c) Provide that all officers, directors, and employees of
242 the institute are ~~shall be~~ governed by the code of ethics for
243 public officers and employees as set forth in part III of
244 chapter 112;

245 (d) Provide that members of the board of directors of the
246 institute are responsible for the prudent use of all public and
247 private funds and that they will ensure that the use of funds is
248 in accordance with all applicable laws, bylaws, and contractual
249 requirements; and

250 (e) Provide that the fiscal year of the institute is from
251 July 1 to June 30.

252 (4) The investment-related affairs of the institute shall
253 be managed by the private fund manager, and overseen by a board
254 of directors who shall serve without compensation. Each director
255 shall have only one vote. The chair of the board of directors
256 shall be selected by a majority vote of the directors, a quorum
257 being present. ~~The board of directors shall consist of the~~
258 ~~following five members:~~

259 ~~(a) The executive director of the department, or the~~
260 ~~director's designee.~~

261 ~~(b) The president of the university where the institute is~~

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262 ~~located or the president's designee unless multiple universities~~
263 ~~jointly sponsor the institute, in which case the presidents of~~
264 ~~the sponsoring universities shall agree upon a designee.~~

265 (a)(e) The board of directors shall consist of three
266 directors appointed by the Governor to 3-year staggered terms,
267 to which the directors may be reappointed.

268 (b) If there is any change to the number of directors by an
269 amendment to the Florida Capital Formation Act:

270 1. The term and service for a director appointed by the
271 Governor must continue through the end of his or her current
272 term as of the effective date of the amendment;

273 2. The term and service for a director not appointed by the
274 Governor and who has served on the board of directors in excess
275 of 3 years must cease and terminate as of the effective date of
276 the amendment; and

277 3. The bylaws of the institute shall be amended accordingly
278 by the board of directors.

279 (c) Upon vacancy, or within 90 days before an anticipated
280 vacancy by the expiration of a term of a director, the private
281 fund manager shall submit a list of three eligible nominees,
282 which may include the incumbent director, to replace the
283 outgoing director. The board of directors, voting along with the
284 private fund manager, may appoint a director from the nominee
285 list or may request and appoint a director from a new list of
286 three nominees that were not included on the previous list.

287 (d) The persons appointed as replacement directors must
288 include persons who have expertise in the area of the selection
289 and supervision of early stage investment managers or in the
290 fiduciary management of investment funds and other areas of

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291 expertise as considered appropriate.

292 (e) Directors are subject to any restrictions on conflicts
 293 of interest specified in the organizational documents and may
 294 not have a financial interest in any venture capital investment
 295 in any portfolio company.

296 (f) Directors may be reimbursed for all reasonable,
 297 necessary, and actual expenses as determined and approved by the
 298 private fund manager pursuant to s. 112.061.

299 (g) The institute shall have all powers granted under its
 300 organizational documents and shall indemnify its directors and
 301 the private fund manager to the broadest extent permissible
 302 under the laws of this state.

303 (5) The board of directors shall oversee the private fund
 304 manager to ensure consistency with the Florida Capital Formation
 305 Act, to perform those duties as may be delegated to it in the
 306 bylaws of the institute, and to provide a copy of the
 307 institute's annual report to the Governor, the President of the
 308 Senate, and the Speaker of the House of Representatives, and the
 309 president of the university at which the institute is located.

310 (6) ~~The department, the president and the board of trustees~~
 311 ~~of the university where the institute is located, the Auditor~~
 312 ~~General, and the Office of Program Policy Analysis and~~
 313 ~~Government Accountability may require and receive from the~~
 314 ~~institute or its independent auditor any detail or supplemental~~
 315 ~~data relative to the operation of the institute.~~

316 (7) To the extent funds for investment are available in the
 317 technology fund, the private fund manager, on behalf of the
 318 institute, may make an investment in a company or organization
 319 if all of the following requirements are met:

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320 (a) Before providing assistance, the institute accepted ~~To~~
 321 ~~be eligible for assistance,~~ the company or organization
 322 attempting to commercialize its product based on the guidelines
 323 under s. 288.96255(4) ~~must be accepted by the institute before~~
 324 ~~receiving the institute's assistance.~~

325 (b) The company or organization is based in this state
 326 ~~institute shall receive recommendations from any publicly~~
 327 ~~supported organization that a company that is commercializing~~
 328 ~~the research, technology, or patents from a qualifying publicly~~
 329 ~~supported organization should be accepted into the institute.~~

330 ~~(c) The institute shall thereafter review the business~~
 331 ~~plans and technology information of each such recommended~~
 332 ~~company. If accepted, the institute shall mentor the company,~~
 333 ~~develop marketing information on the company, and use its~~
 334 ~~resources to attract capital investment into the company, as~~
 335 ~~well as bring other resources to the company which may foster~~
 336 ~~its effective management, growth, capitalization, technology~~
 337 ~~protection, or marketing or business success.~~

338 ~~(8) The institute shall:~~

339 ~~(a) Maintain a centralized location to showcase companies~~
 340 ~~and their technologies and products;~~

341 ~~(b) Develop an efficient process to inventory and publicize~~
 342 ~~companies and products that have been accepted by the institute~~
 343 ~~for commercialization;~~

344 ~~(c) Routinely communicate with private investors and~~
 345 ~~venture capital organizations regarding the investment~~
 346 ~~opportunities in its showcased companies;~~

347 ~~(d) Facilitate meetings between prospective investors and~~
 348 ~~eligible organizations in the institute;~~

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349 ~~(e) Hire full-time staff who understand relevant~~
 350 ~~technologies needed to market companies to the angel investors~~
 351 ~~and venture capital investment community; and~~

352 ~~(f) Develop cooperative relationships with publicly~~
 353 ~~supported organizations all of which work together to provide~~
 354 ~~resources or special knowledge that is likely to be helpful to~~
 355 ~~institute companies.~~

356 (8)(9) Except as provided under s. 288.96255, the institute
 357 may not develop or accrue any ownership, royalty, patent, or
 358 other such rights over or interest in companies or products in
 359 the institute except in connection with financing provided
 360 directly to client companies and shall maintain the
 361 confidentiality of proprietary information.

362 ~~(10) The institute may not charge for services provided to~~
 363 ~~state universities and affiliated organizations, community~~
 364 ~~colleges, or state agencies; however, the institute may deliver~~
 365 ~~and charge for services to private companies and affiliated~~
 366 ~~organizations if providing a service does not interfere with the~~
 367 ~~core mission of the institute. The institute may not use its~~
 368 ~~capital in support of private companies or affiliated~~
 369 ~~organizations whose products were not developed by research and~~
 370 ~~development activities of a publicly supported college,~~
 371 ~~university, or research institute, or any other organization.~~

372 (9)(11) By December 1 of each year, the institute shall
 373 issue an annual report concerning its activities to the
 374 Governor, the President of the Senate, and the Speaker of the
 375 House of Representatives. The annual report shall be considered
 376 a public record, as provided in paragraph (3) (b), subject to any
 377 appropriate exemptions under s. 288.9627. The annual report must

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378 ~~shall~~ include the following:

379 (a) Information on any assistance provided by the institute
 380 to an innovation business, as defined in s. 288.1089; ~~a publicly~~
 381 ~~supported college, university, or research institute; or any~~
 382 ~~other publicly supported organization in the state.~~

383 (b) A description of the benefits to this state resulting
 384 from the institute, including the number of businesses created,
 385 associated industries started, the number of jobs created, and
 386 the growth of related projects.

387 (c) Independently audited financial statements, including
 388 statements that show receipts and expenditures during the
 389 preceding fiscal year for personnel, management fees,
 390 administration, and operational costs of the institute.

391 (10) The private fund manager:

392 (a) Must be a for-profit limited liability company or a
 393 for-profit corporation formed, governed, and operated in
 394 accordance with chapter 605 or chapter 607, respectively.

395 (b) Shall conduct activities on behalf of the institute
 396 which are consistent with the purposes set forth in this
 397 section.

398 (c) Must have expertise and experience in the management
 399 and operation of early stage companies in this state.

400 (d) Must have experience with investment in early stage
 401 ventures in this state and have a working knowledge and
 402 understanding of the investment portfolio and the relevant
 403 industries of the portfolio companies in this state.

404 (e) Shall employ personnel and professionals who have
 405 knowledge of the investment portfolio and portfolio companies of
 406 the institute, as well as financial, technical, and business

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407 expertise to manage the technology fund activity.
 408 (f) May not be a public corporation or instrumentality of
 409 the state.
 410 (g) Is not a corporation primarily acting as an
 411 instrumentality of the state pursuant to s. 768.28(2), for the
 412 purposes of sovereign immunity.
 413 (h) Is not an agency within the meaning of s. 20.03(11).
 414 (i) Is not subject to chapter 287.
 415 (j) May not be governed by the code of ethics for public
 416 officers and employees as set forth in part III of chapter 112.
 417 (11) The purpose of the institute's use of a private fund
 418 manager is to alleviate the state's burden of the continued and
 419 future operational and management costs related to the
 420 technology fund and accelerator program, while allowing the
 421 institute, through the activities of the private fund manager,
 422 to continue to foster greater private-sector investment funding,
 423 to encourage seed-stage investments in startup and early stage
 424 companies, and to advise companies about how to restructure
 425 existing management, operations, product development, or service
 426 development to attract advantageous business opportunities.
 427 (12) The private fund manager shall assume the management
 428 of the assets of the accelerator program and the technology fund
 429 investment portfolios associated with the institute.
 430 (a) The private fund manager has the authority on behalf of
 431 the institute to:
 432 1. Negotiate investment, sale, and liquidation terms with
 433 portfolio and nonportfolio companies;
 434 2. Develop and execute contracts, or amendments thereto,
 435 with portfolio and nonportfolio companies;

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

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436 3. Seek new qualified companies for the investment of funds
 437 from the technology fund;
 438 4. Receive, on behalf of the institute, investment capital
 439 from the sale or liquidation of any portion of the investment
 440 portfolio, loan proceeds, or other investment returns, and remit
 441 such capital, proceeds, and returns to the technology fund
 442 pursuant to s. 288.96255, except as otherwise provided in this
 443 section and s. 288.96255; and
 444 5. Perform additional duties set forth in s. 288.96255.
 445 (b) The private fund manager shall be paid reasonable fees
 446 consistent with industry fund management practices and
 447 consisting of:
 448 1. An operational management fee, including the
 449 reimbursement of expenses, paid from the proceeds of the
 450 repayment of loans from the accelerator program or other
 451 capital, proceeds, and returns available in the technology fund;
 452 2. A portfolio fee paid from the proceeds of each sale or
 453 liquidation of assets or portions of the assets of the
 454 investment portfolio; and
 455 3. A closing fee paid from the investment amount paid by
 456 the technology fund to a company at the closing of each
 457 investment.
 458 (13) The private fund manager may undertake the following
 459 activities on behalf of the institute:
 460 (a) Mentor, assist with the development of marketing
 461 information, and assist with attracting capital investment, as
 462 well as bring other resources to the company which may foster
 463 its effective management, growth, capitalization, technology
 464 protection, or marketing or business success;

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465 (b) Communicate with private investors and venture capital
 466 organizations regarding investment opportunities in the
 467 portfolio companies of the technology fund and accelerator
 468 program;

469 (c) Facilitate meetings between prospective investors and
 470 the companies; and

471 (d) Develop cooperative relationships with publicly
 472 supported organizations that work together to provide resources
 473 or special knowledge likely to be helpful to portfolio
 474 companies.

475 (14) By November 1 of each year, the private fund manager
 476 shall issue an annual report to the board of directors of the
 477 institute concerning the activities the private fund manager
 478 conducted which relate to existing accelerator program and
 479 technology fund investments in order for the board to be in
 480 compliance with its report obligations under subsection (9). The
 481 annual report provided by the private fund manager shall be
 482 considered a public record, as provided in paragraph (3) (b),
 483 subject to any appropriate exemptions under s. 288.9627. The
 484 annual report, at a minimum, must include:

485 (a) A description of the benefits to this state resulting
 486 from the assets of the accelerator program and technology fund,
 487 including the number of jobs created, the amount of capital the
 488 companies raised, and other benefits relating to increased
 489 research expenditures and company growth.

490 (b) Independently audited financial statements related to
 491 the receipt and calculation of the net profits of the investment
 492 portfolio.

493 Section 6. Subsection (1) and subsections (3) through (7)

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494 of section 288.96255, Florida Statutes, are amended to read:

495 288.96255 Florida Technology Seed Capital Fund; creation;
 496 duties.-

497 (1) The Institute for ~~the~~ Commercialization of Florida
 498 Technology Public Research shall create the Florida Technology
 499 Seed Capital Fund as a corporate subsidiary. The purpose of the
 500 technology fund is to foster greater private-sector investment
 501 funding, to encourage seed-stage investments in start-up
 502 companies, and to advise companies about how to restructure
 503 existing management, operation, or production to attract
 504 advantageous business opportunities. The net profits of the
 505 proceeds of each sale or liquidation of assets or portions of
 506 the assets of the investment portfolio must a sale of the equity
 507 held by the fund shall be returned to the technology fund for
 508 reinvestment after payment of the applicable costs, professional
 509 fees, expenses, fees pursuant to s. 288.9625(12) (b), and
 510 disbursement to private investors pursuant to paragraph (6) (e).

511 (3) The institute shall employ a private fund manager
 512 pursuant to s. 288.9625 professionals who have both technical
 513 and business expertise to manage the investment portfolio and
 514 technology fund activity. The private fund manager institute
 515 shall establish an investor advisory board comprised of venture
 516 capital professionals and early stage investors from this and
 517 other states who shall advise the institute and guide the fund
 518 management of the technology fund and make funding
 519 recommendations, provided that capital for investment is
 520 available in the technology fund. The private fund manager shall
 521 receive reasonable fees consistent with industry practices for
 522 performing due diligence and an investment closing fee paid out

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523 of the technology fund at the closing of each investment in
 524 addition to reasonable attorney fees, other fees prescribed in
 525 s. 288.9625(12)(b), and other costs in connection with making an
 526 investment. Administrative costs paid out of the fund shall be
 527 determined by the investor advisory board.

528 (4) The private fund manager institute shall use a thorough
 529 and detailed process that is modeled after investment industry
 530 practices the best practices of the investment industry to
 531 evaluate a proposal. In order to approve a company for
 532 investment, the private fund manager, on behalf of the
 533 institute, must consider if:

534 (a) The company has a strong intellectual property
 535 position, a capable management team, readily identifiable paths
 536 to market or commercialization, significant job-growth
 537 potential, the ability to provide other sources of capital to
 538 leverage the state's investment, and the potential to attract
 539 additional funding;

540 (b) The private fund manager has had an opportunity to
 541 complete due diligence to its satisfaction ~~company has been~~
 542 ~~identified by a publicly funded research institution;~~

543 (c) The ~~start-up~~ company is a target industry business as
 544 defined in s. 288.106(2); and

545 (d) ~~The company has been identified by~~ An approved private-
 546 sector lead investor who has demonstrated due diligence typical
 547 of start-up investments in evaluating the potential of the
 548 company has identified the company. ~~and~~

549 ~~(e) The advisory board and fund manager have reviewed the~~
 550 ~~company's proposal and recommended it.~~

551 (5) ~~(a) Seed Funds~~ from the technology fund may be invested

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552 if the institute approves a company and the initial seed-stage
 553 investment. ~~The initial seed-stage investment must be at least~~
 554 ~~\$50,000, but no more than \$300,000. The initial seed-stage~~
 555 ~~investment requires a one-to-one, private-sector match of~~
 556 ~~investment.~~

557 ~~(b) Additional seed funds may be invested in a company if~~
 558 ~~approved by the institute. The cumulative total of investment in~~
 559 ~~a single company may not exceed \$500,000. Any additional~~
 560 ~~investment amount requires a two-to-one, private-sector match of~~
 561 ~~investment.~~

562 (6) The institute or private fund manager may:

563 (a) Provide a company with value-added support services in
 564 the areas of business plan development and strategy, the
 565 preparation of investor presentations, and other critical areas
 566 identified by the private fund manager institute to increase its
 567 chances for long-term viability and success;

568 (b) Encourage appropriate investment funds to become
 569 preapproved to match investment funds;

570 (c) Market the attractiveness of the state as an early-
 571 stage investment location; ~~and~~

572 (d) Collaborate with state economic-development
 573 organizations, national associations of seed and angel funds,
 574 and other innovation-based associations to create an enhanced
 575 state entrepreneurial ecosystem; ~~and-~~

576 (e) Transfer any portion of the assets of the investment
 577 portfolio, on behalf of the institute, into a private fund or
 578 special purpose vehicle, receive additional private investment
 579 in the private fund or special purpose vehicle, manage the
 580 private fund or special purpose vehicle, and distribute to the

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581 technology fund and the private investors the respective pro
 582 rata portion of any net profits from the sale or liquidation of
 583 the assets of such private fund or special purpose vehicle.

584 ~~(7) The institute shall annually evaluate the activities~~
 585 ~~and results of the funding, taking into consideration that seed~~
 586 ~~investment horizons span from 3 to 7 years.~~

587 Section 7. Section 288.9627, Florida Statutes, is amended
 588 to read:

589 288.9627 Exemptions from public records and public meetings
 590 requirements for the Institute for ~~the~~ Commercialization of
 591 Florida Technology Public Research.-

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

593 (a) "Institute for ~~the~~ Commercialization of Florida
 594 Technology Public Research" or "institute" means the institute
 595 established by s. 288.9625.

596 (b)1. "Proprietary confidential business information" means
 597 information that has been designated by the proprietor when
 598 provided to the institute as information that is owned or
 599 controlled by a proprietor; that is intended to be and is
 600 treated by the proprietor as private, the disclosure of which
 601 would harm the business operations of the proprietor and has not
 602 been intentionally disclosed by the proprietor unless pursuant
 603 to a private agreement that provides that the information will
 604 not be released to the public except as required by law or legal
 605 process, or pursuant to law or an order of a court or
 606 administrative body; and that concerns:

- 607 a. Trade secrets as defined in s. 688.002.
 608 b. Financial statements and internal or external auditor
 609 reports of a proprietor corporation, partnership, or person

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610 requesting confidentiality under this statute, unless publicly
 611 released by the proprietor.

612 c. Meeting materials related to financial, operating,
 613 investment, or marketing information of the proprietor
 614 corporation, partnership, or person.

615 d. Information concerning private investors in the
 616 proprietor corporation, partnership, or person.

617 2. "Proprietary confidential business information" does not
 618 include:

619 a. The identity and primary address of the proprietor's
 620 principals.

621 b. The dollar amount and date of the financial commitment
 622 or contribution made by the institute.

623 c. The dollar amount, on a fiscal-year-end basis, of cash
 624 repayments or other fungible distributions received by the
 625 institute from each proprietor.

626 d. The dollar amount, if any, of the total management fees
 627 and costs paid on an annual fiscal-year-end basis by the
 628 institute.

629 (c) "Proprietor" means a corporation, partnership, or
 630 person that has applied for or received assistance, financial or
 631 otherwise, from the institute and that controls or owns the
 632 proprietary confidential business information.

633 (2) PUBLIC RECORDS EXEMPTION.—

634 (a) The following records held by the institute are
 635 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 636 of the State Constitution:

- 637 1. Materials that relate to methods of manufacture or
 638 production, potential trade secrets, or patentable material

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639 received, generated, ascertained, or discovered during the
640 course of research or through research projects conducted by
641 universities and other publicly supported organizations in this
642 state and that are provided to the institute by a proprietor.

643 2. Information that would identify an investor or potential
644 investor who desires to remain anonymous in projects reviewed by
645 the institute for assistance.

646 3. Any information received from a person from another
647 state or nation or the Federal Government which is otherwise
648 confidential or exempt pursuant to the laws of that state or
649 nation or pursuant to federal law.

650 4. Proprietary confidential business information for 7
651 years after the termination of the institute's financial
652 commitment to the company.

653 (b) At the time any record made confidential and exempt by
654 this subsection, or portion thereof, is legally available or
655 subject to public disclosure for any other reason, that record,
656 or portion thereof, shall no longer be confidential and exempt
657 and shall be made available for inspection and copying.

658 (3) PUBLIC MEETINGS EXEMPTION.—

659 (a) That portion of a meeting of the institute's board of
660 directors at which information is discussed which is
661 confidential and exempt under subsection (2) is exempt from s.
662 286.011 and s. 24(b), Art. I of the State Constitution.

663 (b) Any exempt portion of a meeting shall be recorded and
664 transcribed. The board of directors shall record the times of
665 commencement and termination of the meeting, all discussion and
666 proceedings, the names of all persons present at any time, and
667 the names of all persons speaking. An exempt portion of any

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668 meeting may not be off the record.

669 (c) A transcript and minutes of exempt portions of meetings
670 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
671 I of the State Constitution.

672 (4) REQUEST TO INSPECT OR COPY A RECORD.—

673 (a) Records made confidential and exempt by this section
674 may be released, upon written request, to a governmental entity
675 in the performance of its official duties and responsibilities.

676 (b) Notwithstanding the provisions of paragraph (2)(a), a
677 request to inspect or copy a public record that contains
678 proprietary confidential business information shall be granted
679 if the proprietor of the information fails, within a reasonable
680 period of time after the request is received by the institute,
681 to verify the following to the institute through a written
682 declaration in the manner provided by s. 92.525:

683 1. That the requested record contains proprietary
684 confidential business information and the specific location of
685 such information within the record;

686 2. If the proprietary confidential business information is
687 a trade secret, a verification that it is a trade secret as
688 defined in s. 688.002;

689 3. That the proprietary confidential business information
690 is intended to be and is treated by the proprietor as private,
691 is the subject of efforts of the proprietor to maintain its
692 privacy, and is not readily ascertainable or publicly available
693 from any other source; and

694 4. That the disclosure of the proprietary confidential
695 business information to the public would harm the business
696 operations of the proprietor.

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697 (c)1. Any person may petition a court of competent
698 jurisdiction for an order for the public release of those
699 portions of any record made confidential and exempt by
700 subsection (2).

701 2. Any action under this subsection must be brought in Palm
702 Beach County or Alachua County, and the petition or other
703 initial pleading shall be served on the institute and, if
704 determinable upon diligent inquiry, on the proprietor of the
705 information sought to be released.

706 3. In any order for the public release of a record under
707 this subsection, the court shall make a finding that:

708 a. The record or portion thereof is not a trade secret as
709 defined in s. 688.002;

710 b. A compelling public interest is served by the release of
711 the record or portions thereof which exceed the public necessity
712 for maintaining the confidentiality of such record; and

713 c. The release of the record will not cause damage to or
714 adversely affect the interests of the proprietor of the released
715 information, other private persons or business entities, or the
716 institute.

717 (5) PENALTIES.—Any person who willfully and knowingly
718 violates this section commits a misdemeanor of the first degree,
719 punishable as provided in s. 775.082 or s. 775.083.

720 Section 8. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill #1314**, relating to **Florida Capital Formation Act**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1314

Bill Number (if applicable)

Topic FLORIDA CAPITAL FORMATION

Amendment Barcode (if applicable)

Name LAWRENCE TINKER

Job Title ENTREPRENEUR IN RESIDENCE

Address 410 N MONROE ST. F202

Phone 770-598-2740

Street

Tallahassee FL 32303

City

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing FLORIDA INSTITUTE for the Commercialization of Public Research

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.

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1314

Bill Number (if applicable)

Topic ~~The~~ Florida Capital Formation Act

Amendment Barcode (if applicable)

Name Dr. Jackson Streeter

Job Title CEO - Institute for the Commercialization of Public Research

Address 2714 SW 106th St
Street

Phone (619) 813 6018

Cambridge FL 32609
City State Zip

Email Jackson.Streeter@Florida-Institute.com

Speaking: For Against Information

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

Representing 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.

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 Commerce and Tourism

BILL: SB 1606

INTRODUCER: Senators Taddeo and Gibson

SUBJECT: Film and Television Production

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	McKay	CM	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

SB 1606 creates section 288.1259, F.S. establishing the Florida Motion Picture Capital Corporation (corporation) and the Florida Motion Picture Capital Account (account). The purpose of the corporation is to attract feature film and television productions to the state by using the account to assist with financing. The bill dictates the composition of the corporations' board, its financing application and approval process, formation and guidelines for the account, and production eligibility qualifications. The state cannot be held liable for any claims against the corporation or account.

The corporation is set up to receive both public and private funds, but there is no appropriation of state funds in this bill.

This bill has an effective date of July 1, 2018.

II. Present Situation:

Office of Film and Entertainment

The Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (DEO) develops, markets, promotes, and provides services to Florida's entertainment industry, including serving as a liaison between the industry and government entities and facilitating access to filming locations. The Commissioner of Film and Entertainment must meet certain qualifications and is selected through a national search. The OFE is assisted by the Florida Film and Entertainment Advisory Council (council), which is composed of 17 members, of which seven members are appointed by the Governor, and five members each are appointed by the President of the Senate and the Speaker of the House of Representatives.

The OFE gathers statistical information related to the state's entertainment industry; provides information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities; administers field offices outside the state; and coordinates with regional offices maintained by counties and regions of the state. The OFE is also required to develop a 5-year strategic plan to guide its activities, which is updated on an annual basis and aligns with the DEO's Strategic Plan for Economic Development. The OFE's mission is to build, support, and market the entertainment industry in Florida.

Entertainment Industry Incentive Programs

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program,¹ a 6-year program that began July 1, 2010, and sunset June 30, 2016. The program provided tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits could be applied against the corporate income tax or sales and use taxes. Additionally these tax credits could be transferred or sold one time.²

Over the 6-year period, a total of \$296 million in tax credits were authorized. Annual limitations for tax credits were set at:

- \$53.5 million in Fiscal Year 2010-11;
- \$74.5 million in Fiscal Year 2011-12; and
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.³

The OFE reports that all of the tax credits authorized for the 6-year period have been certified (allocated to certified productions).⁴

Entertainment industry qualified production companies are eligible for several exemptions from taxes under ch. 212, F.S. A qualified production company can obtain a certificate to avoid paying tax at the point of sale, rather than claiming a refund after paying the tax.⁵ Qualified production companies are exempt from paying sales tax for the following:

- *Lease or rental of real property* that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (the term "activity or service" includes photography, casting, location scouting, and designing sets).⁶
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.⁷

¹ Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.

² Also, tax credits may be relinquished to the Department of Revenue for 90 percent of the amount of the relinquished tax credit.

³ Section 288.1254(7), F.S. In 2012, an additional year was added to the program. See s. 15, ch. 2012-32, L.O.F.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).

⁵ Section 288.1258, F.S. See also Department of Revenue, Film in Florida Sales Tax Exemption, available at http://dor.myflorida.com/dor/taxes/film_in_florida.html (last visited February 5, 2018).

⁶ Section 212.031(1)(a)9., F.S.

⁷ Section 212.06(1)(b), F.S., provides a definition of the term "qualified motion picture" for purposes of ch. 212, F.S.

- *Purchase or lease of motion picture and video equipment and sound recording equipment used in Florida for motion picture or television production or for the production of master tapes or master records.*⁸
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*⁹

The OFE reviews and approves applications for the exemptions and the Department of Revenue (DOR) issues certificates of exemption to the production companies.

III. Effect of Proposed Changes:

SB 1606 creates the Florida Motion Picture Capital Corporation (corporation) and the Florida Motion Picture Account (account). The corporation is set up to receive public and private funds, to be used to finance feature film and television productions in the state.

Board of Directors

The bill:

- Requires the formation of a board of directors, granting it powers and duties;
- Requires the board to be made up of seven members populated as follows;
 - Two members with experience in fund management of feature film and television production;
 - Three members that are recognized leaders in the production of feature film and television in the state;
 - One member representing the businesses that supply productions; and
 - One member representing the state’s feature film and television workforce;
- Requires minority and gender representation to be considered in the board member appointment process;
- Requires that the initial board be nominated by the following entities:
 - The presidents of the Florida Venture Forum¹⁰ and the Florida Chamber of Commerce each shall nominate one member;
 - The Governor, President of the Senate, and Speaker of the House each shall nominate a member;
 - The Secretary of the “department” shall nominate a member; and
 - The chair of the Congress of Motion Picture Associations¹¹ of Florida shall nominate a member;
- Requires the three year terms of members to be staggered;
- Allows board members to be reappointed;
- Requires board vacancies to be filled within 30 days of the vacancy; and
- Holds board members responsible to the Code of Ethics for Public Officers and Employees as set forth in part III of chapter 112, F.S.

Definitions and Exclusions

⁸ Section 212.08(5)(f), F.S.

⁹ Section 212.08(12), F.S.

¹⁰ The Florida Venture Forum is a membership organization that assists entrepreneurs with education, strategic planning, and networking in order to improve their fund raising. <http://www.flventure.org/> (last visited February 5, 2018).

¹¹ Congress of Motion Picture Associations represents individuals that work in the feature film and television industry. <http://compassflorida.org/> (last visited February 5, 2018).

The bill:

- Defines high-wage jobs, in-state expenditures, television, and productions; and
- Excludes commercials, infomercials, political advertisements, reality shows, music videos, game shows, award shows, sporting events, educational programming, pornographic productions, and gambling-related productions from benefiting from the financing available through the corporation;

Board Bylaws Requirement

The bill authorizes the corporation to provide financing according to adopted bylaws that must:

- Favor applications that will generate the greatest economic impact to the state;
- Disallow financing to exceed the in-state expenditures of a production;
- Require that the corporation's investment in a production share the highest priority with other preferred shareholders;
- Require that financing must be less than one-half of the cost of the production's total shares;
- Limit financing for each accepted production to 12.5 percent of the total funds available in the account or less;
- Limit the corporation from having any creative and managerial rights over the productions it funds;
- Require the corporation to establish variable limits on returns, accounting for time value, and reduce returns in exchange for an early buyout;
- Require the corporation to establish an application process and have two application periods per fiscal year; and
- Limit funds for one production to 40 percent or less of the total funds available in the account, per application period.

Florida Motion Picture Capital Account

The Florida Motion Picture Capital Account shall be under the exclusive control of the board.

The account is approved to accept state, federal, and local public funding as well as private funding. The account funds may be invested when not allocated and the dividends redeposited into the account. The corporation shall keep their operating expense as low as possible.

Appropriations explicitly made for operating costs and net financial investment returns made be used to fund the corporation's operating costs.

The state cannot be held liable for any claims against the account or corporation.

The President of the Florida Motion Picture Capital Corporation

The President shall be appointed by the board and have financing of feature film and television experience. The president serves at the pleasure of the board, administering corporation programs and submitted annual budgets. The president may hire a staff. The president's salary and benefits will be determined by the board.

Funding Application Requirements

The bill requires productions applying for funding to have:

- A bonded third-party collection account management firm;
- A sales estimate from an established, qualified sales agency;
- An insurance package rated "A" or higher by A.M. Best Company;

- Proof of funds and their remaining budget in escrow;
- A lead producer with experience on five feature films, or a completion bond;
- A budget, script, and filming schedule approved by a production expert as selected by the board;
- Right of the board to inspect and audit weekly cost reports and general ledger; and
- Contingency funds of at least five percent of the productions total budget.

Funding Preferences and Release

The bill requires funding preference to be given to:

- Productions that will generate the greatest comparative economic impact for the state;
- Productions whose proposed financing has corporation funds as the smallest percentage of their overall financing;
- Productions that will have in-state expenditures begin the soonest;
- Productions by companies with a verifiable track record of success;
- Productions by companies based in this state or that are produced, written, or directed by a Florida resident;
- Productions that are expected to significantly increase tourism;
- Productions with recognized creative talent; and
- Productions that have local funding matches.

After funding of a production has been approved the corporation must release the funds in the following manner:

- Fifty percent of funds on the first day of principle photography;
- Twenty-five percent of funds upon completion of principal photography; and
- Twenty-five percent of funds after final picture lock, as the term is understood in the industry.

Public Notice of Financing

When the corporation executes a contract it must notify the department, unidentified in the bill, and maintain a copy of that notice on their website as long as the financing is outstanding. The notice must include a description of the production, name of the production company, names of the creative talent, and the transportation coordinator.

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:

Indeterminate.

C. Government Sector Impact:

It is unclear what, if any, impact this may have on state agencies including the unidentified department referred to in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill details, in lines 260 – 279, how the initial board of directors are to be nominated. It does not then clarify if those specifications are to be followed continuously, and if not, what guidelines should be followed. It appears that lines 280-284 are intended to apply only to subsequent board appointments, but the language could be clearer.

There is no clear funding of the account. The account is not limited to receiving funds only from the private sector and the bill appears to anticipate receiving state appropriations.

The bill refers to the department without identifying which department, except in the title.

There are no audits required of the corporation or account, leaving little to no oversight from the state.

The bill does not require the Public Records Act, in ch. 119, F.S., to apply to the corporation or account. In SB 1604, a linked bill, financing applicants are afforded public records exemptions. The Legislature may wish to consider whether an entity that may be receiving and spending state funds should be subject to the Public Records Act.

The board is given the ability to set the salary and benefits of the president without any standards or limits, lines 342-343, and potentially using state funds.

VIII. Statutes Affected:

This bill creates section 288.1259 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 Taddeo

40-01128-18

20181606__

1 A bill to be entitled
 2 An act relating to film and television production;
 3 creating s. 288.1259, F.S.; defining terms;
 4 establishing the Florida Motion Picture Capital
 5 Corporation to encourage the use of this state as a
 6 site for scripted productions by providing financing
 7 to certain productions; providing powers of the
 8 corporation; requiring the board of directors to adopt
 9 specified criteria for evaluating a financing
 10 application; requiring the production to use a bonded
 11 third-party collection account management firm;
 12 requiring that certain presales or sales estimates
 13 meet a specified minimum value; requiring a production
 14 to carry an insurance package meeting certain
 15 standards; requiring a production to provide certain
 16 proof of funds within a specified period; requiring
 17 the lead producer or production company to have a
 18 specified sales record or provide a completion bond;
 19 requiring that certain items be evaluated and approved
 20 by a production expert selected by the board;
 21 requiring the production budget to include a certain
 22 amount of contingency funds; providing for the release
 23 of corporation funds according to a specified
 24 schedule; requiring the board to approve the
 25 expenditure of certain contingency funds; requiring
 26 the board to release corporation funds to a production
 27 in a specified manner; requiring the production
 28 company to allow the board to inspect and audit
 29 certain reports and ledgers within a certain

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

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30 timeframe; requiring the board to give preference to
 31 productions that meet specified criteria; authorizing
 32 the corporation to charge certain fees; requiring the
 33 board to be composed of certain members; providing for
 34 the appointment of the initial board, terms for the
 35 board, and guidelines for the board; prohibiting a
 36 board member from discussing certain pending
 37 applications with applicants outside of a board
 38 meeting for a specified period; requiring a board
 39 member to serve without compensation; authorizing the
 40 board members to be reimbursed for certain expenses;
 41 requiring the board to adopt bylaws, rules, and
 42 policies before the expenditure of funds; requiring
 43 the board to hold regularly scheduled meetings;
 44 requiring the board to create the Florida Motion
 45 Picture Capital Account and maintain exclusive control
 46 of the account; authorizing the board to deposit funds
 47 with certain institutions and to invest certain funds
 48 in permissible securities; requiring that certain
 49 dividend payments be redeposited in the account for a
 50 specified purpose; requiring that the corporation's
 51 operating expenses be kept to a minimum and funded by
 52 appropriations and certain net returns; requiring that
 53 a claim against the account be solely paid from the
 54 account; requiring the board to appoint a president
 55 who meets specified criteria; providing the powers and
 56 duties of the president; requiring the corporation to
 57 provide certain notice of financing contracts or
 58 agreements to the Department of Economic Opportunity

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

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59 and on the corporation's website for a specified
60 period of time; requiring that the notice include
61 specified information; providing an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Section 288.1259, Florida Statutes, is created
66 to read:

67 288.1259 Florida Motion Picture Capital Corporation.—

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

69 (a) "Account" means the Florida Motion Picture Capital
70 Account.

71 (b) "Board" means the corporation's board of directors.

72 (c) "Corporation" means the Florida Motion Picture Capital
73 Corporation.

74 (d) "High-wage jobs" are jobs that pay at least 120 percent
75 of the median wage for the arts, design, entertainment, sports,
76 and media occupations category as determined by the most recent
77 State Occupational Employment and Wage Estimates for this state
78 published by the United States Department of Labor's Bureau of
79 Labor Statistics.

80 (e) "In-state expenditures" means the costs of tangible
81 property used in this state and services performed by residents
82 of this state for a scripted production, including preproduction
83 and postproduction, but excluding costs for development,
84 marketing, and distribution.

85 (f) "President" means the chief executive officer of the
86 corporation.

87 (g) "Scripted production" or "production" means a feature

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88 film at least 70 minutes in length, whether produced for
89 theatrical, television, or direct-to-video release; a television
90 series created to run multiple seasons having an order for
91 distribution of at least five episodes; or a miniseries, which
92 is produced predominately from a written screenplay or teleplay.
93 The term does not include a commercial, an infomercial, or a
94 political advertisement; a reality show; a game show; an awards
95 show; a music video; an industrial or educational film; a
96 weather or market program; a sporting event or sporting event
97 broadcast; a gala; a production that solicits funds; a home
98 shopping program; a political program; a documentary; a
99 gambling-related production; a concert production; a local,
100 regional, or Internet-distributed-only news show or current-
101 events show; a sports news or sports recap show; a video game; a
102 pornographic production; or any production deemed obscene under
103 chapter 847.

104 (h) "Television" includes broadcast, cable, and Internet
105 television.

106 (2) CORPORATION.—The Florida Motion Picture Capital
107 Corporation is created as a nonprofit corporation, to be
108 incorporated under chapter 617 and approved by the Department of
109 State. The corporation shall be organized on a nonstock basis.
110 The purpose of the corporation is to encourage the use of this
111 state as a site for scripted productions by providing financing
112 to such productions.

113 (3) POWERS AND LIMITATIONS.—

114 (a) The corporation is authorized to provide financing to
115 scripted productions in this state pursuant to the criteria,
116 bylaws, rules, and policies adopted by the board, which must

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117 include the following:

118 1. The corporation shall provide financing to productions
119 that it estimates will generate the greatest economic impact to
120 this state.

121 2. The amount of financing provided to a production must
122 not exceed the amount of the production's in-state expenditures
123 for that production.

124 3. The financing provided to a production must rank and
125 remain pari passu with the highest class of ownership in the
126 production, such that, in the event of liquidation or
127 bankruptcy, the corporation's investment shares the highest
128 priority with other preferred shareholders.

129 4. Any financing provided under this section must be less
130 than one-half of the cost of the production's total shares or
131 other ownership interest.

132 5. The amount of financing provided to any one production
133 must not exceed 12.5 percent of the sum of the remaining amount
134 of uncommitted funds in the account plus the amounts of all
135 outstanding investments in other productions.

136 6. The corporation may not have any voting rights, creative
137 control, or management authority over a production receiving
138 financing under this section.

139 7. The corporation shall limit the return on its
140 investments by establishing variable limits on returns that
141 account for time value and reduce returns in exchange for a
142 production's early buyout of financing positions. For a
143 production exercising an early buyout, the corporation shall
144 limit its return on investment to the minimum that is
145 actuarially measurable and credible and sufficiently related to

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146 actual and expected losses to ensure the corporation's self-
147 sufficiency and preservation of the state appropriations
148 provided for the investment.

149 8. The corporation shall establish an application process
150 and conduct at least two application periods per fiscal year,
151 providing no more than 40 percent of the total funds in the
152 Florida Motion Picture Capital Account for the fiscal year to
153 productions in any one application period.

154 (b) The board shall adopt objective criteria for evaluating
155 applications for financing scripted productions in this state.

156 1. The criteria must require:

157 a. The production to use a bonded third-party collection
158 account management firm to ensure that the corporation receives
159 all funds due from sales proceeds in accordance with a waterfall
160 agreement included in the corporation's investment terms.

161 b. Presales or sales estimates from a sales agency that has
162 sold at least \$50 million in feature films which are based on
163 the cast and script of the production and which reflect a value
164 of at least 1.5 times the exposure of the corporation.

165 c. The production to carry an insurance package from an
166 insurance company rated "A" or higher by A.M. Best Company which
167 must include general liability insurance, workers' compensation,
168 and key cast and director insurance that covers the costs of
169 disruption or replacement downtime in the event of illness or
170 other loss of services from such individuals. If at least 75
171 percent of the production's filming schedule occurs after June 1
172 and before November 30, the production's insurance package must
173 include hurricane coverage.

174 d. The production to provide proof of funds for the

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175 remaining budget within 60 days after application approval and
 176 place the remaining budget in escrow before the release of
 177 corporation funds.

178 e. That the lead producer or production company has
 179 completed, sold, and delivered at least five feature films, or
 180 the production must provide a completion bond.

181 f. That the production's budget, script, and filming
 182 schedule have been evaluated and approved by a production expert
 183 selected by the board.

184 g. The production budget to include contingency funds in an
 185 amount equal to at least 5 percent of the total budget. Up to 40
 186 percent of the contingency funds may be expended during
 187 production without the approval of the board. The remaining
 188 contingency funds may only be expended with prior approval of
 189 the board.

190 h. The board to release corporation funds to a production
 191 in the following manner:

192 (I) Fifty percent of corporation funds shall be released on
 193 the first day of principal photography.

194 (II) Twenty-five percent of corporation funds shall be
 195 released upon completion of principal photography.

196 (III) Twenty-five percent of corporation funds shall be
 197 released after final picture lock, as that term is generally
 198 understood in the production industry.

199 i. The production company to provide the board with the
 200 right to inspect and audit the weekly cost reports and general
 201 ledger of the production throughout preproduction, production,
 202 and postproduction.

203 2. Preference shall be given to:

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204 a. Productions that will generate the greatest comparative
 205 economic impact for this state. The corporation shall make a
 206 determination of each project's comparative economic impact to
 207 this state by comparing the project budgets submitted during the
 208 application period and determining which projects create the
 209 greatest number of high-wage jobs for state residents and
 210 propose the most significant in-state expenditures as a
 211 percentage of total production expenditures.

212 b. Productions in which the proposed financing by the
 213 corporation is lowest as a percentage of the production's total
 214 shares or other ownership interest.

215 c. Productions with the quickest deployment, in which the
 216 production's in-state expenditures will begin soonest after the
 217 corporation commits to financing.

218 d. Productions by companies with a verifiable track record
 219 in producing successful productions.

220 e. Productions by production companies based in this state
 221 or by producers, writers, or directors who are residents of this
 222 state.

223 f. Productions expected to significantly increase tourism
 224 to the state by using a screenplay or teleplay based on a
 225 Florida story or including recognizable locations in this state.

226 g. Productions whose development demonstrates the
 227 likelihood of success, including, but not limited to, having a
 228 recognized director, actor, or other creative talent attached to
 229 the production.

230 h. Productions in which the corporation's financing is
 231 matched from local sources, including, but not limited to,
 232 county or municipal agencies, local film commissions, or other

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233 community resources.

234 (c) The corporation may charge fees, including, but not
 235 limited to, application fees from productions seeking financing
 236 under this section, but such fees may not exceed the reasonable
 237 estimated cost of the activity for which the fee is charged,
 238 such as the cost of processing an application.

239 (4) BOARD OF DIRECTORS; POWERS AND DUTIES.-

240 (a)1. The board shall consist of seven members who are
 241 permanent residents of this state. Minority and gender
 242 representation must be considered when making appointments to
 243 the board. The board shall be composed of the following:

244 a. Two members who have experience in investment banking
 245 and funds management focused on feature film and television
 246 production.

247 b. Three members who have recent experience and are
 248 recognized leaders in the production of feature films or
 249 television in this state. Such members may include, but are not
 250 limited to, producers, directors, production managers or
 251 supervisors, or similar persons in positions of production
 252 leadership.

253 c. One member who represents businesses that provide
 254 supplies for feature film and television production in this
 255 state, such as small businesses through which productions buy or
 256 rent equipment, house and feed cast and crew, purchase supplies
 257 and raw materials, or build production infrastructure.

258 d. One member who represents this state's feature film and
 259 television workforce.

260 2. The initial board shall be appointed as follows:

261 a. The Florida Venture Forum and the Florida Chamber of

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262 Commerce shall each appoint one member pursuant to sub-
 263 paragraph 1.a.

264 b. The Governor, the President of the Senate, and the
 265 Speaker of the House of Representatives shall each appoint one
 266 member pursuant to sub-subparagraph 1.b.

267 c. The department shall appoint one member pursuant to sub-
 268 paragraph 1.c.

269 d. The Congress of Motion Picture Associations of Florida
 270 shall appoint one member pursuant to sub-subparagraph 1.d.

271
 272 To establish staggered terms, the initial members appointed by
 273 the Florida Chamber of Commerce and the Congress of Motion
 274 Picture Associations of Florida shall be appointed to 1-year
 275 terms; the initial members appointed by the President of the
 276 Senate and the Speaker of the House of Representatives shall be
 277 appointed to 2-year terms; and the initial members appointed by
 278 the Governor, the department, and the Florida Venture Forum
 279 shall be appointed to 3-year terms.

280 3. Board members shall serve for a term of 3 years and are
 281 eligible for reappointment. Vacancies shall be filled by the
 282 board within 30 days after the date of the vacancy. A vacancy
 283 that occurs before the scheduled expiration of the term of a
 284 member shall be filled for the remainder of the unexpired term.

285 (b) Board members are subject to the Code of Ethics for
 286 Public Officers and Employees as set forth in part III of
 287 chapter 112. A board member must abstain from voting and comply
 288 with the disclosure requirements of s. 112.3143 if there appears
 289 to be a possible conflict under s. 112.311, s. 112.313, or s.
 290 112.3143. This paragraph does not prohibit any principal by whom

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291 a board member is retained, as defined in s. 112.3143(1) (a),
 292 from applying for or receiving financing under this section.
 293 (c) A board member must, with respect to an application for
 294 financing which is currently pending before the corporation or
 295 which the board member knows or reasonably expects will be
 296 submitted to the corporation within 180 days, refrain from
 297 commenting on or discussing the application outside of a board
 298 meeting with the applicant or any person retained by the
 299 applicant.
 300 (d) Board members shall serve without compensation but may
 301 be reimbursed in accordance with s. 112.061 for all necessary
 302 expenses in the performance of their duties, including attending
 303 board meetings and conducting board business.
 304 (e) The board shall:
 305 1. Before the expenditure of funds from the Florida Motion
 306 Picture Capital Account, adopt bylaws, rules, and policies that
 307 are necessary to carry out the corporation's responsibilities
 308 under this section.
 309 2. Hold regularly scheduled meetings, at least once per
 310 application period, in order to carry out the objectives and
 311 responsibilities of the board.
 312 (5) ACCOUNT.-
 313 (a) The board shall create the Florida Motion Picture
 314 Capital Account for the purpose of receiving state, federal,
 315 county, municipal, and private financial resources, and the
 316 returns from productions financed by allocations from those
 317 resources, and for the purposes of this section. The account
 318 shall be under the exclusive control of the board.
 319 (b) Appropriations provided to the corporation for

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320 financing productions shall be deposited into the account.
 321 (c) The board may deposit the funds of the account with
 322 state or federally chartered financial institutions in this
 323 state and may invest any funds not allocated to a production
 324 during a fiscal year in permissible securities as described in
 325 s. 560.210(1).
 326 (d) Dividend payments received from the investments made by
 327 the corporation shall be redeposited into the account to be used
 328 for the purposes of this section.
 329 (e) The corporation shall keep its operating expenses to
 330 the minimum amount necessary. Such operating expenses shall be
 331 funded by appropriations provided for that purpose and from net
 332 returns from financing provided under this section.
 333 (f) Any claims against the account shall be paid solely
 334 from the account. Under no circumstances shall the credit of the
 335 state be pledged other than funds appropriated by law to the
 336 account, nor shall the state be liable or obligated in any way
 337 for claims on the account or against the corporation.
 338 (6) PRESIDENT OF THE CORPORATION.-
 339 (a) The board shall appoint a president. The president must
 340 be knowledgeable about private and public financing of feature
 341 film and television projects.
 342 (b) The president shall serve at the pleasure of the board
 343 and shall receive a salary and benefits as fixed by the board.
 344 (c) The president shall administer the programs of the
 345 corporation and perform such duties as delegated by the board.
 346 (d) The president shall provide support staff to the board
 347 as requested.
 348 (e) The president shall submit an annual budget to be

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349 approved by the board.

350 (7) PUBLIC NOTICE OF FINANCING.—The corporation shall
351 notify the department upon final execution of each contract or
352 agreement by which the corporation provides financing to a
353 production. The corporation shall also publish and maintain a
354 copy of the notice on the corporation's website while the
355 financing remains outstanding. To provide adequate notice to the
356 businesses and workforce that supply feature film and television
357 production in this state, the notice must include, but need not
358 be limited to, a brief description of the production, the name
359 of the production company, and, to the extent available, the
360 names of the director, cinematographer, production designer,
361 costume designer, and transportation coordinator.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General
Government
Banking and Insurance
Environmental Preservation and Conservation
Military and Veterans Affairs, Space, and
Domestic Security
Transportation

SENATOR ANNETTE TADDEO
40th District

MEMORANDUM

To: Senator Bill Montford, Chair of the Commerce and Tourism Committee
From: Senator Annette Taddeo
Subject: Committee Agenda Request
Date: January 17, 2018

I respectfully request that **Senate Bill 1606**, relating to Film and Television Production be placed on the:

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

A handwritten signature in black ink, appearing to be "AT" with a stylized flourish above it.

Senator Annette Taddeo
Florida Senate, District 40

REPLY TO:

- 10689 North Kendall Drive, Suite 212, Miami, Florida 33176 (305) 596-3003
- 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

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)

2-6-18

Meeting Date

SB 1606

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Analyst

Address 200 W College Ave

Phone _____

Tallahassee FL

Email _____

City State Zip

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.6.18

Meeting Date

1606

Bill Number (if applicable)

Topic Film & Television Production

Amendment Barcode (if applicable)

Name Sarah Busk

Job Title _____

Address 204 S. Monroe St

Phone 858 222-8900

Street

FLH

FL

32301

City

State

Zip

Email sjb@cardenaspartners.com

Speaking: For Against Information

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

Representing Film 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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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1606

Bill Number (if applicable)

Topic Film of Television

Amendment Barcode (if applicable)

Name Rebecca DeLaRosa

Job Title Legislative Affairs Director

Address 301 N Olive Ave., 1101.3

Phone 850-284-7235

Street

West Palm Beach, FL 33401

Email rdelarosa@pbcgov.org

City

State

Zip

Speaking: For Against Information

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

Representing Palm Beach County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1606

Bill Number (if applicable)

Topic SB 1606 Florida Motion Picture Corp

Amendment Barcode (if applicable)

Name Tyler Martinovich

Job Title Film Commissioner Tampa Bay

Address 201 N Franklin St suite 2900

Phone 813-220-6557

Tampa

FL

33602

City

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing Film Tampa Bay

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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APPEARANCE RECORD

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

2/16/18
Meeting Date

1606
Bill Number (if applicable)

Topic Florida Motion Picture Capital Corp.

Amendment Barcode (if applicable)

Name CHRIS RANONE

Job Title Chair

Address 403 Shamrock Road
Street

Phone 904/806-6369

St. Augustine Florida 32086
City State Zip

Email chrisranone@aol.com

Speaking: For Against Information

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

Representing COMPASS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-6-18

1606

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: For Against Information

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

Representing Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/18

Meeting Date

1606

Bill Number (if applicable)

Topic Film & Television Production

Amendment Barcode (if applicable)

Name Sydney Ridley

Job Title Lobbyist

Address 123 S Adams St

Phone 813 563 4100

Street

TLH

City

FL

State

32801

Zip

Email ridley@sastrategy.com

Speaking: For Against Information

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

Representing Feld Entertainment

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Commerce and Tourism

BILL: SB 1604

INTRODUCER: Senator Taddeo

SUBJECT: Public Records/Florida Motion Picture Capital Corporation

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	McKay	CM	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1604 excludes certain information provided in financing applications to the Florida Motion Picture Capital Corporation created in SB 1606 from the public record requirement codified in ch. 119, F.S. Personal financial records, trade secrets, and proprietary information of individuals applying for production financing would be considered confidential and exempt. The public necessity statement claims that applicants are more likely to apply to the Florida Motion Picture Capital Corporation if in doing so they would not be putting their competitive advantage at risk.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill's effect date is contingent upon, and concurrent with, passage of SB 1606, which will take effect on July 1, 2018.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

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 provides that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[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 public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

² *Id.*

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). 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.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ 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.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

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

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

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

Trade Secrets

A “trade secret” in accordance with s. 812.081(1)(c), F.S., is

“Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.²⁴

III. Effect of Proposed Changes:

SB 1604 excludes certain information provided in financing applications to the Florida Motion Picture Capital Corporation from the public record requirement codified in ch. 119, F.S. Personal financial records, trade secrets, and proprietary information of individuals applying for production financing would be considered confidential and exempt. The public necessity statement claims that applicants are more likely to apply to the Florida Motion Picture Capital Corporation if in doing so they would not be putting their competitive advantage at risk.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill’s effect date is contingent upon, and concurrent with, passage of SB 1606, which will take effect on July 1, 2018.

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

²² FLA. CONST., art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 812.081(1)(c), F.S.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

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

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill provides that personal financial records, trade secrets, and proprietary information is confidential and exempt from s. 119.07(1), 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:

SB 1606 is not correctly identified within the bill.

VII. Related Issues:

The linked substantive bill, SB 1606, does not explicitly subject to the corporation it creates to the Public Records Act in chapter 119, F.S.

VIII. Statutes Affected:

This bill amends s. 288.1259, F.S., as created in SB 1606.

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 Taddeo

40-01129-18

20181604__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 288.1259, F.S.; providing an exemption from public
 4 records requirements for certain application
 5 information submitted to the Florida Motion Picture
 6 Capital Corporation; providing for legislative review
 7 and repeal of the exemption; providing a statement of
 8 public necessity; providing a contingent effective
 9 date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (8) is added to section 288.1259,
 14 Florida Statutes, as created by SB ____, to read:
 15 288.1259 Florida Motion Picture Capital Corporation.—
 16 (8) APPLICATIONS; PUBLIC RECORDS EXEMPTION.—Personal
 17 financial records, trade secrets, and proprietary information of
 18 persons applying for financing for a production are confidential
 19 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 20 Constitution. This subsection is subject to the Open Government
 21 Sunset Review Act in accordance with s. 119.15 and shall stand
 22 repealed on October 2, 2023, unless reviewed and saved from
 23 repeal through reenactment by the Legislature.

24 Section 2. The Legislature finds that it is a public
 25 necessity that personal financial records, trade secrets, and
 26 proprietary information of persons applying for financing by the
 27 Florida Motion Picture Capital Corporation in a production be
 28 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 29 Article I of the State Constitution. If the personal financial

Page 1 of 2

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40-01129-18

20181604__

30 records, trade secrets, and proprietary information of persons
 31 applying for financing were subject to disclosure, a chilling
 32 effect on participation would result. There is a strong
 33 likelihood that productions would choose not to apply for
 34 financing from the Florida Motion Picture Capital Corporation.
 35 Since productions are required to make in-state expenditures as
 36 a condition of receiving such financing, the chilling effect
 37 caused by such disclosure would undermine the public purpose of
 38 the Florida Motion Picture Capital Corporation to encourage this
 39 state to be used as a site for scripted productions and would
 40 consequently result in productions being produced outside of the
 41 state.

42 Section 3. This act shall take effect on the same date that
 43 SB ____ or similar legislation takes effect, if such legislation
 44 is adopted in the same legislative session or an extension
 45 thereof and becomes a law.

Page 2 of 2

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18

Meeting Date

1604

Bill Number (if applicable)

Topic FILM & TELEVISION PRODUCTION

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title ASSOCIATE DIR. OF PUBLIC POLICY

Address 100 N. MONROE ST

Phone _____

Street

TAL

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2-6-2019

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

Meeting Date

SB1606

SB1604

Bill Number (if applicable)

Topic FCA. FILM CAPITAL CORP.

Amendment Barcode (if applicable)

Name JACK HEBERT

Job Title

Address 2801 EXEC. DR. #100

Phone 727-560-3323

Street

CLEARWATER, FL 33762

City

State

Zip

Email jack@themallardgroup.com

Speaking: For Against Information

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

Representing AMERICAN ADVERTISING FEDERATION, 4TH DIST.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

BILL: SM 1658

INTRODUCER: Senator Farmer

SUBJECT: Income Inequality

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Denton</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SM 1658 requests Congress to adopt budgetary and other measures to reduce income inequality. These requests include measures to:

- Modernize and reform personal and corporate income taxes;
- Increase the minimum wage to represent a living wage;
- Adequately fund essential federal government responsibilities identified by the memorial;
- Increase funding to programs that support the unemployed and others in need;
- Increase funding to various education programs and public schools;
- Enact strong legislation to contain health care costs;
- Increase funding to repair and enhance the infrastructure of the United States;
- Adequately fund federal agencies to ensure effective regulation of financial institutions and investment firms; and
- Appoint a special study commission to examine the adequacy of consumer protection.

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

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress upon passage.

II. Present Situation:

United States Economy

The United States economy is the largest in the world with a gross domestic product (GDP) of 18.6 trillion dollars.¹ Despite a dip after the Great Recession, the United States' GDP is on a steady upward trajectory.² In recent years, “the median household income was \$59,039 in 2016, an increase in real terms of 3.2 percent from the 2015 median of \$57,230” which represents the “second consecutive annual increase in median household income.”³ When averaged across all households, income is even higher at \$79,663 in 2016;⁴ in comparison, the mean household income was \$65,527 in 2006.⁵

Wealth Disparity

The most recent Federal Reserve Study of Consumer Finances found that in 2016 the top 1 percent of income earners controlled 38.3 percent of the total wealth, while in 1986 the top 1 percent only controlled approximately 30 percent. In 1989, the bottom 90 percent controlled approximately 34 percent of total wealth; in 2016, that number has dropped to 22.8 percent.⁶ If the share of income going to the bottom 90 percent had not changed since 1989, the “income for the typical household would [be] 18 percent higher, or about \$9,000 per year.”⁷

The Gini index, a statistical measure of income inequality that ranges from 0 (perfect equality) to 1 (complete inequality), has steadily increased from 0.362 in 1967 to a peak of 0.482 in 2013 before dipping slightly to the most recent 0.481 in 2016.⁸ Another way to measure income dispersion is the equivalence-adjusted income estimate, which not only measures income but also takes into account the number of people living in a household and adjusts for economies of scale. According to the US Census Bureau, “for both 2015 and 2016, the Gini index was lower when based on an equivalence adjusted income estimate than on the traditional money-income estimate, suggesting a more equal income distribution.”⁹

¹ The World Bank, *GDP Ranking*, <http://databank.worldbank.org/data/download/GDP.pdf> (last visited Feb. 5, 2018)

² The World Bank, *United States*, <https://data.worldbank.org/country/united-states> (last visited Feb. 5, 2018)

³ United States Census Bureau, *Income and Poverty in the United States: 2016*, <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf> (last visited Feb. 5, 2018)

⁴ United States Census Bureau, *American Fact Finder*, 2012-2016 American Community Survey 5-Year Estimates, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/16_5YR/S1902 (last visited Feb. 5, 2018)

⁵ United States Census Bureau, *American Fact Finder*, 2012-2016 American Community Survey 5-Year Estimates, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/06_EST/S1902 (last visited Feb. 5, 2018)

⁶ Board of Governors of the Federal Reserve System, “Changes in U.S. Family Finances from 2013 to 2016; Evidence from the Survey of Consumer Finances,” *Federal Reserve Bulletin*, Vol. 103, No. 3, (September 2017), page 11, *accessible at* <https://www.federalreserve.gov/publications/files/scf17.pdf> (last visited Feb. 5, 2018)

⁷ Jason Furman, “Structural Challenges and Opportunities in the U.S. Economy (lecture, London School of Economics, November 5, 2014), *accessible at* https://obamawhitehouse.archives.gov/sites/default/files/docs/2014-11-05-lse_jason_furman.pdf (last visited Feb. 5, 2018)

⁸ United States Census Bureau, *Income and Poverty in the United States: 2016*, Table A-2, <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf> (last visited Feb. 5, 2018)

⁹ United States Census Bureau, *Income and Poverty in the United States: 2016*, page 9, <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf> (last visited Feb. 5, 2018)

Recovery from Great Recession

The United States' GDP reached pre-recession levels again by 2011, within 3 years of the crash, and since then has steadily continued to grow. While economist Emmanuel Saez's 2012 research asserted that "top 1% incomes are close to full recovery while bottom 99% incomes have hardly started to recover"¹⁰ from the Great Recession, his 2015 update to this research found that "real incomes of bottom 99% have now recovered about two thirds of the losses experienced during the Great Recession."¹¹ While in 2012 the top 1 percent of earners had captured 95 percent of all income gains since 2009,¹² that number had dropped to 52 percent in 2015.¹³

III. Effect of Proposed Changes:

Policies Requested in Memorial

SM 1658 requests Congress to adopt budgetary and other measures to reduce income inequality.

Tax Reforms

The memorial requests Congress to:

- Modernize and reform personal income taxes to close tax loopholes;
- Simplify the preparation of tax returns;
- Make the payment of taxes less regressive;
- Reform corporate income taxes to ensure that all corporations pay a minimum tax;
- Eliminate offshore tax havens and special interest exemptions; and
- Close tax loopholes.

Minimum Wage

The memorial requests Congress to increase the minimum wage in incremental steps over time so that it represents a living wage.

Public Funding

The memorial requests Congress to:

- Adequately fund essential federal government responsibilities, including public safety, the courts, health care, and programs that ensure the well-being of children and the elderly;
- Provide substantially increased funding to programs that support the unemployed and others in need, including:
 - Unemployment compensation programs;
 - Job training programs;
 - The Temporary Assistance for Needy Families program;
 - Affordable housing programs; and
 - Food and nutritional assistance programs;

¹⁰ Emmanuel Saez, *Striking It Richer: The Evolution of Top Incomes in the United States (Updated with 2015 Preliminary Estimates)* (June 30, 2016) <https://eml.berkeley.edu/~saez/saez-UStopincomes-2015.pdf> (last visited Feb. 5, 2018)

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

- Provide increased funding for early childhood education programs, public schools, and vocational and technical education programs; and
- Provide funding over a multiyear period to repair and enhance the infrastructure of the United States, including, but not limited to, public roads, highways, bridges, and buildings.

Health Care

The memorial requests Congress to enact strong legislations to contain health care costs, including prescription drug costs.

Consumer Protection

The memorial requests Congress to:

- Ensure that action is taken to identify, prosecute, and punish those who commit health care fraud;
- Ensure that federal law is sufficient and federal agencies are adequately funded to ensure effective regulation of financial institutions and investment firms and to punish those who intentionally deceive the public;
- Appoint a special study commission to examine the adequacy of consumer protection, including consumer credit, subprime automobile loans, title loans, residential mortgages, telemarketing, consumer products, and employment law; and
- Ensure that federal laws relating to consumer protection are strongly enforced.

Impact of Memorial

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

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress upon passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Farmer

34-01501A-18

20181658__

Senate Memorial

A memorial to the Congress of the United States, requesting Congress to adopt budgetary and other measures to reduce income inequality.

WHEREAS, every United States resident should have the opportunity to achieve his or her maximum potential, and

WHEREAS, for more than three decades, there has been a huge transfer of income from the middle class to a small percentage of the upper class, weakening the economic and social well-being of many residents, and

WHEREAS, according to research published on September 3, 2013, by Emmanuel Saez at the University of California, Berkeley, in 1976 the top 1 percent of earners took home 9 percent of the total income, but in 2012 the top 1 percent of earners took home 22.5 percent of the total income, and

WHEREAS, Emmanuel Saez's research also concluded that between 1976 and 2012, the total income taken home by the top 10 percent of earners increased from 33 percent to more than 50 percent, and between 2009 and 2012, a period of economic recovery, the top 1 percent of earners captured 95 percent of all income gains, and

WHEREAS, according to a November 5, 2014, report by the Council of Economic Advisers within the Executive Office of the President, if the percentage of income earned by the bottom 90 percent of earners was the same in 2013 as it was in 1973, the median annual household income adjusted for family size would have been 18 percent higher, and

WHEREAS, according to the Federal Reserve's 2016 Survey of

Page 1 of 4

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34-01501A-18

20181658__

Consumer Finances, the top 1 percent of households controlled 38.3 percent of the nation's total wealth, an increase from 36.3 percent in 2013, and the top 10 percent of households controlled 77.2 percent of the nation's total wealth, leaving the bottom 90 percent of households controlling only 22.8 percent of the nation's total wealth, and

WHEREAS, since the 1970s, increases in income inequality are widely viewed to be the result of stagnant wage growth, technological change, globalization, declines in labor union memberships, oversized executive salaries, and reductions in employment and retirement benefits, and

WHEREAS, children born into low-income families are less likely to have access to early childhood education, more likely to attend poorly funded schools that deliver inferior K-12 education, and less likely to attend or complete college, and

WHEREAS, increasing income inequality limits job creation, educational attainment, health conditions, and future opportunities for young persons, and

WHEREAS, federal, state, and local governments have insufficient tax revenue to adequately fund their essential responsibilities, including health care, education, and child and elderly welfare, to ensure the well-being of all residents, and

WHEREAS, the wide income disparity and the unprecedented transfer of wealth pose a significant threat to the United States' economy and democracy, contribute to a breakdown of residents' trust in the fair functioning of the economy, undermine residents' well-being, and threaten the middle class with a less secure and prosperous future, NOW, THEREFORE,

Page 2 of 4

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34-01501A-18

20181658__

59

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

61

62 That the Congress of the United States is requested to:

63 (1) Modernize and reform personal income taxes to close tax
64 loopholes, simplify the preparation of tax returns, and make the
65 payment of taxes less regressive.

66 (2) Reform corporate income taxes to ensure that all
67 corporations pay a minimum tax, eliminate offshore tax havens
68 and special interest exemptions, and close tax loopholes.

69 (3) Increase the minimum wage in incremental steps over
70 time so that it represents a living wage.

71 (4) Adequately fund essential federal government
72 responsibilities, including public safety, the courts, health
73 care, and programs that ensure the well-being of children and
74 the elderly.

75 (5) Provide substantially increased funding to programs
76 that support the unemployed and others in need, including, but
77 not limited to, unemployment compensation programs, job training
78 programs, the Temporary Assistance for Needy Families program,
79 affordable housing programs, and food and nutritional assistance
80 programs.

81 (6) Provide increased funding for early childhood education
82 programs, public schools, and vocational and technical education
83 programs to help secure a more prosperous future for young
84 persons.

85 (7) Enact strong legislation to contain health care costs,
86 including prescription drug costs, and ensure that action is
87 taken to identify, prosecute, and punish those who commit health

Page 3 of 4

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34-01501A-18

20181658__

88

care fraud.

89

(8) Provide funding over a multiyear period to repair and
90 enhance the infrastructure of the United States, including, but
91 not limited to, public roads, highways, bridges, and buildings.

92

(9) Ensure that federal law is sufficient and federal
93 agencies are adequately funded to ensure effective regulation of
94 financial institutions and investment firms and to punish those
95 who intentionally deceive the public.

96

(10) Appoint a special study commission to examine the
97 adequacy of consumer protection, including consumer credit,
98 subprime automobile loans, title loans, residential mortgages,
99 telemarketing, consumer products, and employment law and to
100 ensure that federal laws relating to consumer protection are
101 strongly enforced.

102

BE IT FURTHER RESOLVED that the Secretary of State dispatch
103 copies of this memorial to the President of the United States,
104 the President of the United States Senate, the Speaker of the
105 United States House of Representatives, and each member of the
106 Florida delegation to the United States Congress.

Page 4 of 4

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture
Appropriations Subcommittee on Higher Education
Appropriations Subcommittee on Pre-K - 12 Education
Education
Environmental Preservation and Conservation

SENATOR GARY M. FARMER, JR.

34th District

January 23, 2018

Chair Bill Montford
Commerce and Tourism Committee
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to Montford.bill.web@flsenate.gov

Chair Montford,

I respectfully request that you place SB 1658 relating to Income Inequality on the agenda of the Commerce and Tourism Committee at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink that reads "Gary Farmer".

Senator Gary Farmer
District 34

CC:

Todd McKay, Staff Director
Gabriela Denton, Committee Administrative Assistant
Marilyn Barnes, Legislative Assistant to Senator Montford
Melissa Durham, Legislative Assistant to Senator Montford
Varna Mitchell, Legislative Assistant to Senator Montford
Taylor Peck, Legislative Assistant to Senator Montford

REPLY TO:

- Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

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)

Feb 6, 2018

Meeting Date

SM 1658

Bill Number (if applicable)

Topic Income Inequality

Amendment Barcode (if applicable)

Name Richard Polangin

Job Title Gov't Affairs Director

Address 1300 N Duval St

Phone 850 224-4206

Street

Tallahassee

FL

32303

City

State

Zip

Email

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

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

Representing Florida Alliance for Retired Americans

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.

APPEARANCE RECORD

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

2/6/08
Meeting Date

1658
Bill Number (if applicable)

Topic Income Inequality

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Barrough St
Street

Phone _____

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 Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18

Meeting Date

SM 1658

Bill Number (if applicable)

Topic Income Inequality

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 625 E. Broadway St

Phone 850-251-4280

Tallahassee FL 32308

Email barbaradevane1@yahoo.com

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/18

Meeting Date

1658

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street
Street

Phone 850-445-5367

Tallahassee FL 32301
City State Zip

Email tim.nungesser@nfib.org

Speaking: For Against Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

Commerce
Law

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1658

Bill Number (if applicable)

Topic Income Inequality

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

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.

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 Commerce and Tourism

BILL: CS/CS/SB 822

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Hutson

SUBJECT: Beverage Law

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Anderson</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 division has the authority to revoke or suspend beverages licenses after four or more violations within a 36 month period. For the first, second, and third violations within a 36 month period the division can impose a \$5,000 to \$100,000 penalty. The comparative value of the agreement in violation will be taken into account when assigning the civil penalties, as well as the number of violations within the previous 36 months.

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

¹ 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.

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.

- “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 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

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.

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

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/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.

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.

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).

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.²³

The bill imposes civil penalties for violations made during a 36 month period. The division has the authority to revoke or suspend beverages licenses after four or more violations within a 36 month period. For the first, second, and third violations within a 36 month period the division can impose a \$5,000 to \$100,000 penalty. The comparative value of the agreement in violation will be taken into account when assigning the civil penalties, as well as the number of violations within the previous 36 months.

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.

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 565.02(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.

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 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 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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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:



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11 561.42 Tied house evil; financial aid and assistance to
12 vendor by manufacturer, distributor, importer, primary American
13 source of supply, brand owner or registrant, or any broker,
14 sales agent, or sales person thereof, prohibited; procedure for
15 enforcement; exception.-

16 (1) A ~~No~~ manufacturer, distributor, importer, primary
17 American source of supply, or brand owner or registrant of any
18 of the beverages herein referred to, whether licensed or
19 operating in this state or out-of-state, nor any broker, sales
20 agent, or sales person thereof, may not ~~shall~~ have any financial
21 interest, directly or indirectly, in the establishment or
22 business of any vendor licensed under the Beverage Law; nor may
23 ~~shall~~ such manufacturer, distributor, importer, primary American
24 source of supply, brand owner or brand registrant, or any
25 broker, sales agent, or sales person thereof, directly or
26 indirectly assist any vendor by furnishing, supplying, selling,
27 renting, lending, buying for, or giving to any vendor any
28 vehicles, equipment, furniture, fixtures, signs, supplies,
29 credit, fees, slotting fees of any kind, advertising or
30 cooperative advertising, services, ~~any~~ gifts or loans of money
31 or property of any description, or ~~by the giving of any~~ rebates
32 of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~
33 accept, directly or indirectly, any vehicles, equipment,
34 furniture, fixtures, signs, supplies, credit, fees, slotting
35 fees of any kind, advertising or cooperative advertising,
36 services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of
37 any description, or any rebates of any kind whatsoever from any
38 such manufacturer, distributor, importer, primary American
39 source of supply, brand owner or brand registrant, or any



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40 broker, sales agent, or sales person thereof; provided, however,
41 that this does not apply to any bottles, barrels, or other
42 containers necessary for the legitimate transportation of such
43 beverages or to advertising materials and does not apply to the
44 extension of credit, for liquors sold, made strictly in
45 compliance with ~~the provisions of~~ this section. A brand owner is
46 a person who is not a manufacturer, distributor, importer,
47 primary American source of supply, brand registrant, or broker,
48 sales agent, or sales person thereof, but who directly or
49 indirectly owns or controls any brand, brand name, or label of
50 alcoholic beverage. Nothing in this section shall prohibit the
51 ownership by vendors of any brand, brand name, or label of
52 alcoholic beverage.

53 (8) The division may adopt rules and require reports to
54 enforce, and may impose administrative sanctions for any
55 violation of, the limitations established under the Beverage Law
56 on vehicles, equipment, furniture, fixtures, signs, supplies,
57 credit, fees, advertising or cooperative advertising, services,
58 gifts or loans of money or property in this section on credits,
59 coupons, and other forms of assistance.

60 (11) A vendor may display in the interior of his or her
61 licensed premises, including the window or windows thereof,
62 neon, electric, or other signs, including window painting and
63 decalcomanias applied to the surface of the interior or exterior
64 of such windows; signs that require a power source;⁷ and
65 posters, placards, and other advertising material advertising
66 the brand or brands of alcoholic beverages sold by him or her,
67 whether visible or not from the outside of the licensed
68 premises, but a ~~no~~ vendor may not shall display in the window or



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69 windows of his or her licensed premises more than one neon,
70 electric, or similar sign that requires a power source,
71 advertising the product of any one brand of alcoholic beverage
72 manufacturer.

73 (12) Any manufacturer, distributor, importer, primary
74 American source of supply, or brand owner or registrant, or any
75 broker, sales agent, or sales person thereof, may give, lend,
76 furnish, or sell to a vendor who sells the products of such
77 manufacturer, distributor, importer, primary American source of
78 supply, or brand owner or registrant any of the following: neon,
79 ~~or~~ electric, or similar signs requiring a power source; signs,
80 window painting and decalcomanias applied to the surface of the
81 interior or exterior of windows; or, posters, placards, and
82 other advertising material herein authorized to be used or
83 displayed by the vendor in the interior of his or her licensed
84 premises. As used in subsection (11) and this subsection, the
85 term "decalcomania" means a picture, design, print, engraving,
86 or label made to be transferred onto a glass surface.

87 (13) Any manufacturer, distributor, importer, primary
88 American source of supply, or brand owner or registrant, or any
89 broker, sales agent, or sales person thereof, who regularly
90 sells merchandise to vendors, or any vendor who purchases
91 merchandise from such a manufacturer, distributor, importer,
92 primary American source of supply, or brand owner or registrant,
93 or any broker, sales agent, or sales person thereof, does not
94 violate subsection (1) if:

95 (a) Such sale or purchase is not less than the fair market
96 value of the merchandise;

97 (b) Such sale or purchase is not combined with any sale or



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98 purchase of alcoholic beverages;

99 (c) Such sale or purchase is separately itemized from the
100 sale or purchase of alcoholic beverages; and

101 (d) Both the seller and purchaser maintain records of any
102 such sale or purchase, including the price and any conditions
103 associated with such sale or purchase of the merchandise.

104
105 For purposes of this subsection, the term "merchandise" means
106 commodities, supplies, fixtures, furniture, or equipment. The
107 term does not include alcoholic beverages or a motor vehicle or
108 trailer requiring registration under chapter 320.

109 (15) ~~(14)~~ The division shall adopt reasonable rules
110 governing promotional displays and advertising, which rules
111 shall not conflict with or be more stringent than the federal
112 regulations pertaining to such promotional displays and
113 advertising furnished to vendors by distributors, manufacturers,
114 importers, primary American sources of supply, or brand owners
115 or registrants, or any sales agent or sales person thereof;
116 however:

117 (b) Without limitation in total dollar value of such items
118 provided to a vendor, a manufacturer, distributor, importer,
119 brand owner, or brand registrant of malt beverage, or any sales
120 agent or sales person thereof, may rent, loan without charge for
121 an indefinite duration, or sell durable retailer advertising
122 specialties such as clocks, pool table lights, and the like,
123 which bear advertising matter. If sold, such items may not be
124 sold at a price less than the actual cost to the industry member
125 who initially purchased the items.

126 (16) (a) Notwithstanding any other provision of this



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127 section, a manufacturer or importer of malt beverages and a
128 vendor may enter into a written agreement for brand-naming
129 rights and associated cooperative advertising, negotiated at
130 arm's length for no more than fair market value if:

131 1. The vendor operates places of business where consumption
132 on the premises is permitted, the premises are located within a
133 theme park complex consisting of at least 25 contiguous acres
134 owned and controlled by the same business entity, and the
135 complex contains permanent exhibitions and a variety of
136 recreational activities and has a minimum of 1 million visitors
137 annually through a controlled entrance to and exit from the
138 theme park complex;

139 2. Such agreement does not involve, either in whole or in
140 part, the sale or distribution of malt beverages between the
141 manufacturer or importer, or the manufacturer's or importer's
142 distributor, and a vendor;

143 3. The vendor, as a result of such agreement, does not give
144 preferential treatment to the alcoholic beverage brand or brands
145 of the manufacturer or importer with whom the vendor has entered
146 into such agreement;

147 4. Such agreement does not limit, either directly or
148 indirectly, the sale of alcoholic beverages of another
149 manufacturer or importer, or distributor; and

150 5. Within 10 days after execution of such agreement, the
151 vendor files with the division a description of the agreement
152 which includes the location, dates, and the name of the
153 manufacturer or importer that entered into the agreement.

154
155 As used in this paragraph, the term "negotiated at arm's length"



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156 means the negotiation of a business transaction by independent
157 parties acting in each party's own individual self-interest and
158 conducted as if the parties were strangers, so that no conflict
159 of interest may arise.

160 (b) A manufacturer or importer of malt beverages which is a
161 party to a brand-naming rights agreement may not, either
162 directly or indirectly, solicit or receive from any of its
163 distributors any portion of the payment due from the
164 manufacturer or importer of malt beverages to the vendor
165 pursuant to such agreement. Such agreement exists solely between
166 the manufacturer and the vendor and does not, directly or
167 indirectly, in any way obligate or place responsibility,
168 financial or otherwise, upon a distributor.

169 (c) Notwithstanding s. 561.29(3) and (4), a manufacturer of
170 malt beverages, an importer of malt beverages, or a vendor who
171 violates this subsection is subject to:

172 1. A civil penalty of at least \$5,000, but not more than
173 \$25,000, for a first violation.

174 2. A civil penalty of at least \$25,000, but not more than
175 \$50,000, for a second violation occurring within 36 months after
176 the date of the first violation.

177 3. A civil penalty of at least \$50,000, but not more than
178 \$100,000, for a third or subsequent violation occurring within
179 36 months after the date of the first violation.

180 4. At the discretion of the division, in lieu of or in
181 addition to a civil penalty imposed under subparagraph 3.,
182 suspension or revocation of the alcoholic beverage license for a
183 fourth or subsequent violation occurring within 36 months after
184 the date of the first violation.



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185
186 A violation occurring more than 36 months after a first
187 violation is deemed a first violation under this paragraph. When
188 imposing a civil penalty within the ranges provided in
189 subparagraphs 1.-3., the division shall consider the comparative
190 financial value of the brand-naming rights agreement as a factor
191 in assigning the amount of the civil penalty.

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

193
194 ===== T I T L E A M E N D M E N T =====

195 And the title is amended as follows:

196 Delete everything before the enacting clause
197 and insert:

198 A bill to be entitled

199 An act relating to the Beverage Law; amending s.
200 561.42, F.S.; prohibiting certain entities and persons
201 from directly or indirectly assisting any vendor in
202 certain ways; prohibiting a licensed vendor from
203 accepting certain items and services; authorizing the
204 Division of Alcoholic Beverages and Tobacco to impose
205 administrative sanctions for a violation of certain
206 limitations established in the Beverage Law;
207 prohibiting a vendor from displaying certain signs in
208 the window or windows of his or her licensed premises;
209 authorizing certain entities and persons to give,
210 lend, furnish, or sell certain advertising material to
211 certain vendors; defining the term "decalomania";
212 providing exemptions relating to tied house evil for
213 certain sales and purchases of merchandise; providing



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214 conditions for the exemptions; defining the term
215 "merchandise"; prohibiting a manufacturer or importer
216 of malt beverages from soliciting or receiving any
217 portion of certain payments from its distributors;
218 defining the term "negotiated at arm's length";
219 specifying that a brand-naming rights agreement does
220 not obligate or place responsibility upon a
221 distributor; providing civil penalties for violations
222 by manufacturers or importers of malt beverages or
223 vendors; providing applicability; requiring the
224 division to consider the comparative financial value
225 of a brand-naming rights agreement when determining
226 the amount of a civil penalty; providing an effective
227 date.

By the Committee on Regulated Industries; and Senator Hutson

580-02003-18

2018822c1

1 A bill to be entitled
 2 An act relating to the Beverage Law; amending s.
 3 561.42, F.S.; providing an exemption from provisions
 4 relating to the tied house evil for specified
 5 financial transactions between a manufacturer or
 6 importer of malt beverages and a licensed vendor;
 7 providing conditions for the exemption; prohibiting
 8 the manufacturer or importer of malt beverages from
 9 soliciting or receiving any portion of certain
 10 payments from its distributors; specifying that a
 11 brand naming rights agreement does not obligate or
 12 place responsibility upon a distributor; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (15) is added to section 561.42,
 18 Florida Statutes, to read:

19 561.42 Tied house evil; financial aid and assistance to
 20 vendor by manufacturer, distributor, importer, primary American
 21 source of supply, brand owner or registrant, or any broker,
 22 sales agent, or sales person thereof, prohibited; procedure for
 23 enforcement; exception.—

24 (15) (a) Notwithstanding any other provision of this
 25 section, a manufacturer or importer of malt beverages and a
 26 vendor may enter into a written agreement for brand naming
 27 rights, including the right to advertise cooperatively,
 28 negotiated at arm's length for no more than fair market value
 29 if:

Page 1 of 3

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

580-02003-18

2018822c1

30 1. The vendor operates places of business where consumption
 31 on the premises is permitted, the premises are located within a
 32 theme park complex consisting of at least 25 contiguous acres
 33 owned and controlled by the same business entity, and the
 34 complex contains permanent exhibitions and a variety of
 35 recreational activities and has a minimum of 1 million visitors
 36 annually through a controlled entrance to and exit from the
 37 theme park complex;

38 2. Such agreement does not involve, either in whole or in
 39 part, the sale or distribution of malt beverages between the
 40 manufacturer or importer, or its distributor, and a vendor;

41 3. The vendor does not give preferential treatment to the
 42 alcoholic beverage brand or brands of the manufacturer or
 43 importer with whom the vendor has entered into such agreement;

44 4. Such agreement does not limit, either directly or
 45 indirectly, the sale of alcoholic beverages of another
 46 manufacturer or importer, or distributor; and

47 5. Within 10 days after the execution of such agreement,
 48 the vendor files with the division a description of the
 49 agreement which includes the location, dates, and the name of
 50 the manufacturer or importer that entered into the agreement.

51 (b) A manufacturer or importer of malt beverages which is a
 52 party to a brand naming rights agreement may not, either
 53 directly or indirectly, solicit or receive from any of its
 54 distributors any portion of the payment due from the
 55 manufacturer or importer of malt beverages to the vendor
 56 pursuant to such agreement. Such agreement exists solely between
 57 the manufacturer and the vendor and does not, directly or
 58 indirectly, in any way obligate or place responsibility,

Page 2 of 3

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

580-02003-18

2018822c1

59 financial or otherwise, upon a distributor.

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



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 25, 2018

I respectfully request that **Senate Bill #822**, relating to Beverage Law, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18
Meeting Date

822

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Topic Beverage Law

Name Kelly Mallette

Job Title _____

Address 104 West Jefferson Street
Street

Phone (850) 224-3427

Tallahassee, FL 32301
City State Zip

Email kelly@r/badepa.com

Speaking: For Against Information

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

Representing Gold Coast / Fl. Distributing / Reyes

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18

Meeting Date

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Topic Theme Parks

Name Mitch Rubin

Job Title Executive Director

Address 215 S. Monroe St #340

Phone (850) 224-2337

Street
Tallahassee, FL 32301
City State Zip

Email MRubin2505@aol.com

Speaking: For Against Information

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

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

February 6, 2018

Meeting Date

822

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Topic Alcoholic Beverages

Name Josh Aubuchon

Job Title Attorney

Address 315 South Calhoun
Street

Phone 224-7000

Tallahassee
City

FL
State

32301
Zip

Email _____

Speaking: For Against Information

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

Representing Florida Brewers Guild

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

SB 822

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Meeting Date _____

Topic BEVERAGE LAW

Name BETH THIBODAN

Job Title VP, GOVERNMENT AFFAIRS

Address 9205 SOUTH PARK CENTER LOOP

Street

ORLANDO

City

FL

State

32819

Zip

Phone _____

Email beth.thibodan@seaworld.com

Speaking: For Against Information

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

Representing SEAWORLD / BUSCH GARDENS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

2-6-18

Meeting Date

822

Bill Number (if applicable)

536 536

Amendment Barcode (if applicable)

Topic Beverage Law

Name Melanie Becker

Job Title Director Government Affairs

Address 1000 Universal Studios Plaza

Street

Phone 407 363 8974

Orlando

City

32819

State

Zip

Email Melanie.becker@universal

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

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

2-6-18

Meeting Date

822

Bill Number (if applicable)

530536 DE

Amendment Barcode (if applicable)

Topic Beverage Law

Name Natalie King

Job Title VP / COO

Address 235 W Brandon Blvd 64B

Phone 813 924 8218

Brandon FL 33511

Email Natalie@isaconline.com

Speaking: For Against Information

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

Representing Peper Distributing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

APPEARANCE RECORD

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

2-6-18

Meeting Date

802

Bill Number (if applicable)

Topic Beverage law

Amendment Barcode (if applicable)

Name Jon Costello

Job Title lobbyist

Address 119 S. Monroe

Phone 681-6788

Street

Tallahassee

State

FL

Zip

32301

Email jon@reup4law.com

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

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

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

Jan Commerce

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

822

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

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.

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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)

02/06/18

Meeting Date

800

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 230 S. Adams St.

Phone 850-224-2250

Street

Tallahassee

City

FL

State

32301

Zip

Email Spadgett@fla.org

Speaking: For Against Information

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

Representing Florida Restaurant & Lodging ASSO.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

7/6/18
Meeting Date

SB 822
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Beth Thibodaux

Job Title VP, Government Affairs

Address 9205 SouthPark Center Loop
Street

Phone _____

Orlando, FL 32819
City State Zip

Email beth.thibodaux@seaworld.com

Speaking: For Against Information

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

Representing SEA WORLD / BUSCH GARDENS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18
Meeting Date

822
Bill Number (if applicable)

Topic Balunage Law

Amendment Barcode (if applicable)

Name Melanie Becker

Job Title Director Government Affairs

Address 1000 Universal Studios Plaza
Street

Phone 407 363 8974

Orlando 32819
City State Zip

Email Melanie.becker@universal
orlando.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

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

2-6-18

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

822

Meeting Date

Bill Number (if applicable)

536536

Topic Beverage Law

Amendment Barcode (if applicable)

Name Jon Costello

Job Title lobbyist

Address 119 S Monroe

Phone 681-6788

Street

Email jon@rcuphlan.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Miller Coors

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.

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APPEARANCE RECORD

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

2-6-18

Meeting Date

822

Bill Number (if applicable)

536536

Amendment Barcode (if applicable)

Topic Beverage Laws

Name Samantha Padgett

Job Title General Counsel

Address 730 S. Adams St.

Street

Phone 850-528-5006

Tallahassee, FL 32301

City

State

Zip

Email spadgett@fla.org

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

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

Representing FRLA

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.

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 Commerce and Tourism

BILL: SB 1828

INTRODUCER: Senator Rodriguez

SUBJECT: Employment Discrimination

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1828 prohibits an employer from taking any retaliatory personnel action against an employee who leaves his or her place of employment due to a mandatory evacuation order issued by the President of the United States, the Governor, or a political subdivision of the state.

Employers are prohibited from discharging, suspending, demoting, or taking other adverse action against an employee who:

- Left the employee's place of employment to evacuate under a mandatory evacuation order.
- Evacuated because the employee's residence or place of employment was included in the mandatory evacuation zone.
- Returns to work within 14 days after the mandatory evacuation order is lifted, or another time agreed upon between the employee and employer.

Under the bill, an employee who is the object of a prohibited retaliatory personnel action may pursue a civil cause of action against the employer. A court is authorized to order relief and reasonable attorneys fees and costs to the prevailing party.

The bill does not apply to specified emergency personnel, individuals necessary to provide for the safety and well-being of the general public, and individuals employed at a nursing home facility, hospice, an assisted living facility, or a hospital.

The bill takes effect on July 1, 2018.

II. Present Situation:

Mandatory Evacuation Orders

Chapter 252, Florida Statutes (F.S.), confers certain emergency powers upon the Governor, the Division of Emergency Management, and the governing bodies of each political subdivision of the state with respect to emergencies that occur within the state.¹

With respect to the Governor, s. 252.36(2), F.S., provides for declaration of a state of emergency by executive order or proclamation if the Governor finds an emergency or the threat of an emergency has occurred or is about to occur. The law provides that the state of emergency continues until the Governor finds the emergency conditions no longer exist and terminates the state of emergency. However, a state of emergency may not exist for more than 60 days unless the Governor renews it.²

The Governor may also compel evacuation from any stricken or threatened area in the state if he or she determines it necessary to preserve life or facilitate emergency mitigation, response and recovery; and may prescribe routes, modes of transportation, and destinations in connection with evacuation.³ Counties may also order evacuations of their jurisdictional areas pursuant to authority delegated by the Governor and through each county's emergency management director.⁴

Hurricane Irma

During the 2017 hurricane season, Florida experienced one of the most powerful storms ever recorded in the Atlantic Ocean. In early September, Floridians watched news coverage of Hurricane Irma as it quickly developed into a Category 5 hurricane and trajectories began to show the powerful storm heading on a northward path, directly through the middle of the state.⁵

In preparation for the storm, on September 4, 2017, Governor Rick Scott declared a state of emergency in all 67 counties in Florida.⁶ The following day, the President of the United States approved a pre-landfall emergency declaration for the State of Florida.⁷ As the storm

¹ Section 252.32(1)(b), F.S.

² The Legislature may terminate a state of emergency at any time by concurrent resolution.

³ Section 252.36(5)(e) and (f), F.S.

⁴ See s. 252.36(8) and s. 252.38(1), F.S. See also Florida Attorney General Advisory Legal Opinion, AGO 95-24, dated April 3, 1995, explaining that counties may issue emergency evacuation orders in the absence of a directive from the Governor, where there is a Declaration of Emergency that expressly does not preclude such issuance.

⁵ *Maps: Tracking Hurricane Irma's Path Over Florida*, N.Y. TIMES, Sept. 11, 2018, available at <https://www.nytimes.com/interactive/2017/09/05/us/hurricane-irma-map.html>

⁶ See Office of Governor Rick Scott, *Executive Order No. 17-235*, available at <https://www.flgov.com/wp-content/uploads/2017/09/SLG-BIZHUB17090402490.pdf> (last visited Feb. 5, 2018).

⁷ Federal Emergency Management Agency, *President Donald J. Trump Signs Emergency Declaration for Florida*, available at <https://www.fema.gov/news-release/2017/09/05/president-donald-j-trump-signs-emergency-declaration-florida> (last visited Feb. 5, 2018).

approached, mandatory evacuation orders were issued throughout the state and a record number of 6.5 million people evacuated.⁸

Worker Protections in Florida

In Florida, there is no specific government agency responsible for administering and enforcing worker protection laws. Hour and wage laws are overseen by the federal Wage and Hour Division through local offices across the state. Complaints of discrimination or harassment in the workplace are typically handled by the Florida Commission on Human Regulations and the Equal Employment Opportunity Commission. The Florida Department of Financial Services regulates issues arising under workers' compensation claims, while the Department of Economic Opportunity (DEO) handles issues pertaining to unemployment insurance.⁹

Although current law does not directly prohibit an employer from firing or punishing an employee who does not show up to work due to a mandatory evacuation order, existing provisions may offer a remedy to an employee under such circumstances.

Reemployment Assistance Program

Florida's "Reemployment Assistance Program"¹⁰ provides reemployment benefits to individuals who become unemployed through no fault of their own. To receive benefits, such individuals must apply to the DEO, which is responsible for determining claimant eligibility, and the calculation and payment of reemployment assistance benefits.¹¹ Key eligibility requirements for reemployment benefits involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.¹²

Reemployment assistance benefits are funded through a tax imposed on employers as a cost of doing business in the state of Florida. The rate at which employers pay reemployment assistance taxes is based on the employer's annual experience rating. One factor that can negatively affect an employer's tax rate is the number of employees that qualify for reemployment assistance benefits during the previous year. An employer with a high number of employees eligible for reemployment assistance benefits will likely be required to pay a higher tax rate.¹³

⁸ Mandatory evacuations were ordered for Monroe County and portions of Brevard, Broward, Citrus, Collier, Dixie, Duval, Flagler, Glades, Hendry, Hernando, Indian River, Lee, Martin, Miami-Dade, Orange, Palm Beach, Pasco, Pinellas, Sarasota, Seminole, St. Lucie, Sumter, and Volusia counties. Additionally, voluntary evacuation notices were issued for Alachua, Baker, Bay, Bradford, Charlotte, Columbia, Desoto, Hardee, Highlands, Hillsborough, Lake, Manatee, Okeechobee, Osceola, and Polk counties. See Office of Governor Rick Scott, *Gov. Scott Issues Updates on Hurricane Irma Preparedness*, September 7, 2017, available at <https://www.flgov.com/2017/09/07/gov-scott-issues-updates-on-hurricane-irma-preparedness-5/> (last visited Feb. 5, 2018).

⁹ The roles of Florida's agencies are specified under ch. 20, F.S.

¹⁰ The state's unemployment compensation program was rebranded in 2012. See Chapter 2012-30, Laws of Fla.

¹¹ Section 20.60(5)(c), F.S. and s. 443.171, F.S.

¹² Section 443.151(3) (a), F.S.

¹³ Florida Department of Revenue, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Feb. 5, 2018).

Disaster Unemployment Assistance

Upon an official declaration by the President of the United States of a major disaster, Disaster Unemployment Assistance (DUA) is made available to individuals who have become unemployed as a result of the major disaster and would not ordinarily be eligible under Florida's Reemployment Assistance Program. After Hurricane Irma, DUA benefits were made available to Floridians in 48 affected counties.¹⁴ Eligible individuals were authorized to receive DUA benefits for up to 26 weeks.¹⁵

Florida Whistleblower's Act

Florida's Whistleblower's Act (FWA) protects employees from certain retaliatory personnel actions taken by an employer. Sections 448.101-448.105, F.S., prohibit employers from taking any retaliatory personnel action against an employee who has "objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation." The FWA applies to private employers with 10 or more employees and provide an employee with a civil cause of action as a remedy for relief.¹⁶

An employee who is the object of retaliatory personnel action for not coming to work due to a mandatory evacuation order may be able to bring a civil action against the employer under the FWA. To prevail, a court would need to find:

- The employer's request to attend work under a mandatory evacuation order was a violation of a law, rule, or regulation;
- The employee refused to violate such law, rule, or regulation; and
- The employer took retaliatory personnel action against the employee.¹⁷

Other Worker Protections

The federal Fair Labor Standards Act (FLSA) requires covered employees to comply with minimum wage, overtime pay, recordkeeping, and child labor standards. Employers that do not comply with the FLSA or take prohibited adverse action against an employee who reports information pertaining to a violation of the FLSA may be subject to a suit for relief. Remedies for an employee under the FLSA include reinstatement, payment of lost wages, and damages.¹⁸

¹⁴ DUA benefits were available to residents of Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lafayette, Levy, Lake, Lee, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Union and Volusia Counties. DEO, *Disaster Unemployment Assistance*, available at <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/claimants/disaster-unemployment-assistance> (last visited Feb 5, 2018).

¹⁵ FEMA, *Federal Aid Programs for the State of Florida*, available at <https://www.fema.gov/news-release/2017/09/10/federal-aid-programs-state-florida> (last visited Feb. 5, 2018).

¹⁶ Similarly, provisions under s. 112.3187, F.S., protect public employees from adverse personnel action if the employee discloses information pertaining to an employer's alleged violation of law.

¹⁷ However, a nursing home employee that sought a FWA civil action under similar circumstances was unsuccessful in her attempt to establish that a mandatory evacuation order was a law, rule, or regulation. *See Gillyard v. Delta Health Group, Inc.*, 757 So.2d 601, (Fla. 5th DCA 2000) (holding that it would be absurd to interpret s. 448.102(3), F.S., as prohibiting employees from attending work at a nursing home during a mandatory evacuation order).

¹⁸ USDOL Wage and Hour Division, *Handy Reference Guide to the FLSA*, available at <https://www.dol.gov/whd/regs/compliance/hrg.htm> (last visited Feb. 5, 2018).

The federal Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.¹⁹ If a declared emergency or mandatory evacuation order causes an employee's absence from work for the purpose of caring for a family member, an employer subject to the FMLA may be required to allow the employee's absence. In addition to penalties being imposed by the United States Department of Labor (USDOL), an employer that violates the FMLA may be subject to a civil action brought by the employee.²⁰

The Occupational Safety and Health Administration (OSHA) is an agency under the USDOL, and is responsible for establishing health and safety standards in the workplace.²¹ Employers that fail to meet these standards may be subject to inspection and penalties. Employees who report unsafe workplace issues to the OSHA are protected from retaliatory action taken by employers under whistleblower provisions. Generally, a mandatory evacuation order is issued when there are hazardous circumstances that constitute an emergency. The OSHA may pursue an investigation or action against an employer who required an employee to attend work despite a mandatory evacuation order and unsafe circumstances. Additionally, an employee may be protected from retaliatory action against the employer if the employee requests the involvement of the OSHA at the workplace.

III. Effect of Proposed Changes:

The bill prohibits an employer from taking any retaliatory personnel action against an employee²² who leaves a place of employment due to a mandatory evacuation order.²³ The term "retaliatory personnel action" includes "the discharge, suspension, or other demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment."

Specifically, the employer may not take retaliatory personnel action against an employee who:

- Left the employee's place of employment to evacuate under a mandatory evacuation order.
- Evacuated because the employee's residence or place of employment was included in the mandatory evacuation zone.
- Returns to work within 14 days after the mandatory evacuation order is lifted, or another time agreed upon between the employee and employer.

An employee who has been the object of a prohibited retaliatory personnel action may bring a civil action against the employer in the county in which the alleged retaliatory personnel action occurred, in which the complainant resides, or in which the employer has its principal place of

¹⁹ 29 U.S.C. § 2601.

²⁰ Information under this subheading obtained from: United States Department of Labor, Wage and Hour Division, *Fact Sheet # 77B: Protection for Individuals under the FMLA*, <http://www.dol.gov/whd/regs/compliance/whdfs77b.htm> (last visited Feb. 5, 2018).

²¹ For more information on the Occupational Safety and Health Administration, see <https://www.osha.gov/about.html> (last visited Feb. 5, 2018)

²² The bill defines "employee" and "employer" as having the same meanings as described in the federal FLSA and its implementing regulations.

²³ The bill defines "mandatory evacuation order" as "an official statement issued by the President of the United States, the Governor, or a political subdivision of this state to mandate the evacuation of all or part of the population of an area stricken or threatened by an emergency."

business. The civil action for relief must be brought within 2 years after discovering that such action was taken or within 4 years after the action was taken, whichever is earlier. However, the bill provides that an employee may not recover if he or she failed to notify the employer about the applicable evacuation order or if the retaliatory personnel action was predicated upon another ground.

In addition to an award of reasonable attorneys fees, costs, and expenses, the bill authorizes the court to order the following forms of relief:

- An injunction restraining continued retaliatory personnel actions prohibited by the bill;
- Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;
- Reinstatement of full fringe benefits and seniority rights;
- Compensation for lost wages, benefits, and other remuneration; and
- Any other compensatory damages allowable by law.

The bill does not apply to individuals who are:

- Employed as emergency personnel²⁴ if the employer provides adequate emergency shelter for those individuals;
- Necessary to provide for the safety and well-being of the general public, including a person necessary for the restoration of vital services;²⁵ and
- Employed at a nursing home facility, hospice, assisted living facility, or hospital.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The State Constitution prohibits the state from passing any law impairing the obligation of contracts.²⁶ Article I, Section 6 of the State Constitution also creates a constitutional

²⁴ Emergency personnel includes law enforcement officers, firefighters, emergency medical technicians or paramedics, and other individuals who are required, in the course and scope of their employment, to provide services for the benefit of the general public during an emergency.

²⁵ The bill limits the term “vital services” to include only the utility and roadway services necessary immediately after an emergency.

²⁶ Article I, s. 10, FLA. CONST.

right to collectively bargain for public sector employees. The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.²⁷

Typically, collective bargaining agreements still allow an employer the right to exercise control and discretion over its employees, including the right to take disciplinary actions for proper cause.²⁸ Some collective bargaining agreements contain a “force majeure” clause, setting forth the employer’s rights and duties in emergency situations. For instance, an agreement may contain a provision affording the employer the right to cease operations and go out of business completely if a natural disaster forces the business to close. To the extent that the bill interferes with the terms and conditions of employment in existing employment contracts or collective bargaining agreements, the bill may implicate an employer’s right to contract under the State Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact dependent on the number of mandatory evacuation orders issued, the number of counties affected by such an order, and the duration of the order. The fiscal impact is therefore indeterminate.

C. Government Sector Impact:

The fiscal impact dependent on the number of mandatory evacuation orders issued, the number of counties affected by such an order, and the duration of the order. The fiscal impact is therefore indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 43-52 prohibit an employer from discriminating against an employee whose actions meet specified criteria. The bill does not clearly identify whether an employee must meet all of the listed criteria or only one of the listed criteria in order to be protected from retaliatory personnel action. Additionally, the bill provides that an employee cannot recover in a civil action if the employee does not give notice to the employer. However, the notice requirement is not listed in lines 43-52.

²⁷ See *Hillsborough Cnty. Gov’tl Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So.2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So.2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So.2d 684 (Fla. 1972).

²⁸ See generally Chapter 447, F.S.

The bill does not provide definitions for the following terms: “full fringe benefits,” “seniority rights,” and “a person who is necessary to provide for the safety and well-being of the general public.”

VIII. Statutes Affected:

This bill creates section 448.077 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.



394594

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Commerce and Tourism (Rodriguez) recommended the following:

Senate Amendment

Delete line 50

and insert:

(c) Returns to work within 72 hours after the mandatory



107004

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Commerce and Tourism (Rodriguez) recommended the following:

Senate Substitute for Amendment (394594)

Delete lines 46 - 52

and insert:

(a) Is unavailable for work because the employee evacuated in compliance with a mandatory evacuation order;

(b) Provided the employer with written notice prior to the expiration of the mandatory evacuation order; and

(c) Returns to work within 72 hours after the mandatory evacuation order is lifted.

By Senator Rodriguez

37-00744A-18

20181828__

A bill to be entitled

An act relating to employment discrimination; creating s. 448.077, F.S.; providing definitions; prohibiting an employer from taking retaliatory personnel action against an employee who has left a place of employment to evacuate under an mandatory evacuation order; providing exceptions; providing employee remedies and relief; providing for attorney fees and costs; providing applicability; providing an effective date.

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

Section 1. Section 448.077, Florida Statutes, is created to read:

448.077 Employment discrimination on basis of participation in mandatory evacuation prohibited.—

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

(a) "Emergency" has the same meaning as defined in s. 252.34.

(b) "Mandatory evacuation order" means an official statement issued by the President of the United States, the Governor, or a political subdivision of this state to mandate the evacuation of all or part of the population of an area stricken or threatened by an emergency.

(c) "Emergency personnel" means a law enforcement officer as defined in s. 943.10, a firefighter as defined in s. 633.102, an emergency medical technician or paramedic as defined in s. 401.23, or other individuals who are required, in the course and scope of their employment, to provide services for the benefit

Page 1 of 4

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

37-00744A-18

20181828__

of the general public during an emergency.

(d) "Employee" has the same meaning as established under the federal Fair Labor Standards Act and its implementing regulations.

(e) "Employer" has the same meaning as established under the federal Fair Labor Standards Act and its implementing regulations.

(f) "Retaliatory personnel action" means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment.

(g) "Vital services" means only the utility and roadway services necessary immediately after an emergency.

(2) DISCRIMINATION PROHIBITED.—An employer may not take any retaliatory personnel action against an employee if the employee:

(a) Left the employee's place of employment to evacuate under a mandatory evacuation order.

(b) Evacuated because the employee's residence or place of employment was included in the mandatory evacuation zone.

(c) Returns to work within 14 days after the mandatory evacuation order is lifted or by a time agreed upon between the employee and employer.

(3) EMPLOYEE'S REMEDY; RELIEF.—

(a)1. An employee who has been the object of a retaliatory personnel action in violation of subsection (2) may institute a civil action in a court of competent jurisdiction for relief as set forth in paragraph (b) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within 4

Page 2 of 4

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

37-00744A-18 20181828__

59 years after the personnel action was taken, whichever is
60 earlier.

61 2. Any civil action authorized under this subsection may be
62 brought in the county in which the alleged retaliatory personnel
63 action occurred, in which the complainant resides, or in which
64 the employer has its principal place of business.

65 3. An employee may not recover in any action brought
66 pursuant to this subsection if he or she failed to notify the
67 employer about the applicable evacuation order or if the
68 retaliatory personnel action was predicated upon a ground other
69 than the employee's exercise of a right protected by this
70 section.

71 (b) In any action brought pursuant to paragraph (a), the
72 court may order relief as follows:

73 1. An injunction restraining continued violation of this
74 section.

75 2. Reinstatement of the employee to the same position held
76 before the retaliatory personnel action, or to an equivalent
77 position.

78 3. Reinstatement of full fringe benefits and seniority
79 rights.

80 4. Compensation for lost wages, benefits, and other
81 remuneration.

82 5. Any other compensatory damages allowable by law.

83 (4) ATTORNEY FEES AND COSTS.—A court may award reasonable
84 attorney fees, court costs, and expenses to the prevailing
85 party.

86 (5) APPLICABILITY.—This section does not apply to:

87 (a) Individuals employed as emergency personnel if the

37-00744A-18 20181828__

88 employer provides adequate emergency shelter for those
89 individuals.

90 (b) A person who is necessary to provide for the safety and
91 well-being of the general public, including a person necessary
92 for the restoration of vital services.

93 (c) Individuals employed at a nursing home facility, as
94 defined in s. 400.021; hospice, as defined in s. 400.601;
95 assisted living facility, as defined in s. 429.02; or hospital,
96 as defined in s. 395.002.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General Government
Commerce and Tourism
Community Affairs
Ethics and Elections
Appropriations Subcommittee on Civil and Criminal Justice
Rules

SENATOR JOSE JAVIER RODRIGUEZ

Deputy Democratic Whip
37th District

January 16th, 2018

Chairman Montford
Committee on Commerce and Tourism
310 Knott Building
404 S. Monroe St.
Tallahassee, FL 32399-1100
Sent via email to montford.bill@flsenate.gov

Chairman Montford,

I respectfully request that you place SB 1828 relating to employment discrimination on the agenda of the Committee on Commerce and Tourism at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Regards,

A handwritten signature in blue ink, appearing to read "JR", with a stylized flourish at the end.

Senator José Javier Rodríguez
District 37, Miami

CC: Todd McKay, Staff Director
Gabriela Denton, Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

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)

2.6.13

Meeting Date

Topic Employment Discrimination

Bill Number 1828

Name William Large

Amendment Barcode 394594 (if applicable)

Job Title President

(if applicable)

Address 210 S. Monroe Street

Phone 850.222.0170

Tallahassee FL 32301

E-mail William@Justice.org

Speaking: For Against Information

Representing Florida Justice Reform 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

02.06.18

Meeting Date

1828

Bill Number (if applicable)

Topic Employment Discrimination

Amendment Barcode (if applicable)

Name Jeffrey Slanker

Job Title _____

Address 123 North Monroe Street

Phone 850-205-1996

Street

Tallahassee

FL

32301

Email jslanker@sniffenlaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform 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)

2/6/18

Meeting Date

1828

Bill Number (if applicable)

Topic Employment Discrimination

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough Street

Phone 521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/18
Meeting Date

1828

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

City

State

Zip

Email tim.nungesser@nfib.org

Speaking: For Against Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-6-18

Meeting Date

1828

Bill Number (if applicable)

Topic EMPLOYMENT DISCRIMINATION

Amendment Barcode (if applicable)

Name CAM FENTRISS

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQ # 3-243

Phone 850-222-2772

TALLAHASSEE FL 32312

Email CFENTRISS@AOL.COM

Speaking: For Against Information

Waive Speaking: In Support Against

Representing IFA ROOFING & SHEET METAL CONTRACTORS ASSN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2/6/18

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

SB 1828

Bill Number (if applicable)

Meeting Date

Topic Employment Discrimination

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams street

Phone 352 359 6835

Tallahassee FL 32301

Email Jake@frf.org

Speaking: For Against Information

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

Representing FLORIDA RETAIL FEDERATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

Commer
9am

APPEARANCE RECORD

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

2/6/18

1828

Meeting Date

Bill Number (if applicable)

Topic Employment Discrimination

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

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.



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 5, 2018

The Honorable President Negron
404 S. Monroe Street
Tallahassee, FL 32399-1100

President Negron:

This is a formal request that I be excused from tomorrow's Commerce and Tourism Committee meeting and from any votes on committee matters taken during my absence.

Your indulgence is greatly appreciated.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bill Montford".

Bill Montford, State Senator
District Three

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

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and
Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Commerce and Tourism
Judiciary
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 6, 2018

Senator Bill Montford, Chair
Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Chair Montford:

I respectfully request be excused from this week's committee meeting, because I am sick with the flu.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Audrey Gibson".

Audrey Gibson
State Senator
Senate District 6

101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: EL 110 Case No.:
Caption: Senate Commere and Tourism Committee

Type:
Judge:

Started: 2/6/2018 9:04:47 AM
Ends: 2/6/2018 10:29:16 AM Length: 01:24:30

9:04:50 AM Roll Call
9:05:07 AM Pledge
9:05:31 AM Senator Young in Chair
9:05:54 AM SB's 1658 and SB 1828 TP'd
9:06:03 AM SB 762 by Senator Mayfield
9:06:24 AM SB 762 by Senator Mayfield
9:06:43 AM Questions
9:06:51 AM amendment 689278
9:07:25 AM Amendment adopted
9:07:31 AM Back on bill as amended
9:07:45 AM Robert reyes waives in support
9:07:51 AM John Mixon waives in support
9:07:58 AM Senator Mayfield closing
9:08:18 AM CS/SB 762 passes as CS
9:08:50 AM Recording Paused
9:10:02 AM Recording Resumed
9:10:29 AM Tab 3 SB 1114 by Sen. Brandes - Professional Regulation
9:10:39 AM
9:11:24 AM Questions on bill
9:12:08 AM Amendment 447528 late filed
9:12:26 AM Senator Passidomo objected to late filed amendment
9:13:11 AM Senator Brandes explaining late filed amendment 447528
9:14:18 AM Senator Passidomo with questions
9:14:45 AM Senator Brandes responding
9:15:53 AM Lisa Mergel waives in oppisition
9:16:29 AM Joni Jarrell, President, Summitt Salon Academy Gainesville
9:19:20 AM Joanne Powers, Summitt Salon Academy- Tampa
9:23:00 AM Allen Mortham Jr Waives in Opposition
9:23:34 AM Curtis Austin, Executive Director, Florida Association of Postsecondary Schools and Colleges
9:26:24 AM Vittorio Nastasi waives in support
9:26:45 AM Senator Passidomo in debate
9:27:30 AM Senator Rodriguez in debate
9:28:15 AM Senator Young in debate
9:28:44 AM Senator Brandes closing on amendment
9:30:13 AM Amendment 447528 passes
9:30:22 AM Back on bill as amended
9:30:53 AM Jorge Chamizo waives in support
9:31:11 AM Senator Brandes closes
9:31:39 AM CS/SB 1114 passes favorable
9:32:28 AM Tab 5 SB 1606 by Senator Taddeo, Film and Television Productions
9:33:28 AM Senator Taddeo explaining bill
9:34:43 AM Senator Passidomo with questions
9:35:09 AM Senator Taddeo responding
9:36:31 AM Senator Passidomo with follow up
9:36:55 AM Senator Taddeo responding
9:38:17 AM Senator Passidom with follow up
9:38:40 AM Senator Taddeo responding
9:39:49 AM Senator Stargel with a question
9:40:21 AM Senator Taddeo responding
9:41:26 AM Senator Taddeo responding
9:41:38 AM Senator Stargel with follow up
9:42:04 AM Senator Taddeo responding

9:42:11 AM Senator Stargel
9:42:35 AM Senator Taddeo responding
9:44:11 AM Chris Ranung, Chair, Compass
9:46:42 AM Chair Young reading cards waiving in support
9:46:56 AM Andrew Hosek, Americas for Prosperity
9:50:27 AM Sidney Rudkey, Waives in support
9:50:41 AM Senator Passidomo in debate
9:52:28 AM Senator Stargel in debate
9:53:40 AM Senator Rodriguez in debate
9:55:09 AM Senator Gainer in debate
9:55:56 AM Senator Taddeo TP'd SB 1606
9:56:06 AM SB 1604 Tp'd
9:57:02 AM Tab 4 SB 1314 by Senator Brandes
9:57:41 AM Amendment barcode 363924
9:57:51 AM Amendment 363924 adopted
9:58:07 AM Senator Roriguez in questions
9:58:16 AM Senator Brandes responding
9:59:11 AM Dr. Jackson Streeter, CEO Institute for the Commeralization of Public Research
9:59:32 AM Debate on bill
9:59:42 AM Senator Brandes waives
9:59:48 AM Roll call on SB 1314
9:59:58 AM CS/SB 1314 reported favorably
10:00:09 AM Recording Paused
10:09:10 AM Recording Resumed
10:09:16 AM Back in Meeting
10:09:29 AM CS/SB 822 by Senator Hutson, Beverage Law
10:10:10 AM Strike all amendment 536536
10:10:22 AM Senator Hutson explaining amendment
10:10:48 AM
10:10:52 AM questions
10:11:09 AM Appearance cards
10:11:30 AM Josh Aubuchon - Florida Brewers
10:12:47 AM Debate on bill as amended
10:13:00 AM Debate on bill as amended
10:13:05 AM Amendment adopted
10:13:13 AM Debate on bill as amended
10:13:22 AM
10:14:10 AM Senator Rodriguez in debate
10:14:37 AM Senator Stargel in debate
10:14:58 AM Close on bill
10:15:09 AM CS/SB 822 passes
10:15:22 AM Recording Paused
10:25:44 AM Recording Resumed
10:27:05 AM Senator Rodrigez moves to take up SB 1828 by Senaotr Rodriguez - - Employment Discrimination
10:27:13 AM Motion failes
10:27:27 AM Senator Rodriguez moves to take up SB 1658 by Sen. Farmer, Income Inequality
10:27:31 AM Motion failes
10:27:39 AM Tab 2 - SB 894 by Senator Garcia - Mortgage Lending
10:27:47 AM Senator Garcia explains bill
10:28:31 AM Courtney Larkin, Florida Office of Financial Regulation
10:28:39 AM Senator Garcia waives close
10:28:55 AM SB 894 passes favorably
10:29:06 AM Meeting Adjourned