

SB 54 by **Montford**; (Identical to CS/H 3523) Relief of Mark T. Sawicki and Sharon L. Sawicki by the City of Tallahassee

SB 164 by **Evers (CO-INTRODUCERS) Grimsley**; (Identical to H 0193) Crime Stoppers Trust Fund

SB 322 by **Stargel (CO-INTRODUCERS) Gaetz, Hays**; Medicaid Reimbursement for Hospital Providers

561494	A	S	RCS	FP, Stargel	Delete L.64 - 100:	04/15 08:09 PM
541058	AA	S	RCS	FP, Stargel	Delete L.22 - 34:	04/15 08:09 PM
150600	A	S	WD	FP, Stargel	Before L.31:	04/15 08:14 AM
866216	A	S	WD	FP, Stargel	Before L.31:	04/15 08:09 PM

SB 368 by **Abruzzo (CO-INTRODUCERS) Smith**; (Compare to CS/CS/H 0149) Rights of Grandparents and Great-grandparents

934880	PCS	S	RCS	FP, ACJ		04/15 08:20 PM
727400	PCS:A	S	RCS	FP, Abruzzo	Delete L.120:	04/15 08:20 PM

CS/SB 388 by **TR, Montford (CO-INTRODUCERS) Gaetz**; (Compare to CS/H 7093) Transportation Facility Designations

884540	A	S	RCS	FP, Clemens	btw L.88 - 89:	04/15 12:21 PM
605406	A	S	RCS	FP, Margolis	btw L.88 - 89:	04/15 12:21 PM
102454	A	S	RCS	FP, Hukill	btw L.88 - 89:	04/15 12:21 PM
173178	A	S	RCS	FP, Legg	btw L.88 - 89:	04/15 12:21 PM

CS/CS/SB 390 by **CJ, JU, Richter**; (Similar to CS/CS/CS/H 0157) Fraud

797088	A	S	RCS	FP, Hays	btw L.390 - 391:	04/15 08:27 PM
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CS/SB 414 by **CM, Altman**; (Similar to CS/H 0071) Service Animals

CS/SB 418 by **RI, Richter**; (Identical to CS/CS/CS/H 0087) Construction Defect Claims

CS/SB 512 by **HP, Thompson (CO-INTRODUCERS) Soto**; (Similar to CS/CS/H 0321) HIV Testing

682776	A	S	RCS	FP, Clemens	Delete L.394 - 405:	04/15 08:30 PM
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CS/SB 636 by **RI, Latvala**; (Identical to CS/CS/H 0373) Public Accountancy

CS/CS/SB 736 by **JU, RI, Stargel (CO-INTRODUCERS) Detert**; (Similar to CS/CS/CS/H 0611) Residential Properties

308876	A	S	RS	FP, Abruzzo	Delete L.77 - 275:	04/15 08:35 PM
318184	SA	S	RCS	FP, Stargel	Delete L.92 - 270:	04/15 08:35 PM

CS/SB 768 by **HP, Gaetz**; (Similar to CS/H 0309) Patient Observation Status Notification

SB 788 by **Sobel**; (Identical to CS/H 0471) Disabled Parking

CS/SB 792 by **HP, Bean**; (Similar to CS/1ST ENG/H 0279) Pharmacy

SB 816 by **Grimsley**; (Identical to H 0441) Home Health Agencies

572864	A	S	RCS	FP, Stargel	btw L.43 - 44:	04/15 08:37 PM
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CS/CS/SB 908 by CJ, TR, Altman (CO-INTRODUCERS) Gibson; (Compare to CS/CS/CS/H 0231) Traffic Safety						
CS/SB 912 by EP, Bean; (Similar to CS/H 0787) Recycled and Recovered Materials						
CS/SB 922 by JU, Latvala; (Similar to CS/CS/CS/H 0775) Appointment of an Ad Litem						
CS/SB 950 by HP, Hukill; (Similar to CS/H 0697) Public Health Emergencies						
SB 1010 by Braynon; (Identical to H 0117) False Personation						
CS/SB 1032 by RI, Richter (CO-INTRODUCERS) Diaz de la Portilla, Braynon; (Similar to H 0763) Point-of-sale Terminals						
SB 1040 by Braynon; (Identical to H 0475) Infectious Disease Elimination Pilot Program						
CS/SB 1098 by CJ, Bradley; (Identical to CS/H 0897) Controlled Substances						
CS/SB 1126 by BI, Altman; (Similar to CS/H 0749) Continuing Care Communities						
242306	PCS	S	RCS	FP, AGG		04/15 08:39 PM
CS/SB 1134 by BI, Hays; (Similar to CS/CS/H 0893) Blanket Health Insurance						
125558	PCS	S	RCS	FP, AGG		04/15 08:41 PM
CS/SB 1222 by BI, Richter; (Similar to CS/CS/H 1133) Division of Insurance Agent and Agency Services						
570694	PCS	S	RCS	FP, AGG		04/15 08:44 PM
442200	PCS:A	S	RCS	FP, Hays	Delete L.430 - 440:	04/15 08:44 PM
CS/CS/SB 1232 by CA, HP, Simpson; (Compare to CS/CS/CS/H 0915) Building Codes						
384976	D	S	RCS	FP, Bean	Delete everything after	04/15 08:52 PM
328722	AA	S	RCS	FP, Bean	Delete L.220 - 242:	04/15 08:52 PM
487780	AA	S	RCS	FP, Bean	Delete L.866 - 887:	04/15 08:52 PM
862830	AA	S	RCS	FP, Bean	Delete L.1118:	04/15 08:52 PM
SB 1270 by Soto; (Identical to CS/H 0133) Sexual Offenses						
554152	PCS	S	RCS	FP, ACJ		04/15 08:58 PM
801430	PCS:A	S	RCS	FP, Abruzzo	btw L.12 - 13:	04/15 08:58 PM
154194	PCS:A	S	RCS	FP, Abruzzo	btw L.40 - 41:	04/15 08:58 PM
624990	PCS:A	S	RCS	FP, Abruzzo	btw L.40 - 41:	04/15 08:58 PM
CS/SB 1304 by GO, Latvala; (Similar to CS/CS/CS/H 0371) Inspectors General						
560970	PCS	S	RCS	FP, AGG		04/15 09:00 PM
891510	PCS:A	S	RCS	FP, Hays	Delete L.62 - 102:	04/15 09:00 PM
567240	PCS:A	S	RCS	FP, Hays	Delete L.275 - 391:	04/15 09:00 PM
CS/SB 1388 by CA, Stargel; (Similar to CS/CS/H 1155) Special Districts						

CS/CS/SB 1390 by **RI, HP, Hays**; (Similar to CS/H 1219) Public Food Service Establishments

300412 A S RCS FP, Hays Delete L.30 - 31: 04/15 07:50 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

FISCAL POLICY
Senator Flores, Chair
Senator Bradley, Vice Chair

MEETING DATE: Wednesday, April 15, 2015
TIME: 9:00 a.m.—12:00 noon
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Flores, Chair; Senator Bradley, Vice Chair; Senators Abruzzo, Bean, Clemens, Hays, Hukill, Legg, Margolis, Sachs, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 54 Montford (Identical CS/H 3523)	Relief of Mark T. Sawicki and Sharon L. Sawicki by the City of Tallahassee; Providing for an appropriation to compensate them for injuries sustained by Mr. Sawicki as a result of the negligence of an employee of the City of Tallahassee; providing a limitation on the payment of fees and costs; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act, etc. SM 01/26/2015 Recommendation: Favorable JU 02/03/2015 Favorable CA 04/07/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 8 Nays 1
2	SB 164 Evers (Identical H 193)	Crime Stoppers Trust Fund; Authorizing a county that is awarded a grant from the trust fund to use such funds for the purchase and distribution of promotional items, etc. CJ 03/02/2015 Favorable CA 03/31/2015 Favorable ACJ 04/08/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
With subcommittee recommendation - Criminal and Civil Justice Appropriations			
3	SB 322 Stargel	Medicaid Reimbursement for Hospital Providers; Requiring the Agency for Health Care Administration to provide written notice, pursuant to ch. 120, F.S., to providers of hospital reimbursement rates established by the agency; providing that such notice constitutes final agency action; prohibiting the agency from being compelled by an administrative body or court to pay a monetary judgment relating to the establishment of hospital reimbursement rates beyond a specified date, etc. HP 02/03/2015 Temporarily Postponed HP 02/17/2015 Favorable FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0

A proposed committee substitute for the following bill (SB 368) is available:

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Wednesday, April 15, 2015, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 368 Abruzzo (Compare CS/CS/H 149)	Rights of Grandparents and Great-grandparents; Redefining the term "next of kin" to include great-grandparents; providing great-grandparents the same visitation rights as grandparents; authorizing the grandparent of a minor child to petition a court for visitation under certain circumstances; providing for application of the Uniform Child Custody Jurisdiction and Enforcement Act; authorizing, after petition, a court to terminate a grandparent visitation order upon adoption of a minor child by a stepparent or close relative, etc. JU 03/10/2015 Favorable CF 03/26/2015 Favorable ACJ 04/08/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
With subcommittee recommendation - Criminal and Civil Justice Appropriations			
5	CS/SB 388 Transportation / Montford (Compare CS/H 7093)	Transportation Facility Designations; Providing honorary designations of various transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers, etc. TR 04/02/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
6	CS/CS/SB 390 Criminal Justice / Judiciary / Richter (Similar CS/CS/CS/H 157)	Fraud; Providing for restitution to victims for certain victim out-of-pocket costs; requiring business entities to provide copies of business records of fraudulent transactions involving identity theft to victims and law enforcement agencies in certain circumstances; including counties and other political subdivisions in provisions prohibiting the false marking of goods or packaging with a location of origin; expanding specified identity theft offenses to include all persons rather than being limited to natural persons, etc. JU 02/17/2015 Fav/CS CJ 03/30/2015 Fav/CS ACJ 04/08/2015 Favorable FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
With subcommittee recommendation - Criminal and Civil Justice Appropriations			

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 414 Commerce and Tourism / Altman (Similar CS/H 71)	Service Animals; Requiring a public accommodation to permit use of a service animal by an individual with a disability under certain circumstances; prohibiting a public accommodation from inquiring about the nature or extent of an individual's disability; providing conditions for a public accommodation to exclude or remove a service animal; revising penalties for certain persons or entities who interfere with use of a service animal in specified circumstances; providing a penalty for knowing and willful misrepresentation with respect to use or training of a service animal, etc. CM 03/30/2015 Fav/CS CA 04/07/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
8	CS/SB 418 Regulated Industries / Richter (Identical CS/CS/CS/H 87)	Construction Defect Claims; Providing additional requirements for a notice of claim; revising requirements for a response; revising provisions relating to production of certain records, etc. RI 03/31/2015 Fav/CS BI 04/07/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
9	CS/SB 512 Health Policy / Thompson (Similar CS/CS/H 321)	HIV Testing; Revising and providing definitions; specifying the notification and consent procedures for performing an HIV test in a health care setting and a nonhealth care setting, etc. HP 03/17/2015 Fav/CS AHS 04/08/2015 Favorable FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
With subcommittee recommendation - Health and Human Services Appropriations			
10	CS/SB 636 Regulated Industries / Latvala (Identical CS/CS/H 373)	Public Accountancy; Revising the definition of the term "licensed audit firm"; revising practice requirements for partnerships, corporations, and limited liability companies; revising provisions relating to the licensure of firms and public accounting firms; revising the definition of the term "quality review" to include a peer review, etc. RI 03/31/2015 Fav/CS FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/CS/SB 736 Judiciary / Regulated Industries / Stargel (Similar CS/CS/CS/H 611)	Residential Properties; Revising requirements relating to the issuance of an estoppel certificate to specified persons; requiring that an estoppel certificate contain certain information; providing an effective period for a certificate based upon the date of issuance and form of delivery, etc. RI 03/24/2015 RI 03/31/2015 Fav/CS JU 04/07/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
12	CS/SB 768 Health Policy / Gaetz (Similar CS/H 309, Compare S 820)	Patient Observation Status Notification; Requiring a licensed facility to document observation services in a patient's discharge papers when the facility places the patient on observation status; requiring a licensed facility to notify a patient or patient's proxy of observation status through discharge papers; authorizing a licensed facility to notify a patient or patient's proxy of observation status through other forms of communication, etc. HP 03/10/2015 Fav/CS CF 03/26/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
13	SB 788 Sobel (Identical CS/H 471)	Disabled Parking; Revising provisions that allow counties and municipalities to charge fees for vehicles displaying a disabled parking permit at certain timed parking facilities; excluding vehicles displaying a DV license plate from payment of such fees, etc. TR 03/26/2015 Favorable CA 04/07/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
14	CS/SB 792 Health Policy / Bean (Similar CS/H 279)	Pharmacy; Authorizing a registered intern under the supervision of a pharmacist to administer specified vaccines to an adult; revising which vaccines may be administered by a pharmacist or a registered intern under the supervision of a pharmacist, etc. HP 03/10/2015 Fav/CS AHS 04/02/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0

With subcommittee recommendation - Health and Human Services Appropriations

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 816 Grimsley (Identical H 441)	Home Health Agencies; Revising the information that a home health agency is required to submit to the Agency for Health Care Administration for license renewal; removing the requirement that a home health agency submit quarterly reports, etc. HP 03/23/2015 Favorable AHS 04/08/2015 Favorable FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
With subcommittee recommendation - Health and Human Services Appropriations			
16	CS/CS/SB 908 Criminal Justice / Transportation / Altman (Similar CS/CS/H 231)	Traffic Safety; Revising provisions relating to the passing of a vehicle; prohibiting passing and turning in front of a vulnerable user in an unsafe manner; providing penalties; providing fines and penalties for specified infractions contributing to bodily injury of a vulnerable user; requiring a hearing for specified offenses, etc. TR 03/26/2015 Fav/CS CJ 04/07/2015 Fav/CS FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
17	CS/SB 912 Environmental Preservation and Conservation / Bean (Similar CS/H 787)	Recycled and Recovered Materials; Exempting a person who sells, transfers, or arranges for the transfer of recycled and recovered materials from liability for hazardous substances released or threatened to be released from the receiving facility or site under certain circumstances, etc. EP 03/31/2015 Fav/CS JU 04/07/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
18	CS/SB 922 Judiciary / Latvala (Similar CS/CS/CS/H 775)	Appointment of an Ad Litem; Authorizing a court to appoint an ad litem for certain parties upon whom service of process by publication is made; prohibiting a court from appointing an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving; prohibiting a court from requiring an ad litem to post a bond or designate a resident agent, etc. JU 03/17/2015 JU 03/24/2015 Fav/CS ACJ 04/08/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
With subcommittee recommendation - Criminal and Civil Justice Appropriations			

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	CS/SB 950 Health Policy / Hukill (Similar CS/H 697)	Public Health Emergencies; Requiring certain state and local officers to assist in enforcing rules and orders issued by the Department of Health under ch. 381, F.S.; authorizing the State Health Officer to issue orders to isolate individuals; specifying that any order the department issues is immediately enforceable by a law enforcement officer; providing a penalty for violating an isolation order, etc. HP 03/10/2015 Fav/CS AHS 04/08/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
With subcommittee recommendation - Health and Human Services Appropriations			
20	SB 1010 Braynon (Identical H 117)	False Personation; Revising the list of officials who are prohibited from being falsely personated; prohibiting the sale or transfer of specified badges bearing in any manner or combination the words "fire department" and the ownership or operation of vehicles marked or identified by the words "fire department", etc. CJ 03/23/2015 Not Considered CJ 03/30/2015 Favorable CA 04/07/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
21	CS/SB 1032 Regulated Industries / Richter (Similar H 763, Compare S 120)	Point-of-sale Terminals; Authorizing the Department of the Lottery to create a program that authorizes certain persons to purchase a ticket or game at a point-of-sale terminal; authorizing the department, a retailer operating from one or more locations, or a vendor approved by the department to use a point-of-sale terminal to sell a lottery ticket or game; prohibiting a point-of-sale terminal from being used to redeem a winning ticket; providing that revenue generated by a point-of-sale-terminal shall be used to enhance instructional technology resources for students and teachers in this state, etc. RI 03/24/2015 Fav/CS AGG 04/08/2015 Favorable FP 04/15/2015 Temporarily Postponed	Temporarily Postponed
With subcommittee recommendation - General Government Appropriations			

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	SB 1040 Braynon (Identical H 475)	Infectious Disease Elimination Pilot Program; Creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; authorizing the University of Miami and its affiliates to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; requiring the Office of Program Policy Analysis and Government Accountability to submit a report and recommendations regarding the pilot program to the Legislature; providing for severability, etc. HP 03/23/2015 Favorable AHS 04/08/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 7 Nays 2
With subcommittee recommendation - Health and Human Services Appropriations			
23	CS/SB 1098 Criminal Justice / Bradley (Identical CS/H 897)	Controlled Substances; Adding certain substances to the Schedule I list of controlled substances, etc. CJ 03/23/2015 Fav/CS ACJ 04/08/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
With subcommittee recommendation - Criminal and Civil Justice Appropriations			
A proposed committee substitute for the following bill (CS/SB 1126) is available:			
24	CS/SB 1126 Banking and Insurance / Altman (Similar CS/H 749)	Continuing Care Communities; Revising authority of the Office of Insurance Regulation to waive requirements for accredited facilities; providing that continuing care and continuing care at-home contracts are preferred claims in the event of bankruptcy proceedings against a provider; requiring an agent of a provider to provide a copy of an examination report and corrective action plan under certain conditions; requiring a residents' council to provide a forum for certain purposes; revising provisions relating to quarterly meetings between residents and the governing body of the provider, etc. BI 03/10/2015 Fav/CS AGG 04/08/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
With subcommittee recommendation - General Government Appropriations			

A proposed committee substitute for the following bill (CS/SB 1134) is available:

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	CS/SB 1134 Banking and Insurance / Hays (Similar CS/CS/H 893)	Blanket Health Insurance; Expanding the types of individuals and entities which are eligible for blanket health insurance coverage, etc. BI 03/17/2015 Fav/CS AGG 04/02/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
With subcommittee recommendation - General Government Appropriations			

A proposed committee substitute for the following bill (CS/SB 1222) is available:

26	CS/SB 1222 Banking and Insurance / Richter (Similar CS/CS/H 1133)	Division of Insurance Agent and Agency Services; Revising examination requirements and exemptions for applicants for certain agent and adjuster licenses; requiring an insurance agent to provide and retain certain information upon surrender of an annuity or life insurance policy under certain circumstances; authorizing certain notices of insolvency to be delivered to policyholders by certain methods, etc. BI 03/17/2015 Fav/CS AGG 04/02/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
With subcommittee recommendation - General Government Appropriations			

27	CS/CS/SB 1232 Community Affairs / Health Policy / Simpson (Compare CS/CS/H 915, CS/S 926)	Building Codes; Revising the certification examination requirements for building code inspectors, plans examiners, and building code administrators; providing an exemption for a specified employee who makes minor repairs to existing waters heaters or to existing heating, venting, and air-conditioning systems in certain circumstances; exempting certain low-voltage landscape lighting from licensed electrical contractor installation requirements, etc. HP 03/23/2015 Fav/CS CA 04/07/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
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A proposed committee substitute for the following bill (SB 1270) is available:

28	SB 1270 Soto (Identical CS/H 133)	Sexual Offenses; Citing this act as the "43 Days Initiative Act"; revising time limitations for the criminal prosecution of specified sexual battery offenses if the victim is 16 years of age or older, etc. CJ 03/23/2015 Favorable ACJ 04/08/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
With subcommittee recommendation - Criminal and Civil Justice Appropriations			
A proposed committee substitute for the following bill (CS/SB 1304) is available:			
29	CS/SB 1304 Governmental Oversight and Accountability / Latvala (Similar CS/CS/CS/H 371)	Inspectors General; Authorizing the Chief Inspector General or his or her designee to retain legal counsel and issue and enforce subpoenas under certain circumstances; revising the definitions of the terms "agency head" and "state agency" to include the State Board of Administration and the Office of Early Learning of the Department of Education; prescribing additional hiring requirements, employment qualifications, and terms of employment for inspectors general and staff of the office of inspector general, etc. GO 03/23/2015 Fav/CS AGG 04/02/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0
With subcommittee recommendation - General Government Appropriations			
30	CS/SB 1388 Community Affairs / Stargel (Similar CS/CS/H 1155)	Special Districts; Revising legislative intent with respect to the Uniform Special District Accountability Act to include independent and dependent special districts; specifying the Legislature's authority to create dependent special districts by special act; requiring a newly created dependent special district, and authorizing an existing dependent special district, to identify the district as dependent in its charter; specifying that local general-purpose governments may review certain special districts, etc. CA 03/31/2015 Fav/CS ATD 04/08/2015 Favorable FP 04/15/2015 Favorable	Favorable Yeas 9 Nays 0
With subcommittee recommendation - Transportation, Tourism, and Economic Development Appropriations			
31	CS/CS/SB 1390 Regulated Industries / Health Policy / Hays (Similar CS/H 1219)	Public Food Service Establishments; Revising the definition of the term "public food service establishment" to exclude certain events for the purposes of exemption from licensure and inspection; clarifying that a license is not required to be obtained if excluded under the definition of "public food service establishment", etc. HP 03/17/2015 Fav/CS RI 03/31/2015 Fav/CS FP 04/15/2015 Fav/CS	Fav/CS Yeas 9 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, www.flsenate.gov.



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
12/31/14	SM	Favorable
2/3/15	JU	Favorable
4/7/15	CA	Favorable
4/14/15	FP	Favorable

December 31, 2014

The Honorable Andrew Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 54** – Senator Montford
Relief of Mark. T. Sawicki and Sharon L. Sawicki

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$700,000, TO BE PAYABLE IN A LUMP SUM, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN MARK T. SAWICKI AND SHARON L. SAWICKI AND THE CITY OF TALLAHASSEE. THE FINAL JUDGMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A CITY OF TALLAHASSEE TRUCK WHICH INJURED MARK T. SAWICKI.

FINDINGS OF FACT:

This claim arises out of an accident involving a truck owned by the City of Tallahassee and a bicyclist, Mark Sawicki, which occurred on October 2, 2009, in Tallahassee, Florida. The city truck struck and ran over Mr. Sawicki as the truck driver turned north onto Monroe Street from Call Street. The intersection is controlled by a traffic signal, and has cross walks and stop bars on each road. Call Street does not have a dedicated bicycle lane. Call Street does, however, have painted symbols of a bicycle with two chevrons on top, informing drivers that the roadway is shared with bicycles.

On the morning of the accident, Mr. Paul Hudson was working as a commercial truck driver for the City of Tallahassee. The truck he was driving had a hydraulic arm attached to its right side which would allow Mr. Hudson to

load and unload containers on and off the truck. Also on that morning, Mr. Sawicki, an engineer for Florida State University, left his home by bicycle and headed to work. Mr. Sawicki and his bicycle were equipped with various forms of safety gear, including front and rear bicycle lights, a backpack with reflective stripes, and a helmet.

At about 7 a.m. that morning, Mr. Sawicki, on a bicycle, and Paul Hudson, driving the city truck, each headed West on Call Street approaching Monroe Street. It was still relatively dark, as sunrise did not occur until 7:31 a.m. on that day. Mr. Hudson in his truck reached the intersection first. Mr. Sawicki pulled up to the intersection within the crosswalk, to the right of the truck, believing Mr. Hudson to have turned on his left turn signal. As stated by Mr. Hudson in deposition, Mr. Hudson did not look before attempting to turn right on a red light from Call Street to North Monroe Street. Additionally, Officer B. Davis of the Tallahassee Police Department noted in the Florida Traffic Crash Report that Mr. Hudson turned right on red when it was not clear to do so.

As the truck made a right turn, its hydraulic arm struck Mr. Sawicki in the back of his head, causing him to fall and be pulled under the truck as the truck continued moving. As Mr. Hudson continued to drive forward, the rear tire of the truck ran over Mr. Sawicki's body.

Mr. Sawicki suffered a crushed pelvis, broken right leg, and twisted ankle. Upon transport to the hospital by ambulance, Mr. Sawicki remained there for 32 days. Since the accident, Mr. Sawicki endured three surgeries, including major pelvis reconstructive surgery. He also experienced complications from surgery, consisting of repeated Methicillin-resistant staphylococcus aureus (MRSA) infections.

Mr. Sawicki's medical bills to date total \$250,000, of which Mr. Sawicki owes \$23,566.66 through a subrogation lien. The subrogation lien is a contingent liability which is due and payable only if the Legislature approves the settlement.

FUTURE SERVICES REPORT: Dr. John McKay, a rehabilitation consultant, prepared a Future Services Report at the request of the claimant. The report describes how the injuries from the accident have affected Mr. Sawicki's lifestyle and limited his abilities. The

report also specifies and calculates the cost of future medical needs resulting from the accident.

Before the accident, Mr. Sawicki was a competitive triathlete, marathoner, and cyclist. Since the accident and recovery to date, Mr. Sawicki struggles to stand for lengthy periods of time. He is no longer able to run more than a very short distance, much less compete in triathlons or other races.

Mr. Sawicki did not return to work from the date of the accident, October 2, 2009, until January 1, 2010. For this and other medical reasons, Mr. Sawicki depleted his sick leave and annual leave. The report, however, does not place a specific monetary value on the loss of leave time.

Mr. Sawicki continues to suffer from chronic pain, a dropped foot, sexual dysfunction, and intermittent bladder incontinence. Due to these continuing conditions, he will incur ongoing costs for physician services, medication, diagnostic tests, and physical therapy.

Mr. Sawicki previously performed numerous personal services around his house, including home repairs, yard work, and mechanical repairs. Due to physical limitations from his injuries, such as restricted climbing, standing, and walking, height restrictions, and light lifting only, he is unable to resume this work, and must rely on hiring outside help.

The report assumes that Mr. Sawicki will have a normal life expectancy but does not specify what that is. Although approximate costs are included in the report, as detailed in the table below, the report did not calculate the present value of the future medical costs. Additionally, Mr. Sawicki remains at risk for medical complications.

Still, future medical and personal services costs are estimated at several thousand dollars per year:

Cost	First Year	2nd thru 10th Year	11th Year +
Analgesics	\$30	\$30	\$30
Orthopedist	\$58	\$58	\$58
Urologist	\$98	\$98	\$98
Medical Care for Pain	\$90	\$90	\$90
Pills for Functioning	\$1,920	\$1,920	\$1,920
X-rays	\$42	\$42	\$21
Urology Tests	\$67	\$67	\$67
Physical Therapy	\$2,080	\$130	\$130
Exercise Mat	\$90	\$90	\$90
Exercise Equipment	\$100	\$100	\$100
Mileage Reimbursement	\$120	\$120	\$120
Personal Services	\$1,560	\$1,560	\$1,560
Total	\$6,255	\$4,305	\$4,284

The orthopedic surgeon who performed the reconstructive surgery on Mr. Sawicki's pelvis expects that Mr. Sawicki will have to have hip surgery sometime in the future. The cost of the hip surgery is not included in the table, but is estimated at \$62,000.

Florida State University has employed Mr. Sawicki as a mechanical engineer continuously since 1987. The claimant intends to retire three years early due to the accident. The report estimates this loss at about \$200,000 in present value.

LITIGATION HISTORY:

On June 3, 2010, Mr. and Mrs. Sawicki filed a Complaint for Damages against the City of Tallahassee in the Leon County Circuit Court. The complaint alleged that Mr. Hudson negligently operated his truck which caused Mr. Sawicki to have permanent injuries, suffer mental anguish, and incur considerable medical costs. The complaint also asserted that the accident caused Mrs. Sawicki to suffer from loss of companionship, society, and consortium.

After the plaintiffs filed complaint, the parties engaged in discovery, exchanged interrogatories and took depositions. Eventually, the Sawicki's and the City of Tallahassee entered into a Mediation Contingent Settlement Agreement. The city agreed to pay the Sawicki's \$900,000, of which the city would pay \$200,000 upfront. The agreement provided for the

remainder to be paid upon the approval of a claim bill by the Legislature. The agreement also provides that the Sawicki's are responsible for their own attorneys' fees and costs, and states that the city agrees to support the claim bill.

The court issued an order approving the settlement and final judgment on February 12, 2012.

The city paid the \$200,000 on or about March 1, 2012. The remaining \$700,000 is sought through the underlying claim bill.

CLAIMANT'S POSITION:

To prove a claim of negligence, a plaintiff must show that a defendant had a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant argues each of these elements as follows. Mr. Hudson had a duty to Mr. Sawicki to safely operate his motor vehicle. Mr. Hudson breached that duty by turning right on a red light without looking to the right. Had Mr. Hudson looked to the right before making a right turn on a red light, he would have seen Mr. Sawicki and known to avoid running over him, as it was foreseeable that he could have hit someone. Therefore, Mr. Hudson caused the accident and the resulting damages to the Sawickis'.

Mr. Sawicki suffered considerable physical damage from the accident. In addition to being required to have had three major surgeries and a liposuction, substantial rehabilitation, and long-term antibiotics for repeated MRSA infections, Mr. Sawicki is permanently injured. He continues to suffer from intermittent bladder incontinence. He will also most likely need a hip replacement surgery. He intends to shorten his career by retiring 3 years early, down from 66, to 63 years of age at retirement. His injuries now prevent him from participating altogether in activities he previously enjoyed, including triathlons, running events, and competitions. Walking, bicycling, and contributing to physical household tasks are now severely limited.

Mrs. Sawicki has suffered, and continues to suffer from loss of consortium as Mr. Sawicki has permanent sexual dysfunction.

RESPONDENT'S POSITION: The City of Tallahassee admits liability and fully supports this claim.

CONCLUSIONS OF LAW: Section 768.28 (2009), F.S., governs this matter. That statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$100,000 per person and \$200,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, the Sawickis will not receive the full benefit of their settlement agreement with the City of Tallahassee unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So. 2d 585,586 (Fla.1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992). Mr. Hudson failed to use reasonable care by not looking to the right before turning his vehicle onto Monroe Street at a red light. Had Mr. Hudson looked properly, he would have seen Mr. Sawicki to the right of him, and avoided striking him with his vehicle.

Due to Mr. Hudson's breach of his duty of care, he caused the accident and the Sawicki's damages.

Florida's dangerous instrumentality doctrine imposes strict vicarious liability on an owner of a dangerous instrumentality who entrusts the instrument to a person who operates it negligently. *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Trucks in operation are considered to be dangerous instrumentalities. *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1985).

Municipalities are subject to the dangerous instrumentality doctrine. “When a municipality owns a motor truck, a dangerous instrumentality when in operation, that is being operated with the knowledge and consent of the municipality through its officers or employees and used on the other streets for lawful street, sewer or other corporate purposes, the municipality may be liable for injuries ... caused by negligence of the truck driver in operating the truck” *Barth v. City of Miami*, 1 So. 2d 574, 577 (Fla. 1941).

The long-standing doctrine of respondeat superior provides that an employer is liable for an employee’s acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

The City of Tallahassee employed Mr. Hudson at the time of the accident. On that day, Mr. Hudson drove a truck owned by the City of Tallahassee during the course of his normal workday. Therefore, the City of Tallahassee is liable for the negligence of Mr. Hudson and the damages caused to Mr. and Mrs. Sawicki.

The claimant has demonstrated significant economic damages. Mr. Sawicki owes \$23,566.66 in medical bills through a subrogation lien for past medical costs. As stated above, Mr. Sawicki has lost considerable leave time due to the accident. Expected costs for medical and personal services total, on average, a minimum of \$4,300 a year for the rest of his life. Mr. Sawicki is expected to undergo hip replacement, estimated at \$62,000. Mr. Sawicki’s career is expected to be shortened by 3 years, which will cause him to lose about \$200,000 in income.

Noneconomic damages have not been calculated but clearly exist for both Mr. Sawicki and Mrs. Sawicki.

Additionally, should this case have proceeded to trial, Mr. Sawicki appears by all accounts to have presented as a sympathetic plaintiff and one who, if anything, achieved the positive physical recovery he had largely due to his own efforts and fit state preceding the accident.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

LEGISLATIVE HISTORY:

Senator Montford, sponsor for the claim bill, also sponsored this bill in 2013 and 2014. The Senate did not hear the bill or any other claim bill in any committee of reference in either year.

ATTORNEYS FEES:

The Sawickis' attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit.

FISCAL IMPACT:

The City of Tallahassee is self-insured. If approved by the Legislature, the \$700,000 will be paid from the city's self-insurance fund. The city represents that they have reserved this amount for the claim.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 54 (2015) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Senator Montford
Debbie Brown, Secretary of the Senate
Counsel of Record

By Senator Montford

3-00034A-15

201554__

1 A bill to be entitled
 2 An act for the relief of Mark T. Sawicki and his wife,
 3 Sharon L. Sawicki, by the City of Tallahassee;
 4 providing for an appropriation to compensate them for
 5 injuries sustained by Mr. Sawicki as a result of the
 6 negligence of an employee of the City of Tallahassee;
 7 providing a limitation on the payment of fees and
 8 costs; providing that certain payments and the
 9 appropriation satisfy all present and future claims
 10 related to the negligent act; providing an effective
 11 date.
 12
 13 WHEREAS, on the morning of October 2, 2009, Mark T. Sawicki
 14 was riding his bicycle on his way to Florida State University in
 15 Tallahassee, where he works as an engineer, and
 16 WHEREAS, Mark T. Sawicki was stopped at the intersection of
 17 Call Street and North Monroe Street while waiting to cross the
 18 street, and
 19 WHEREAS, a solid waste collection vehicle, owned by the
 20 City of Tallahassee and operated by a city employee, was making
 21 a right-hand turn and ran over Mark T. Sawicki, and
 22 WHEREAS, as a result of the foregoing incident, Mark T.
 23 Sawicki sustained multiple fractures, including, but not limited
 24 to, fractures to his right and left pelvic region, right femur,
 25 right acetabulum pubic ramus, and sacrum; a torn urethra;
 26 multiple abrasions and lacerations to his right thigh and upper
 27 and lower extremities; and neurological damage to his right
 28 lower extremities, resulting in a dropped foot, and
 29 WHEREAS, on June 7, 2010, a complaint was filed on behalf

Page 1 of 3

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

3-00034A-15

201554__

30 of Mark T. Sawicki and his wife, Sharon L. Sawicki, against the
 31 City of Tallahassee in the Circuit Court for Leon County, Case
 32 No. 2010-CA-1984, to recover damages for the injuries sustained
 33 by Mark T. Sawicki as a result of the negligence of the City of
 34 Tallahassee employee, and
 35 WHEREAS, the City of Tallahassee, Mark T. Sawicki, and his
 36 wife, Sharon L. Sawicki, reached a settlement of the case that
 37 includes a lump-sum payment in the amount of \$900,000, and
 38 WHEREAS, the City of Tallahassee paid \$200,000 of the
 39 settlement pursuant to the statutory limits of liability set
 40 forth in s. 768.28, Florida Statutes, and
 41 WHEREAS, the City of Tallahassee fully supports the passage
 42 of this claim bill, NOW, THEREFORE,
 43
 44 Be It Enacted by the Legislature of the State of Florida:
 45
 46 Section 1. The facts stated in the preamble to this act are
 47 found and declared to be true.
 48 Section 2. The City of Tallahassee is authorized and
 49 directed to appropriate from funds of the city not otherwise
 50 appropriated and to draw a warrant, payable to Mark T. Sawicki
 51 and his wife, Sharon L. Sawicki, for the total amount of
 52 \$700,000 as compensation for injuries and damages sustained as a
 53 result of the negligence of an employee of the City of
 54 Tallahassee.
 55 Section 3. The total amount paid for attorney fees,
 56 lobbying fees, costs, and other similar expenses relating to
 57 this claim may not exceed 25 percent of the amount awarded under
 58 this act.

Page 2 of 3

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

3-00034A-15

201554__

59 Section 4. The amount paid by the City of Tallahassee
60 pursuant to s. 768.28, Florida Statutes, and the amount awarded
61 under this act is intended to provide the sole compensation for
62 all present and future claims arising out of the factual
63 situation described in this act which resulted in the injuries
64 to Mark T. Sawicki.

65 Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 116 2015

Meeting Date

Topic _____

Bill Number 54
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD

3rd District

April 09, 2015

Senator Anitere Flores,
Chair
Senate Committee on Fiscal Policy
225 Knott Building
Tallahassee, Florida 32399-1100

Dear Senator Flores:

I respectfully request that the following bills be scheduled for a hearing before the Senate Fiscal Policy Committee.

SB 54 Sawicki Claims Bill
SB 572 School Support Organizations

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
Senate District 3

WM/md

Cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: SB 164

INTRODUCER: Senators Evers and Grimsley

SUBJECT: Crime Stoppers Trust Fund

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Summer</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Wagoner</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
4.	<u>Goedert</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 164 authorizes counties that are awarded a grant from the Crime Stoppers Trust Fund to use the funds for the purchase and distribution of promotional items to increase public awareness and educate the public about Crime Stoppers.

The express authorization to use grant funds for certain expenditures does not have a fiscal impact.

II. Present Situation:

The local Crime Stoppers programs authenticate tips about criminal activity and act as liaisons between citizens and law enforcement agencies.¹ They allow citizens to anonymously report individuals who are known or suspected of committing criminal acts within the community and offer cash rewards for any tips that lead to an arrest.²

Crime Stoppers began in Albuquerque, New Mexico in 1976. A homicide detective with the Albuquerque Police asked a local television station to broadcast a re-enactment of an unsolved murder on its newscast. A reward was offered and a caller contacted the police the next day with a tip that led the police to the two men who were responsible. The success of this concept launched a program which is now internationally known as "Crime Stoppers." There are now over 1,200 Crime Stoppers programs worldwide.³

¹ Crime Stoppers of Broward County website, "What is Crime Stoppers?," available at <http://www.browardcrimestoppers.org/about-us/> (last visited April 10, 2015).

² Southwest Florida Crime Stoppers website, "About us," available at <http://www.swflcrimestoppers.org/content/about-us> (last visited April 10, 2015). See also Crime Stoppers of Broward County website.

³ Florida Association of Crime Stoppers, *Where It All Started*, available at <http://www.floridacrimestoppers.com/pages/where> (last visited April 8, 2015).

Today there are 32 programs in Florida operating under the name Florida Association of Crime Stoppers, Inc.⁴ Florida Crime Stoppers programs reported 56,069 crime tips, 9,857 cleared cases, 4,679 arrests, and 3,885 approved rewards during Fiscal Year 2013-2014.⁵

The Crime Stoppers programs are financed through the “Crime Stoppers Trust Fund” (trust fund) provided for in s. 16.555, F.S. The Department of Legal Affairs (department) is required to administer the trust fund, including applying for all federal, state, and private grants that meet the purposes of advancing Crime Stoppers and disbursing the funds.

Section 938.06, F.S., provides a funding source for the trust fund by imposing a \$20 court cost on persons convicted of any criminal offense. The clerks retain \$3 per assessment as a service charge and forward the rest of the money to the Department of Revenue for deposit into the trust fund.⁶ The proceeds from the \$20 court cost are deposited in a separate account within the trust fund, and within that account, designated according to the judicial circuit in which they were collected.⁷ A county may apply to the department for a grant from funds collected in the judicial circuit in which the county is located; however, grants can only be awarded to counties which are served by an official member of the Florida Association of Crime Stoppers.⁸ The grants may only be used to support Crime Stoppers and its programs.⁹ Approximately \$4.4 million in grants were awarded to Crime Stoppers organizations during Fiscal Year 2013-2014.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 16.555, F.S., to authorize counties that are awarded a grant from the Crime Stoppers Trust Fund to use the funds for the purchase and distribution of promotional items to increase public awareness and educate the public about Crime Stoppers.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴ Florida Association of Crime Stoppers, *Who We Are*, <http://www.floridacrimestoppers.com/pages/who> (last visited April 8, 2015).

⁵ *Division of Victim Services and Criminal Justice Programs Annual Report 2013-2014*, pg. 10.

⁶ Section 928.06(2), F.S.

⁷ Section 16.555(4)(b), F.S.

⁸ Section 16.555(5)(b), F.S.

⁹ *Id.*

¹⁰ Department of Legal Affairs, *Division of Victim Services and Criminal Justice Programs Annual Report 2013-2014*, pg. 11, available at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9S3LLL/\\$file/2013-2014AnnualReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9S3LLL/$file/2013-2014AnnualReport.pdf) (last visited April 8, 2015).

C. Trust Funds Restrictions:

The bill would allow for trust funds to be used to purchase and distribute promotional items.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 164 expressly authorizes the use of grant funds from the Crime Stoppers Trust Fund for certain expenditures. This bill has no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 16.555 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Evers

2-00188-15

2015164__

1 A bill to be entitled
2 An act relating to the Crime Stoppers Trust Fund;
3 amending s. 16.555, F.S.; authorizing a county that is
4 awarded a grant from the trust fund to use such funds
5 for the purchase and distribution of promotional
6 items; making technical changes; providing an
7 effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsection (5) of section 16.555, Florida
12 Statutes, is amended to read:

13 16.555 Crime Stoppers Trust Fund; rulemaking.-

14 (5) (a) The department shall be the disbursing authority for
15 the distribution of funding to units of local government which
16 apply, upon their application to the department for funding
17 assistance.

18 (b) Funds deposited in the trust fund pursuant to paragraph
19 (4) (b) shall be disbursed as provided in this paragraph. A Any
20 county may apply to the department under s. 938.06 for a grant
21 from the funds collected in the judicial circuit in which the
22 county is located under s. 938.06. A grant may be awarded only
23 to counties that which are served by an official member of the
24 Florida Association of Crime Stoppers and may ~~only~~ be used only
25 to support Crime Stoppers and its ~~their~~ crime fighting programs.
26 Only one such official member is ~~shall be~~ eligible for support
27 within any county. ~~In order~~ To aid the department in determining
28 eligibility, the secretary of the Florida Association of Crime
29 Stoppers shall furnish the department with a schedule of

Page 1 of 2

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2-00188-15

2015164__

30 authorized crime stoppers programs and shall update the schedule
31 as necessary. The department shall award grants to eligible
32 counties from available funds and shall distribute funds as
33 equitably as possible, based on amounts collected within each
34 county, ~~if when~~ more than one county is eligible within a
35 judicial circuit.

36 (c) A county that is awarded a grant under this section may
37 use such funds to purchase and distribute promotional items to
38 increase public awareness of, and to educate the public about,
39 Crime Stoppers.

40 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 16 / 2015

Meeting Date

Topic _____

Bill Number 164
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

SB 164
Bill Number (if applicable)

Topic CRIME STOPPERS

Amendment Barcode (if applicable)

Name James Peacock

Job Title Chairman Chipola CRIME STOPPERS

Address P.O. Box 171

Phone 850-209-7377

Street

Marianna

City

FL

State

32478

Zip

Email jpeacockus55@

yahoo.com

Speaking: For Against Information

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

Representing FLORIDA ASSOCIATION OF CRIME STOPPERS

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)

April 15, 2015

Meeting Date

164

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Quigley

Job Title _____

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

04-15-15

Meeting Date

SB 0164

Bill Number (if applicable)

Topic Crime Stoppers Trust Fund

Amendment Barcode (if applicable)

Name DENNIS STRANGE

Job Title LT.

Address 2570 West Colonial Dr

Phone 407-254-7000

Street Del Prado 71
City State Zip

Email dennis.strange@ocfl.net

Speaking: For Against Information

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

Representing Orange County Sheriff's Office

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-15

Meeting Date

1164

Bill Number (if applicable)

Topic CRIME STOPPERS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST

Phone 294-1838

Street

TAL

City

FL

State

32301

Zip

Email L.YOUMANS@FLCOURTIES.COM

COM

Speaking: For Against Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Flores
Chair, Fiscal Policy

Subject: Committee Agenda Request

April 8, 2015

Dear Senator,

I respectfully request that **Senate Bill 164**, regarding Crime Stoppers Trust Fund, be placed on the:

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

A handwritten signature in cursive script that reads "Greg Evers".

Senator Greg Evers
Florida Senate, District 2



561494

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 64 - 100

and insert:

(e)1. As used in this paragraph, the term:

a. "Appropriation made by law" has the same meaning as provided in s. 11.066.

b. "Reimbursement rate" means the audited hospital cost-based per diem reimbursement rate for inpatient or outpatient care established by the agency.



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11 2. Pursuant to chapter 120, the agency shall furnish
12 written notice of a reimbursement rate to providers. The written
13 notice constitutes final agency action. A substantially affected
14 provider seeking to correct or adjust the calculation of a
15 reimbursement rate, based on a challenge other than a challenge
16 to a methodology used to calculate a reimbursement rate as
17 described in subparagraph 3., may request an administrative
18 hearing by filing a petition with the agency within 180 days
19 after receipt of the written notice by the provider. The failure
20 to timely file a petition in compliance with this subparagraph
21 is deemed conclusive acceptance of the reimbursement rate.

22 3. An administrative proceeding pursuant to:

23 a. Section 120.569 or s. 120.57 which challenges a
24 methodology that is specified in an agency rule or in a
25 reimbursement plan incorporated by reference in such rule and
26 that is used to calculate a reimbursement rate may not result in
27 a correction or an adjustment of a reimbursement rate for a rate
28 period that occurred more than 5 years before the date the
29 petition initiating the proceeding was filed.

30 b. Section 120.56 or s. 120.57(1)(e) which challenges the
31 validity of an agency rule or an unadopted rule that governs the
32 calculation of a reimbursement rate may not have a retroactive
33 effect on a reimbursement rate for a rate period before the date
34 the petition initiating the proceeding was filed.

35 4. This paragraph applies to any challenge described in
36 subparagraph 2. or subparagraph 3., including a right to
37 challenge which arose before July 1, 2015. A correction or
38 adjustment of a reimbursement rate which is required by an
39 administrative order or appellate decision:



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40 a. Must be reconciled in the first rate period after the
41 order or decision becomes final; and

42 b. May not serve as the basis for a challenge to correct or
43 adjust hospital rates required to be paid by a Medicaid managed
44 care provider pursuant to part IV of chapter 409.

45 5. The agency may not be compelled by an administrative
46 body or a court to pay compensation that exceeds \$5 million to a
47 hospital relating to the establishment of reimbursement rates by
48 the agency or for remedies relating to such rates, unless an
49 appropriation made by law is enacted for the exclusive, specific
50 purpose of paying such additional compensation.

51 6. A period of time specified in this paragraph is not
52 tolled by the pendency of an administrative or appellate
53 proceeding.

54 7. An administrative proceeding pursuant to chapter 120 is
55 the exclusive means to challenge a reimbursement rate as
56 described under subparagraph 2. before, on, or after July 1,
57 2015, and to challenge a methodology used to calculate a
58 reimbursement rate as described under subparagraph 3.

59 Section 2. For the purpose of incorporating the amendment
60 made by this act to section 409.908, Florida Statutes, in a
61 reference thereto, section 383.18, Florida Statutes, is
62 reenacted to read:

63 383.18 Contracts; conditions.—Participation in the regional
64 perinatal intensive care centers program under ss. 383.15–383.19
65 is contingent upon the department entering into a contract with
66 a provider. The contract shall provide that patients will
67 receive services from the center and that parents or guardians
68 of patients who participate in the program and who are in



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69 compliance with Medicaid eligibility requirements as determined
70 by the department are not additionally charged for treatment and
71 care which has been contracted for by the department. Financial
72 eligibility for the program is based on the Medicaid income
73 guidelines for pregnant women and for children under 1 year of
74 age. Funding shall be provided in accordance with ss. 383.19 and
75 409.908.

76 Section 3. For the purpose of incorporating the amendment
77 made by this act to section 409.908, Florida Statutes, in a
78 reference thereto, subsection (4) of section 409.8132, Florida
79 Statutes, is reenacted to read:

80 409.8132 Medikids program component.—

81 (4) APPLICABILITY OF LAWS RELATING TO MEDICAID.—The
82 provisions of ss. 409.902, 409.905, 409.906, 409.907, 409.908,
83 409.912, 409.9121, 409.9122, 409.9123, 409.9124, 409.9127,
84 409.9128, 409.913, 409.916, 409.919, 409.920, and 409.9205 apply
85 to the administration of the Medikids program component of the
86 Florida Kidcare program, except that s. 409.9122 applies to
87 Medikids as modified by the provisions of subsection (7).

88 Section 4. For the purpose of incorporating the amendment
89 made by this act to section 409.908, Florida Statutes, in
90 references thereto, paragraph (c) of subsection (5) and
91 paragraph (b) of subsection (6) of section 409.905, Florida
92 Statutes, are reenacted to read:

93 409.905 Mandatory Medicaid services.—The agency may make
94 payments for the following services, which are required of the
95 state by Title XIX of the Social Security Act, furnished by
96 Medicaid providers to recipients who are determined to be
97 eligible on the dates on which the services were provided. Any



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98 service under this section shall be provided only when medically
99 necessary and in accordance with state and federal law.

100 Mandatory services rendered by providers in mobile units to
101 Medicaid recipients may be restricted by the agency. Nothing in
102 this section shall be construed to prevent or limit the agency
103 from adjusting fees, reimbursement rates, lengths of stay,
104 number of visits, number of services, or any other adjustments
105 necessary to comply with the availability of moneys and any
106 limitations or directions provided for in the General
107 Appropriations Act or chapter 216.

108 (5) HOSPITAL INPATIENT SERVICES.—The agency shall pay for
109 all covered services provided for the medical care and treatment
110 of a recipient who is admitted as an inpatient by a licensed
111 physician or dentist to a hospital licensed under part I of
112 chapter 395. However, the agency shall limit the payment for
113 inpatient hospital services for a Medicaid recipient 21 years of
114 age or older to 45 days or the number of days necessary to
115 comply with the General Appropriations Act. Effective August 1,
116 2012, the agency shall limit payment for hospital emergency
117 department visits for a nonpregnant Medicaid recipient 21 years
118 of age or older to six visits per fiscal year.

119 (c) The agency shall implement a prospective payment
120 methodology for establishing reimbursement rates for inpatient
121 hospital services. Rates shall be calculated annually and take
122 effect July 1 of each year. The methodology shall categorize
123 each inpatient admission into a diagnosis-related group and
124 assign a relative payment weight to the base rate according to
125 the average relative amount of hospital resources used to treat
126 a patient in a specific diagnosis-related group category. The



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127 agency may adopt the most recent relative weights calculated and
128 made available by the Nationwide Inpatient Sample maintained by
129 the Agency for Healthcare Research and Quality or may adopt
130 alternative weights if the agency finds that Florida-specific
131 weights deviate with statistical significance from national
132 weights for high-volume diagnosis-related groups. The agency
133 shall establish a single, uniform base rate for all hospitals
134 unless specifically exempt pursuant to s. 409.908(1).

135 1. Adjustments may not be made to the rates after October
136 31 of the state fiscal year in which the rates take effect,
137 except for cases of insufficient collections of
138 intergovernmental transfers authorized under s. 409.908(1) or
139 the General Appropriations Act. In such cases, the agency shall
140 submit a budget amendment or amendments under chapter 216
141 requesting approval of rate reductions by amounts necessary for
142 the aggregate reduction to equal the dollar amount of
143 intergovernmental transfers not collected and the corresponding
144 federal match. Notwithstanding the \$1 million limitation on
145 increases to an approved operating budget contained in ss.
146 216.181(11) and 216.292(3), a budget amendment exceeding that
147 dollar amount is subject to notice and objection procedures set
148 forth in s. 216.177.

149 2. Errors in source data or calculations discovered after
150 October 31 must be reconciled in a subsequent rate period.
151 However, the agency may not make any adjustment to a hospital's
152 reimbursement more than 5 years after a hospital is notified of
153 an audited rate established by the agency. The prohibition
154 against adjustments more than 5 years after notification is
155 remedial and applies to actions by providers involving Medicaid



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156 claims for hospital services. Hospital reimbursement is subject
157 to such limits or ceilings as may be established in law or
158 described in the agency's hospital reimbursement plan. Specific
159 exemptions to the limits or ceilings may be provided in the
160 General Appropriations Act.

161 (6) HOSPITAL OUTPATIENT SERVICES.—

162 (b) The agency shall implement a methodology for
163 establishing base reimbursement rates for outpatient services
164 for each hospital based on allowable costs, as defined by the
165 agency. Rates shall be calculated annually and take effect July
166 1 of each year based on the most recent complete and accurate
167 cost report submitted by each hospital.

168 1. Adjustments may not be made to the rates after October
169 31 of the state fiscal year in which the rates take effect,
170 except for cases of insufficient collections of
171 intergovernmental transfers authorized under s. 409.908(1) or
172 the General Appropriations Act. In such cases, the agency shall
173 submit a budget amendment or amendments under chapter 216
174 requesting approval of rate reductions by amounts necessary for
175 the aggregate reduction to equal the dollar amount of
176 intergovernmental transfers not collected and the corresponding
177 federal match. Notwithstanding the \$1 million limitation on
178 increases to an approved operating budget under ss. 216.181(11)
179 and 216.292(3), a budget amendment exceeding that dollar amount
180 is subject to notice and objection procedures set forth in s.
181 216.177.

182 2. Errors in source data or calculations discovered after
183 October 31 must be reconciled in a subsequent rate period.
184 However, the agency may not make any adjustment to a hospital's



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185 reimbursement more than 5 years after a hospital is notified of
186 an audited rate established by the agency. The prohibition
187 against adjustments more than 5 years after notification is
188 remedial and applies to actions by providers involving Medicaid
189 claims for hospital services. Hospital reimbursement is subject
190 to such limits or ceilings as may be established in law or
191 described in the agency's hospital reimbursement plan. Specific
192 exemptions to the limits or ceilings may be provided in the
193 General Appropriations Act.

194 Section 5. The amendment made by this act to s. 409.908,
195 Florida Statutes, is remedial in nature, confirms and clarifies
196 existing law, and applies to all proceedings pending on or
197 commenced after this act takes effect.

198
199 ===== T I T L E A M E N D M E N T =====

200 And the title is amended as follows:

201 Delete lines 3 - 27

202 and insert:

203 providers; amending s. 409.908, F.S.; defining terms;
204 requiring the Agency for Health Care Administration to
205 provide written notice, pursuant to ch. 120, F.S., of
206 reimbursement rates to providers; specifying
207 procedures and requirements to challenge the
208 calculation of or the methodology used to calculate
209 such rates; providing that the failure to timely file
210 a certain challenge constitutes acceptance of the
211 rates; specifying limits on and procedures for the
212 correction or adjustment of the rates; providing
213 applicability; prohibiting the agency from being



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214 compelled by an administrative body or a court to pay
215 additional compensation that exceeds a certain amount
216 to a hospital for specified matters unless an
217 appropriation is made by law; prohibiting certain
218 periods of time from being tolled under specified
219 circumstances; specifying that an administrative
220 proceeding is the exclusive means for challenging
221 certain issues; reenacting ss. 383.18, 409.8132(4),
222 and 409.905(5)(c) and (6)(b), F.S., relating to
223 contracts for the regional perinatal intensive care
224 centers program, the Medikids program component, and
225 mandatory Medicaid services, respectively, to
226 incorporate the amendment made to s. 409.908, F.S., in
227 references thereto; providing that the act is
228 remedial, intended to confirm and clarify law, and
229 applies to proceedings pending on or commenced after
230 the effective date; providing an effective date.



541058

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
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The Committee on Fiscal Policy (Stargel) recommended the following:

Senate Amendment to Amendment (561494)

Delete lines 22 - 34
and insert:

3. An administrative proceeding pursuant to s. 120.569 or s. 120.57 which challenges a methodology that is specified in an agency rule or in a reimbursement plan incorporated by reference in such rule and that is used to calculate a reimbursement rate may not result in a correction or an adjustment of a reimbursement rate for a rate period that occurred more than 5



541058

11 years before the date the petition initiating the proceeding was
12 filed.



150600

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2015	.	
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The Committee on Fiscal Policy (Stargel) recommended the following:

Senate Amendment (with title amendment)

Before line 31

insert:

Section 1. Subsection (29) is added to section 409.901, Florida Statutes, to read:

409.901 Definitions; ss. 409.901-409.920.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(29) "Usual and customary charge" means the amount a



150600

11 provider usually bills an uninsured person for services or goods
12 before application of a discount or supplemental plan.

13 Section 2. The amendment made by this act to s. 409.901,
14 Florida Statutes, confirms and clarifies existing law.

15

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

17 And the title is amended as follows:

18 Delete lines 2 - 3

19 and insert:

20 An act relating to Medicaid; amending s. 409.901,
21 F.S.; defining the term "usual and customary charge";
22 providing that the act's amendment to s. 409.901,
23 F.S., is intended to confirm and clarify existing law;
24 amending s. 409.908, F.S.; requiring the



866216

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2015	.	
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	.	

The Committee on Fiscal Policy (Stargel) recommended the following:

Senate Amendment (with title amendment)

Before line 31

insert:

Section 1. Subsection (29) is added to section 409.901, Florida Statutes, to read:

409.901 Definitions; ss. 409.901-409.920.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(29) "Usual and customary charge" means the retail price



866216

11 that a provider or supplier routinely charges a person for
12 services or goods before application of a discount, rebate, or
13 supplemental plan. Charity care, uninsured discounts, or free
14 goods or services that are provided to a person based on the
15 person's uninsured status, indigent status, or financial
16 hardship may not be considered in determining the usual and
17 customary charge.

18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete lines 2 - 3

22 and insert:

23 An act relating to Medicaid; amending s. 409.901,

24 F.S.; defining the term "usual and customary charge";

25 amending s. 409.908, F.S.; requiring the

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 Fiscal Policy

BILL: CS/SB 322

INTRODUCER: Fiscal Policy Committee, Senator Stargel and others

SUBJECT: Medicaid Reimbursement for Hospital Providers

DATE: April 17, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

I. Summary:

CS/SB 322 clarifies reimbursement provisions, provider notification requirements, and the administrative challenge process for Medicaid inpatient and outpatient hospital rates. The bill specifies that the written notice of the hospital reimbursement rates provided by the Agency for Health Care Administration (AHCA) constitutes final agency action for purposes of administrative challenges to the rate.

The bill provides additional finality for future rate adjustments by requiring a challenge to a final audited rate to be filed within 180 days of the AHCA providing written notice of a final audited rate. By tying the window for a rate challenges to the notice of a final audited rate, the bill preserves that option regardless of how long it takes the AHCA to complete the auditing and rate-setting process.

The bill also limits the period of time considered for rate reconciliation that is needed when the rate methodology is found invalid due to a rule challenge. Such reconciliations can only be made for the 5 years preceding the petition challenging the rule.

The bill specifies that the AHCA may not be compelled to pay additional compensation in excess of \$5 million to a hospital for adjusted rate unless there is a specific appropriation for that purpose.

These clarifications are deemed remedial in nature and apply retroactively to all proceedings pending or commenced on or after the effective date of this act.

The bill has an indeterminate significant negative fiscal impact on any subsequent challenges to hospital reimbursement rates.

II. Present Situation:

Florida Medicaid

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Over 3.7 million Floridians are currently enrolled in Medicaid¹ and its enrollees make up 20 percent of Florida's population.² The state statutory authority for the Medicaid program is contained in ch. 409, F.S.

Medicaid's estimated expenditures for FY 2014-15 are over \$23.3 billion.³ The total budget for the current state fiscal year is over \$24.5 billion with over \$14.6 billion of those funds coming from federal sources.⁴

Nationally, Medicare and Medicaid account for 58 percent of all care provided by hospitals.⁵ Hospital participation in Medicaid is voluntary. However, for a not-for-profit hospital to receive a federal tax exemption, the hospital must care for Medicare and Medicaid beneficiaries.⁶ The Florida Hospital Association reports that Florida hospitals provided more than \$1.4 billion in community benefit to Florida Medicaid and other government programs in 2012.⁷

Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services.⁸ The state plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies, including inpatient and outpatient hospital rate charges. Florida's Medicaid state plan and its attachments provide the methodology for the reimbursement of both inpatient and outpatient services.⁹

¹ Agency for Health Care Administration, Statewide Medicaid Enrollment Report March 2015, available at http://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited April 10, 2015).

² Agency for Health Care Administration, *Agency for Health Care Administration - An Overview*, Presentation to Senate Health and Human Services Appropriations Subcommittee on January 22, 2015, p. 10, slide 10, available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/AHS/MeetingRecords/MeetingPacket_2759.pdf (last visited April 10, 2015).

³ Social Services Estimating Conference, *Medicaid Caseloads and Expenditures, November 21 and December 12, 2014 Executive Summary*, available at <http://edr.state.fl.us/Content/conferences/medicaid/medsummary.pdf> (last visited April 10, 2015).

⁴ See *supra* note 2, at slide 3.

⁵ American Hospital Association, *Underpayment by Medicare and Medicaid Fact Sheet 2015*, available at <http://www.aha.org/content/15/medicaremedicaidunderpmt.pdf> (last visited April 10, 2015).

⁶ *Id.*

⁷ Florida Hospital Association, *2014 Florida Hospitals' Community Benefit Report*, p. 4, available at <http://www.fha.org/reports-and-resources/show-details/2014-Community-Benefit-Report/102> (last visited April 10, 2015).

⁸ Medicaid.gov, *Medicaid State Plan Amendments*, available at <http://medicaid.gov/state-resource-center/medicaid-state-plan-amendments/medicaid-state-plan-amendments.html> (last visited April 10, 2015).

⁹ Agency for Health Care Administration, *Medicaid State Plan Under Title XIX of the Social Security Act Medical Assistance Program*, available at <http://www.fdhc.state.fl.us/Medicaid/stateplan.shtml> (last visited April 10, 2015).

Hospital Reimbursements for Medicaid

Pre 2013 Reimbursements for Medicaid

Prior to July 1, 2013, rates for hospital both inpatient and outpatient services under the Florida Medicaid program were set on a facility-specific basis based on each facility's reported costs.¹⁰

¹¹ Hospital rates were based on reported costs for services provided by the hospital to Medicaid recipients on a fee-for-service basis (all-inclusive "per diem" rates.)¹²

The hospital cost report¹³ details costs for the entire year and includes any appropriate adjustments for allowable costs as required by the state's adopted *Medicaid Hospital Outpatient or Inpatient Reimbursement Plans*.¹⁴ Both inpatient and outpatient hospital rate reimbursement plans are promulgated as rules under the Florida Administrative Procedures Act and are made available for public comment and inspection.¹⁵

Hospitals participating in the Medicaid program submitted cost reports to the AHCA for both inpatient and outpatient services twice a year (July and January) and then just once a year beginning in 2011.¹⁶ These reports are now due no later than five calendar months after the close of the hospital's cost-reporting year.^{17, 18, 19} The AHCA must retain all cost reports following the date of submission.

Hospitals were then notified of their fee-for-service rates via letters sent from the AHCA. As amended or updated cost reports were submitted by hospitals, rates were adjusted to reflect the updated reported cost, if applicable.²⁰ The *Medicaid Hospital Outpatient Plan* and the *Inpatient Reimbursement Plan* each include a provision for challenging any rate adjustment or denial of a rate adjustment by the AHCA under Rule 28-106 of the Florida Administrative Code and s. 120.57, F.S.

¹⁰ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

¹¹ Beginning July 1, 2013, the AHCA began paying Medicaid inpatient hospital fee-for-service claims under the Diagnosis Related Groups method. Under Statewide Medicaid Managed Care, hospitals providing services to Medicaid managed care enrollees are paid by managed care plans typically in accordance with negotiated rates.

¹² *Supra* note 10.

¹³ The cost report forms are established by the federal Centers for Medicare and Medicaid Services. *See* 42 U.S.C. s. 1396a(a)(6) (2012).

¹⁴ *Infra* note 17 at Section I, Paragraphs C and O. *Infra* note 18 at Section I, Paragraph C and N-P.

¹⁵ *See* Rule 59G-6.020, F.A.C., for inpatient and Rule 59G-6.030, F.A.C., for outpatient.

¹⁶ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

¹⁷ Rule 59G-6.030, F.A.C., *Florida Title XIX Outpatient Hospital Reimbursement Plan, Version XXIV*, (Effective July 1, 2013) Section I (Attachment 4.19-B, Part I) available at <https://www.flrules.org/gateway/reference.asp?No=Ref-04493> (last visited April 10, 2015).

¹⁸ Rule 59G-6.020, F.A.C., *Florida Title XIX Inpatient Hospital Reimbursement Plan, Version XL*, (Effective July 1, 2013) Section I, Paragraph A (Attachment 4.19-A, Part I) available at <https://www.flrules.org/gateway/reference.asp?No=Ref-04814> (last visited April 10, 2015).

¹⁹ For both rates, hospitals filing a certified cost report audited by independent auditors may receive a 30-day extension.

²⁰ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

Current Reimbursements for Medicaid

Beginning July 1, 2013, the AHCA implemented a new prospective payment methodology that uses a diagnosis related group (DRG) for Medicaid inpatient hospital fee-for-service claims. Under this reimbursement methodology, hospital inpatient fee-for-service reimbursement rates are not noticed, except for the state mental health hospitals which are paid based on a fee-for-service methodology.²¹

The reimbursement methodology is a prospective payment system that classifies hospital stays using DRG.²² The DRG system assigns each discharge from a hospital a code which is based on the diagnosis of a patient, the procedures performed, and patient age, and gender, and birth weight.²³ Patients are then categorized based on those who have similar clinical characteristics and similar hospital resource intensity. Generally hospital payments are fixed based on the assignment, rather than a unique rate per hospital.²⁴

Legislation Limiting Hospital Reimbursement Rate Adjustments

In 2011, the Legislature amended s. 409.905(5), F.S., relating to hospital inpatient services, to require errors in cost reporting or calculation of rates discovered after September 30 to be reconciled in a subsequent rate period.²⁵ The amendment also prohibited the AHCA from making any adjustment to a hospital's reimbursement rate more than 5 years after a hospital is notified of an audited rate established by the AHCA. This prohibition was remedial and applied to actions by providers involving Medicaid claims for hospital services.

In 2012, the Legislature again amended s. 409.905(5), F.S., to change the September 30 date to October 31.²⁶

In 2013, the Legislature amended s. 409.905(5) and (6), F.S., to its existing state.²⁷ Currently, for both hospital inpatient and outpatient services, errors in source data or calculations discovered after October 31 must be reconciled in a subsequent rate period.²⁸ The AHCA is prohibited from making any adjustment to a hospital's reimbursement more than five years after a hospital is notified of an audited rate established by the agency. This prohibition is remedial and applies to actions by providers involving Medicaid claims for hospital services.²⁹

²¹ Agency for Health Care Administration, *Hospital Rates*, available at http://ahca.myflorida.com/medicaid/cost_reim/hospital_rates.shtml (last visited April 10, 2015).

²² Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

²³ *Id.* and Navigant, *DRG Conversion Implementation Plan - Final* (December 21, 2012), p. 10, available at http://ahca.myflorida.com/medicaid/cost_reim/pdf/DRG_Payment-Conversion_Implementation_Plan-FL_AHCA-Final.pdf (last visited April 10, 2015).

²⁴ *Supra* note 22.

²⁵ Chapter 2011-135, s. 9, L.O.F.

²⁶ Chapter 2012-33, s. 5, L.O.F.

²⁷ Chapter 2013-48, s. 3, L.O.F.

²⁸ Section 409.905(5) and (6), F.S.

²⁹ *Id.*

Administrative Challenges

Presently, the AHCA is involved in several lawsuits with hospital providers who are challenging the fee-for-service hospital rates regardless of the amount of time passed since the initial rate setting period.³⁰ Some of these challenges involve rates initially set as far back as the 1980's and 90's.³¹

III. Effect of Proposed Changes:

SB 322 amends s. 409.908, F.S., to clarify provider notification requirements and the administrative challenge process for Medicaid inpatient and outpatient fee-for-service hospital rates.

The bill defines the term “appropriation made by law” as having the same meaning as provided in s. 11.066, F.S., and the term “reimbursement rate” as the audited hospital cost-based per diem reimbursement rate for inpatient or outpatient care established by the agency.

The bill requires the AHCA to furnish written notice of reimbursement rates to hospital providers pursuant to ch. 120, F.S. The written notice constitutes final agency action for the purposes of administrative challenges to the rate.

The bill specifies that a substantially affected provider seeking to correct or adjust the calculation of a reimbursement rate, based on a challenge other than a challenge to a methodology used to calculate a reimbursement rate, may request an administrative hearing by filing a petition with the agency within 180 days after receipt of the written notice by the provider. Failure to timely file a complaint petition in is deemed conclusive acceptance of the reimbursement rate.

A challenge to the methodology that is specified in an agency rule or in a reimbursement plan incorporated by reference in such rule and that is used to calculate a reimbursement rate will not result in a correction or an adjustment of a reimbursement rate for a rate period that occurred more than 5 years preceding the date the petition was filed.

A correction or adjustment of a reimbursement rate which is required by an administrative order or appellate decision to any challenge addressed in the bill and any right to challenge which arose before July 1, 2015,:

- Must be reconciled in the first rate period after the order or decision becomes final; and
- May not serve as the basis for a challenge to correct or adjust hospital rates required to be paid by a Medicaid managed care provider pursuant to part IV of ch. 409, F.S.

The bill specifies that the AHCA may not be compelled by an administrative body or a court to pay compensation that exceeds \$5 million to a hospital relating to the establishment of reimbursement rates by the agency or for remedies relating to such rates, unless an appropriation made by law is enacted for the exclusive, specific purpose of paying such additional compensation.

³⁰ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

³¹ *Id.*

The bill provides that an administrative proceeding pursuant to ch. 120, F.S., is the only means to challenge a reimbursement rate and that the periods of time set out in the bill are not tolled by the pendency of any administrative or civil proceeding

The bill is remedial in nature and intended to clarify existing law. The bill applies to all proceedings pending or commenced on or after the date the bill becomes law.

Other sections of related Medicaid and Kidcare statutes, ss. 383.18, 409.8132(4), and 409.905(5)(c), and (6)(b), F.S., are reenacted for the purpose of incorporating the changes made to s. 409.908, F.S.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does affect counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill is remedial in nature and intended to clarify existing law. The bill applies to all proceedings pending or commenced on or after the date the act becomes law. To the extent that a court may find that the bill is a type of penalty then the retroactivity of the bill could be in question.³²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The specific timelines set in the bill for filing challenges and addressing corrections or adjustments to fee-for-service rates will establish finality in hospital reimbursements. This bill may affect the ability of privately owned hospitals to seek increased, retroactive

³² See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995).

rate adjustments. Currently, several administrative challenges are pending and unresolved.

Should the ACHA provide written notice of past hospital reimbursement rates to providers, such providers will have 180 days to file a petition seeking to correct or adjust the calculation of the reimbursement rate. Otherwise, the rate will become final. Any challenges to the methodology used to determine the rate can only be made for the 5 years preceding the date the petition is filed. The bill provides the AHCA may not be compelled to pay additional compensation in excess of \$5 million to a hospital for adjusted rate unless there is a specific appropriation for that purpose.

The impact of the bill is indeterminate but could result in a significant negative fiscal impact on any challenges to hospital reimbursement rates to privately owned hospitals.

C. Government Sector Impact:

The specific timelines set in the bill for filing challenges and addressing corrections or adjustments to fee-for-service rates will establish finality in hospital reimbursements. This bill may affect the ability of publicly owned hospitals to seek increased, retroactive rate adjustments.

Long-term, this bill may reduce the number of rate challenges that the AHCA must address and reduce the amount of time that the AHCA directs towards addressing such challenges. However, the AHCA may see a short term increase in challenges if the ACHA provides written notice of past hospital reimbursement rates to providers and the providers decide file a petition seeking to correct or adjust a rate calculation within the 180-day time period or challenging the methodology used to determine the rate for the 5 years preceding the date the petition is filed. The bill provides the AHCA may not be compelled to pay additional compensation in excess of \$5 million to a hospital for adjusted rate unless there is a specific appropriation for that purpose. Currently, several administrative challenges are pending and unresolved.

The impact of the bill is indeterminate for publicly owned hospitals but could result in a significant negative fiscal impact on any challenges to hospital reimbursement rates to publicly owned hospitals.

The impact on the AHCA of the any subsequent challenges is indeterminate at this time.³³

VI. Technical Deficiencies:

None.

³³ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.908 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 383.18, 409.8132, and 409.905.

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

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

CS by Fiscal Policy on April 15, 2015:

The committee substitute (CS):

- Provides additional finality for future rate adjustments by requiring a challenge to a final audited rate to be filed within 180 days of the AHCA providing written notice of a final audited rate. By tying the window for a rate challenges to the notice of a final audited rate, the bill preserves that option regardless of how long it takes the AHCA to complete the auditing and rate-setting process.
- Limits the period of time considered for rate reconciliation that are needed when the rate methodology is found invalid due to a rule challenge. Such reconciliations can only be made for the 5 years preceding the petition challenging the rule.
- Provides the AHCA may not be compelled to pay additional compensation in excess of \$5 million to a hospital for adjusted rate unless there is a specific appropriation for that purpose.

B. Amendments:

None.

By Senator Stargel

15-01026-15

2015322__

A bill to be entitled

An act relating to Medicaid reimbursement for hospital providers; amending s. 409.908, F.S.; requiring the Agency for Health Care Administration to provide written notice, pursuant to ch. 120, F.S., to providers of hospital reimbursement rates established by the agency; providing that such notice constitutes final agency action; specifying procedures and requirements for a substantially affected provider to challenge the final agency action; providing that the failure to timely file a petition in compliance with the requirements is deemed conclusive acceptance of the reimbursement rates; specifying when a correction or adjustment of a hospital reimbursement rate required by an administrative order or civil judgment may occur; prohibiting the agency from being compelled by an administrative body or court to pay a monetary judgment relating to the establishment of hospital reimbursement rates beyond a specified date; prohibiting specified periods of time from being tolled under certain circumstances; reenacting ss. 383.18, 409.8132(4), 409.905(5)(c) and (6)(b), and 409.91211(3)(y), F.S., to incorporate the amendment made to s. 409.908, F.S., in references thereto; providing that the act is remedial and intended to clarify existing law; providing for retroactive application; providing an effective date.

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

Page 1 of 4

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

15-01026-15

2015322__

Section 1. Paragraph (e) is added to subsection (1) of section 409.908, Florida Statutes, to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions

Page 2 of 4

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

15-01026-15 2015322__

59 provided for in the General Appropriations Act, provided the
60 adjustment is consistent with legislative intent.

61 (1) Reimbursement to hospitals licensed under part I of
62 chapter 395 must be made prospectively or on the basis of
63 negotiation.

64 (e)1. Pursuant to chapter 120, the agency shall furnish to
65 providers written notice of the hospital reimbursement rates
66 established by the agency. The written notice constitutes final
67 agency action. A substantially affected provider may request an
68 administrative hearing to challenge the final agency action by
69 filing a petition with the agency within 21 days after receipt
70 of the written notice. The petition must include all
71 documentation supporting the challenge upon which the provider
72 intends to rely at the administrative hearing or in any
73 subsequent civil action. The failure to timely file a petition
74 in compliance with this subparagraph is deemed conclusive
75 acceptance of the hospital reimbursement rates established by
76 the agency.

77 2. A correction or adjustment of a hospital reimbursement
78 rate that is required by an administrative order or civil
79 judgment shall be reconciled in the first rate period after the
80 order or judgment becomes final; however, such reconciliation
81 may not occur more than 5 years after the date on which the
82 provider received written notice under subparagraph 1.

83 3. The agency may not be compelled by an administrative
84 body or court to pay a monetary judgment relating to the
85 establishment of hospital reimbursement rates by the agency more
86 than 5 years after the date on which the provider received
87 written notice under subparagraph 1.

Page 3 of 4

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

15-01026-15 2015322__

88 4. The periods of time specified in this paragraph are not
89 tolled by the pendency of an administrative or civil proceeding.

90 Section 2. Section 383.18, subsection (4) of s. 409.8132,
91 paragraph (c) of subsection (5) and paragraph (b) of subsection
92 (6) of s. 409.905, and paragraph (y) of subsection (3) of s.
93 409.91211, Florida Statutes, are reenacted for the purpose of
94 incorporating the amendment made by this act to s. 409.908,
95 Florida Statutes, in references thereto.

96 Section 3. The amendment made by this act to s. 409.908,
97 Florida Statutes, is remedial in nature, is intended to clarify
98 existing law, and applies retroactively to all proceedings
99 pending or commenced on or after the date on which this act
100 takes effect.

101 Section 4. This act shall take effect upon becoming a law.

Page 4 of 4

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

SB 322

Bill Number (if applicable)

541058

Amendment Barcode (if applicable)

Topic Hospital Rates

Name Michael ANWAY

Job Title

Address Street

Phone

City State Zip

Email

Speaking: [] For [] Against [] Information

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

Representing Safety Net Hospital Alliance of Florida

Appearing at request of Chair: [] Yes [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

APPEARANCE RECORD

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

4/15/15

Meeting Date

SB 322

Bill Number (if applicable)

LATE FILED BY STARGEL

Amendment Barcode (if applicable)

Topic MEDICAID REIMBURSEMENT

Name MIKE HUEY

Job Title

Address 3015 S. BRONBUGH

Street

Phone 577-9090

T44

City

FL

State

32301

Zip

Email

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

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

Representing LABORATORY CORP. OF AMERICA

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

APPEARANCE RECORD

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

4/15/15

Meeting Date

SB 322

Bill Number (if applicable)

LATE FILED BY STARBEL

Amendment Barcode (if applicable)

Topic REIMBURSEMENT

Name DOUG RUSSELL

Job Title

Address 9604 DEER VALLEY DR.

Street

Phone 850-445-0206

TALL. FL 32312

City

State

Zip

Email

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

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

Representing QUEST DIAGNOSTICS

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

March 5, 2015

The Honorable Anitere Flores
Senate Fiscal Policy Committee, Chair
413 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Flores:

I am respectfully requesting that SB 322, related to *Medical Reimbursement for Hospital Providers*, be placed on the next committee agenda.

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

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Jennifer Hrdlicka/ Staff Director
Tamra Lyon/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



727400

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment

Delete line 120

and insert:

(1) A written testamentary statement by the deceased or missing parent or parent in a persistent vegetative state

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 Fiscal Policy

BILL: PCS/SB 368 (934880)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senators Abruzzo and Smith

SUBJECT: Rights of Grandparents and Great-grandparents

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
3.	<u>Harkness/Preston</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
4.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 368 provides that a grandparent of a minor child whose parents are deceased, missing, or in a permanent vegetative state may petition for visitation with a grandchild. If only one parent is deceased, missing, or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. The court must find the grandparent has made a prima facie showing of parental unfitness or significant harm to the child, and if not, must dismiss the petition.

If the court finds that there is prima facie evidence that a parent is unfit or that there is significant harm to the child, the bill allows the court to appoint a guardian ad litem for the child and requires the court to order the family to mediation.

The bill provides a list of factors for the court to consider in assessing best interest of the child and material harm to the parent-child relationship. The bill places a limit on the number of times a grandparent can file an original action for visitation, absent a real, substantial, and unanticipated change of circumstances.

The bill repeals s. 752.01, F.S., relating to grandparent visitation rights, which has been found largely unconstitutional by Florida courts. The bill also repeals s. 752.07, F.S., relating to grandparental rights after adoption of a child by a stepparent.

The bill is not expected to have a significant fiscal impact.

II. Present Situation:

History of Grandparent Visitation Rights

Under common law, a grandparent who was forbidden by his or her grandchild's parent from visiting the child was normally without legal recourse.¹ Nonparent visitation statutes, which did not exist before the late 1960s, now allow grandparents to petition courts for the right to visit their grandchildren. Before the passage of these statutes, grandparents, like all other nonparents, had no right to sue for court-ordered visitation with their grandchildren.²

States began to enact statutes to permit grandparents and sometimes other nonparents to petition for visitation rights. States passed the first wave of grandparent visitation statutes between 1966 and 1986. By the early 1990s, all states had enacted grandparent visitation laws that expanded grandparents' visitation rights. Today, the statutes generally delineate who may petition the court and under what circumstances and then require the court to determine if visitation is in the child's best interests.³

In 2000, the U.S. Supreme Court found that a Washington statute providing for the petition of visitation at any time was unconstitutional because the Due Process Clause of the Fourteenth Amendment “protects the fundamental right that parents have to make the decision concerning the care, custody and control of their children.”⁴

Grandparent Visitation Rights in Florida

Until 1978, Florida grandparents did not have any statutory right to visit their grandchild. Currently, provisions relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F.S. Provisions previously in ch. 61, F.S., have been repealed because they were ruled unconstitutional.⁵

Chapter 752, Florida Statutes – Grandparent Visitation

The legislature enacted ch. 752, F.S., titled “Grandparental Visitation Rights,” in 1984, giving grandparents standing to petition the court for visitation in certain situations. Florida courts have considered the constitutionality of s. 752.01, F.S., on numerous occasions and have “consistently held all statutes that have attempted to compel visitation or custody with a grandparent based solely on the best interest of the child standard . . . to be unconstitutional.”⁶

¹ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 Fam. Ct. Rev. 14, 16 (Jan. 2003). See also Karin J. McMullen, *The Scarlet “N:” Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, 83 St. John's L. Rev. 83 (2009).

² *Id.*

³ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 Fam. Ct. Rev. 14, 16 (Jan. 2003).

⁴ *Id.* *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

⁵ Chapter 2008-61, L.O.F.

⁶ *Sullivan v. Sapp*, 866 So. 2d 28, 37 (Fla. 2004).

When a court reviews a statute granting grandparents visitation rights, it must determine if it meets a compelling state interest and does so through the least intrusive means. In 1996, the Florida Supreme Court determined that s. 752.01(e), F.S., which allowed grandparents to seek visitation when the child's family was intact, was facially unconstitutional.⁷ The Court held that "the State may not intrude upon the parents' fundamental right of parents to raise their children except in cases where the child is threatened with harm."⁸

To date, almost all of the provisions in s. 752.01, F.S., have been found to be unconstitutional,⁹ although these provisions are still found in the Florida Statutes because they have not been repealed by the Legislature.

Chapter 39, Florida Statutes – Dependent Children

When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents have the right to unsupervised, reasonable visitation, unless visitation is not in the best interests of the child or would interfere with the goals of the case plan.¹⁰ The court may deny grandparent visitation if it is not in the child's best interest or based on the grandparent's prior criminal history.

When the child is returned to the custody of his or her parent, the visitation rights granted to a grandparent must be terminated.¹¹

Existing grandparent visitation with a child who has been adjudicated dependent does not automatically terminate if the court enters an order for a termination of parental rights. Grandparent visitation rights will only terminate if the court finds that continued grandparent visitation is not in the best interest of the child or visitation would interfere with the Department of Children and Families' goals of permanency planning for the child.¹² Before the court may terminate parental rights, notice must be provided to certain persons, including any grandparent entitled to priority for purposes of adoption.¹³

If the court determines that reunification with a parent and adoption are not in the best interest of the child, the child can be placed with a permanent guardian or with a fit and willing relative. The court must address a number of factors in the order for permanent guardianship or placement with a fit and willing relative, including the frequency and nature of visitation or contact between the child and his or her grandparents.¹⁴

⁷ *Beagle v. Beagle*, 678 So. 2d 1271, 1276 (Fla. 1996).

⁸ *Id.*

⁹ *See Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998); *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999); *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000).

¹⁰ Section 39.509, F.S.

¹¹ *Id.* at (4).

¹² *Id.*

¹³ Section 39.801(3)(a), F.S. A grandparent has the right to notice by the court if a child has lived with the grandparent for at least 6 out of 24 months immediately preceding the filing of a petition for termination of parental rights pending adoption. s. 63.0425(1), F.S.

¹⁴ Sections 39.6221(2)(d) and 39.6231(3)(d), F.S.

III. Effect of Proposed Changes:

The bill makes numerous changes to laws relating to contact between grandparents and grandchildren.

Section 1 amends s. 752.001, F.S., to create definitions for the terms “missing” and “persistent vegetative state.”

Section 2 repeals s. 752. 01, F.S, relating to action by grandparent for right of visitation.

Section 3 creates s. 752.011, F.S., relating to a petition for grandparent visitation of a minor child, to specify limited circumstances under which a grandparent may petition for visitation with a child. The newly created section authorizes grandparents to file a petition for visitation with a child if:

- The parents are deceased, missing, or in a permanent vegetative state; or
- At least one parent is deceased, missing, or in a permanent vegetative state and the other parent has been convicted of a felony or a violent offense.

When a petition for grandparent visitation is filed, the court will hold a preliminary hearing to determine whether a prima facie showing of parental unfitness or significant harm to the minor child exists. If the petitioner establishes a prima facie case, the court will order the case to family mediation and may appoint a guardian ad litem. If mediation does not successfully resolve the issue of grandparent visitation, the court shall proceed with a final hearing.

At the final hearing, the court will determine by clear and convincing evidence whether the parent is unfit or significant harm to the child exists, visitation is in the best interest of the minor child, and visitation will not materially harm the parent-child relationship.

In determining the best interest of the child, the court must consider the totality of the circumstances affecting the mental and emotional well-being of the minor child, including:

- The love, affection, and other emotional ties between the child and the grandparent;
- The length and quality of the previous relationship between the child and the grandparent;
- Whether the grandparent established ongoing personal contact with the child before the death of the parent, before the onset of the parent’s persistent vegetative state, or before the parent was missing;
- The reasons that the parent ended contact or visitation with the grandparent;
- Whether there has been significant and demonstrable mental or emotional harm to the minor child as a result of the disruption in the family unit, whether the child derived support and stability from the grandparent, and whether the continuation of such support and stability is likely to prevent further harm;
- The existence or threat to the minor child of mental injury;
- The present mental, physical, and emotional health of both the minor child and the grandparent;
- The recommendation of a guardian ad litem, if appointed;
- The result of any psychological evaluation of the minor child;
- The preference of the minor child if he or she is sufficiently mature;

- A written testamentary statement by the parent regarding visitation with the grandparent. The absence of a testamentary statement is not deemed to provide evidence that parent would have objected to the requested visitation; and
- Other factors that the court considers necessary in making its determination.

In assessing material harm to the parent and child relationship, the court must look at the totality of the circumstances affecting the parent-child relationship, including:

- Whether there have been previous disputes between the grandparent and the parent over childbearing or other matters related to the care and upbringing of the minor child;
- Whether visitation would materially interfere with or compromise parental authority;
- Whether visitation can be arranged in a manner that does not material detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship and any other consideration related to the disruption of the schedule and routine of the parent and minor child;
- Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the minor child with the intent that the child will benefit from the relationship;
- Whether the requested visitation would expose the minor child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent;
- The nature of the relationship between the child's parent and the grandparent;
- The reasons cited by the parent in ending contact or visitation between the minor child and grandparent that was previously allowed by the parent;
- The psychological toll of visitation disputes on the minor child; and
- Other factors the court considers necessary in making its determination.

The Uniform Child Custody Jurisdiction and Enforcement Act, which governs the resolution of child custody between states, applies to determination of grandparent visitation.¹⁵ The bill encourages consolidation of court determination of grandparent visitation and child custody, parenting, and time-sharing actions to minimize the burden of litigation on the parties. An order for grandparent visitation may be modified by showing that a substantial change in circumstances has occurred and the modification is in the best interests of the child.

The grandparent may file a petition once every 2 years, except on good cause shown that the minor child is suffering or may suffer harm caused by a parent's denial of grandparent visitation.

The bill does not provide for grandparent visitation with a minor child placed for adoption except as provided in s. 752.071, F.S., with respect to adoption by a stepparent or close relative.

Section 4 repeals s. 752.07, F.S., relating to the effect of the adoption of a child by a stepparent on a grandparent's right of visitation and when that right may be terminated.

Section 5 creates s. 752.071, F.S., relating to the effect of adoption by a stepparent or close relative, to authorize the stepparent to petition the court to terminate grandparent visitation,

¹⁵ Part II, ch. 61, F.S.

unless the grandparent can show that the criteria authorizing visitation with a child who remains in parental custody still applies.

Section 6 amends s. 752.015, F.S., relating to mediation of visitation disputes, to replace rules promulgated by the Supreme Court with the Florida Family Law Rules of Procedure.

Section 7 provides an effective date of July 1, 2015.

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 United States Supreme Court has recognized the fundamental liberty interest parents have in the “care, custody and management” of their children.¹⁶ The Florida Supreme Court has likewise recognized that decisions relating to child rearing and education are clearly established as fundamental rights within the Fourteenth Amendment of the United States Constitution and that the fundamental liberty interest in parenting is specifically protected by the privacy provision in the Florida Constitution.¹⁷ Consequently, any statute that infringes these rights is subject to the highest level of scrutiny and must serve a compelling state interest through the least intrusive means necessary.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Possible increased costs for private adoption attorneys due to adding great-grandparents to the list of relatives entitled to service of process on a notice of a petition to terminate parental rights.

¹⁶ *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982).

¹⁷ *Beagle v. Beagle*, 678 So. 2d 1271, 1276 (Fla. 1996).

C. Government Sector Impact:

In its review of the original bill (SB 368), the Department of Children and Families identified a potential fiscal impact related to:

- Possible increased costs for Community-based Care lead agencies, subcontracted agencies, dependency case managers, and foster parents, associated with transporting or supervising great-grandparent visitation; and
- Possible increased costs for Children's Legal Services due to adding great-grandparents to the list of relatives entitled to service of process on a notice of a petition to terminate parental rights.

The department also estimated an increase in personal service of process costs. These costs are approximately \$35 within the state, up to \$180 for out-of-state, and \$280 or higher internationally.¹⁸

Additionally, the Office of the State Courts Administrator indicated that the impact of the original bill (SB 368) on judicial workload was difficult to determine as the number of petitions to be filed as a result of the bill was unknown.¹⁹

The committee substitute narrows the circumstances under which a grandparent or may petition for visitation with a child. As a result, the bill does not have a discernable fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be difficulty in implementing the provisions of the bill as they relate to a parent that is deceased, missing, or in a persistent vegetative state. For example:

- If both parents are deceased, missing, or in a persistent vegetative state, it may be moot for the court to award them attorney fees and court costs or order them to mediation.
- A number of factors the court is required to consider assume that a parent-child relationship exists. However, if the parents are deceased, missing, or in a persistent vegetative state, there is no parent-child relationship.
- The bill provides that a grandparent can only file a petition for visitation once during any 2-year period unless there has been a change in circumstances related to a parental decision to deny visitation. This appears unlikely to happen unless a missing parent returns or a parent in a persistent vegetative state recovers.

A judge would be required to call the child abuse hotline under the provisions of ch. 39, F.S., if the court finds that there is prima facie evidence that the minor child is suffering or is threatened

¹⁸ Department of Children and Families, *2015 Agency Legislative Bill analysis for SB 368* (January 9, 2015); on file with the Senate Committee on Children, Families and Elder Affairs.

¹⁹ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 10, 2015); on file with the Senate Judiciary Committee.

with suffering demonstrable significant mental or emotional harm as a result of not being allowed to visit a grandparent, This may result in the department commencing a child protective investigation pursuant to s. 39.301, F.S.

The bill requires mediation, but does not contain an opt-out clause which provides protection against being ordered to mediation when there is evidence of domestic violence in the family as provided in s. 44.102(2)(c), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 752.001 and 752.015.

This bill creates the following sections of the Florida Statutes: 752.011 and 752.071.

This bill repeals the following sections of the Florida Statutes: 752.01 and 752.07.

IX. Additional Information:

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

Recommended CS Barcode 934880 by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute:

- Creates a definition for the terms “missing” and “persistent vegetative state.”
- Removes all of the provisions relating to grandparent visitation with minor children who are dependent under chapter 39, F.S.

- B. **Amendments:**

None.



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Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to the rights of grandparents;
amending s. 752.001, F.S.; providing definitions;
repealing s. 752.01, F.S., relating to actions by a
grandparent for visitation rights; creating s.
752.011, F.S.; authorizing the grandparent of a minor
child to petition a court for visitation under certain
circumstances; requiring a preliminary hearing;
providing for the payment of attorney fees and costs
by a petitioner who fails to make a prima facie
showing of harm; authorizing grandparent visitation if
the court makes specified findings; providing factors
for court consideration; providing applicability of
the Uniform Child Custody Jurisdiction and Enforcement
Act; encouraging the consolidation of certain
concurrent actions; providing for modification of an
order awarding grandparent visitation; limiting the
frequency of actions seeking visitation; limiting
applicability to a minor child placed for adoption;
providing for venue; repealing s. 752.07, F.S.,
relating to the effect of adoption of a child by a
stepparent on grandparent visitation rights; creating
s. 752.071, F.S.; providing conditions under which a
court may terminate a grandparent visitation order
upon adoption of a minor child by a stepparent or
close relative; amending s. 752.015, F.S.; conforming
provisions and cross-references to changes made by the



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act; providing an effective date.

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

Section 1. Section 752.001, Florida Statutes, is amended to
read:

752.001 Definitions.—~~As used in~~ ~~For purposes of~~ this
chapter, the term:

(1) "Grandparent" shall include great-grandparent.

(2) "Missing" means having whereabouts which are unknown
for a period of at least 90 days and not being able to be
located after a diligent search and inquiry. Such search and
inquiry for a missing person must include, at a minimum,
inquiries of all relatives of the person who can reasonably be
identified by the petitioner, inquiries of hospitals in the
areas where the person last resided, inquiries of the person's
recent employers, inquiries of state and federal agencies likely
to have information about the person, inquiries of appropriate
utility and postal providers, a thorough search of at least one
electronic database specifically designed for locating persons,
and inquiries of appropriate law enforcement agencies.

(3) "Persistent vegetative state" has the same meaning as
provided in s. 765.101(12).

Section 2. Section 752.01, Florida Statutes, is repealed.

Section 3. Section 752.011, Florida Statutes, is created to
read:

752.011 Petition for grandparent visitation with a minor
child.—A grandparent of a minor child whose parents are
deceased, missing, or in a persistent vegetative state, or whose



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57 one parent is deceased, missing, or in a persistent vegetative
58 state and whose other parent has been convicted of a felony or
59 an offense of violence evincing behavior that poses a
60 substantial threat of harm to the minor child's health or
61 welfare, may petition the court for court-ordered visitation
62 with the grandchild under this section.

63 (1) Upon the filing of a petition by a grandparent for
64 visitation, the court shall hold a preliminary hearing to
65 determine whether the petitioner has made a prima facie showing
66 of parental unfitness or significant harm to the child. Absent
67 such a showing, the court shall dismiss the petition and may
68 award reasonable attorney fees and costs to be paid by the
69 petitioner to the respondent.

70 (2) If the court finds that there is prima facie evidence
71 that a parent is unfit or that there is significant harm to the
72 child, the court may appoint a guardian ad litem and shall refer
73 the matter to family mediation as provided in s. 752.015. If
74 family mediation does not successfully resolve the issue of
75 grandparent visitation, the court shall proceed with a final
76 hearing.

77 (3) After conducting a final hearing on the issue of
78 visitation, the court may award reasonable visitation to the
79 grandparent with respect to the minor child if the court finds
80 by clear and convincing evidence that a parent is unfit or that
81 there is significant harm to the child, that visitation is in
82 the best interest of the minor child, and that the visitation
83 will not materially harm the parent-child relationship.

84 (4) In assessing the best interest of the child under
85 subsection (3), the court shall consider the totality of the



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86 circumstances affecting the mental and emotional well-being of
87 the minor child, including:

88 (a) The love, affection, and other emotional ties existing
89 between the minor child and the grandparent, including those
90 resulting from the relationship that had been previously allowed
91 by the child's parent.

92 (b) The length and quality of the previous relationship
93 between the minor child and the grandparent, including the
94 extent to which the grandparent was involved in providing
95 regular care and support for the child.

96 (c) Whether the grandparent established ongoing personal
97 contact with the minor child before the death of the parent,
98 before the onset of the parent's persistent vegetative state, or
99 before the parent was missing.

100 (d) The reasons cited by the respondent parent in ending
101 contact or visitation between the minor child and the
102 grandparent.

103 (e) Whether there has been significant and demonstrable
104 mental or emotional harm to the minor child as a result of the
105 disruption in the family unit, whether the child derived support
106 and stability from the grandparent, and whether the continuation
107 of such support and stability is likely to prevent further harm.

108 (f) The existence or threat to the minor child of mental
109 injury as defined in s. 39.01.

110 (g) The present mental, physical, and emotional health of
111 the minor child.

112 (h) The present mental, physical, and emotional health of
113 the grandparent.

114 (i) The recommendations of the minor child's guardian ad



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115 litem, if one is appointed.

116 (j) The result of any psychological evaluation of the minor
117 child.

118 (k) The preference of the minor child if the child is
119 determined to be of sufficient maturity to express a preference.

120 (l) A written testamentary statement by the deceased parent
121 regarding visitation with the grandparent. The absence of a
122 testamentary statement is not deemed to provide evidence that
123 the deceased or missing parent or parent in a persistent
124 vegetative state would have objected to the requested
125 visitation.

126 (m) Other factors that the court considers necessary to
127 making its determination.

128 (5) In assessing material harm to the parent-child
129 relationship under subsection (3), the court shall consider the
130 totality of the circumstances affecting the parent-child
131 relationship, including:

132 (a) Whether there have been previous disputes between the
133 grandparent and the parent over childrearing or other matters
134 related to the care and upbringing of the minor child.

135 (b) Whether visitation would materially interfere with or
136 compromise parental authority.

137 (c) Whether visitation can be arranged in a manner that
138 does not materially detract from the parent-child relationship,
139 including the quantity of time available for enjoyment of the
140 parent-child relationship and any other consideration related to
141 disruption of the schedule and routine of the parent and the
142 minor child.

143 (d) Whether visitation is being sought for the primary



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144 purpose of continuing or establishing a relationship with the
145 minor child with the intent that the child benefit from the
146 relationship.

147 (e) Whether the requested visitation would expose the minor
148 child to conduct, moral standards, experiences, or other factors
149 that are inconsistent with influences provided by the parent.

150 (f) The nature of the relationship between the child's
151 parent and the grandparent.

152 (g) The reasons cited by the parent in ending contact or
153 visitation between the minor child and the grandparent which was
154 previously allowed by the parent.

155 (h) The psychological toll of visitation disputes on the
156 minor child.

157 (i) Other factors that the court considers necessary in
158 making its determination.

159 (6) Part II of chapter 61 applies to actions brought under
160 this section.

161 (7) If actions under this section and s. 61.13 are pending
162 concurrently, the courts are strongly encouraged to consolidate
163 the actions in order to minimize the burden of litigation on the
164 minor child and the other parties.

165 (8) An order for grandparent visitation may be modified
166 upon a showing by the person petitioning for modification that a
167 substantial change in circumstances has occurred and that
168 modification of visitation is in the best interest of the minor
169 child.

170 (9) An original action requesting visitation under this
171 section may be filed by a grandparent only once during any 2-
172 year period, except on good cause shown that the minor child is



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173 suffering, or may suffer, significant and demonstrable mental or
174 emotional harm caused by a parental decision to deny visitation
175 between a minor child and the grandparent, which was not known
176 to the grandparent at the time of filing an earlier action.

177 (10) This section does not provide for grandparent
178 visitation with a minor child placed for adoption under chapter
179 63 except as provided in s. 752.071 with respect to adoption by
180 a stepparent or close relative.

181 (11) Venue shall be in the county where the minor child
182 primarily resides, unless venue is otherwise governed by chapter
183 39, chapter 61, or chapter 63.

184 Section 4. Section 752.07, Florida Statutes, is repealed.

185 Section 5. Section 752.071, Florida Statutes, is created to
186 read:

187 752.071 Effect of adoption by stepparent or close
188 relative.—After the adoption of a minor child by a stepparent or
189 close relative, the stepparent or close relative may petition
190 the court to terminate an order granting grandparent visitation
191 under this chapter which was entered before the adoption. The
192 court may terminate the order unless the grandparent is able to
193 show that the criteria of s. 752.011 authorizing the visitation
194 continue to be satisfied.

195 Section 6. Section 752.015, Florida Statutes, is amended to
196 read:

197 752.015 Mediation of visitation disputes.—It ~~is shall be~~
198 the public policy of this state that families resolve
199 differences over grandparent visitation within the family. It ~~is~~
200 ~~shall be~~ the further public policy of this state that, when
201 families are unable to resolve differences relating to



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202 grandparent visitation, ~~that~~ the family participate in any
203 formal or informal mediation services that may be available. If
204 when families are unable to resolve differences relating to
205 grandparent visitation and a petition is filed pursuant to s.
206 752.011 ~~s. 752.04~~, the court shall, if such services are
207 available in the circuit, refer the case to family mediation in
208 accordance with the Florida Family Law Rules of Procedure ~~rules~~
209 promulgated by the Supreme Court.

210 Section 7. This act shall take effect July 1, 2015.

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 Fiscal Policy

BILL: CS/SB 368

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senators Abruzzo and Smith

SUBJECT: Rights of Grandparents and Great-grandparents

DATE: April 17, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
3.	<u>Harkness/Preston</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
4.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 368 provides that a grandparent of a minor child whose parents are deceased, missing, or in a permanent vegetative state may petition for visitation with a grandchild. If only one parent is deceased, missing, or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. The court must find the grandparent has made a prima facie showing of parental unfitness or significant harm to the child, and if not, must dismiss the petition.

If the court finds that there is prima facie evidence that a parent is unfit or that there is significant harm to the child, the bill allows the court to appoint a guardian ad litem for the child and requires the court to order the family to mediation.

The bill provides a list of factors for the court to consider in assessing best interest of the child and material harm to the parent-child relationship. The bill places a limit on the number of times a grandparent can file an original action for visitation, absent a real, substantial, and unanticipated change of circumstances.

The bill repeals s. 752.01, F.S., relating to grandparent visitation rights, which has been found largely unconstitutional by Florida courts. The bill also repeals s. 752.07, F.S., relating to grandparental rights after adoption of a child by a stepparent.

The bill is not expected to have a significant fiscal impact.

II. Present Situation:

History of Grandparent Visitation Rights

Under common law, a grandparent who was forbidden by his or her grandchild's parent from visiting the child was normally without legal recourse.¹ Nonparent visitation statutes, which did not exist before the late 1960s, now allow grandparents to petition courts for the right to visit their grandchildren. Before the passage of these statutes, grandparents, like all other nonparents, had no right to sue for court-ordered visitation with their grandchildren.²

States began to enact statutes to permit grandparents and sometimes other nonparents to petition for visitation rights. States passed the first wave of grandparent visitation statutes between 1966 and 1986. By the early 1990s, all states had enacted grandparent visitation laws that expanded grandparents' visitation rights. Today, the statutes generally delineate who may petition the court and under what circumstances and then require the court to determine if visitation is in the child's best interests.³

In 2000, the U.S. Supreme Court found that a Washington statute providing for the petition of visitation at any time was unconstitutional because the Due Process Clause of the Fourteenth Amendment “protects the fundamental right that parents have to make the decision concerning the care, custody and control of their children.”⁴

Grandparent Visitation Rights in Florida

Until 1978, Florida grandparents did not have any statutory right to visit their grandchild. Currently, provisions relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F.S. Provisions previously in ch. 61, F.S., have been repealed because they were ruled unconstitutional.⁵

Chapter 752, Florida Statutes – Grandparent Visitation

The legislature enacted ch. 752, F.S., titled “Grandparental Visitation Rights,” in 1984, giving grandparents standing to petition the court for visitation in certain situations. Florida courts have considered the constitutionality of s. 752.01, F.S., on numerous occasions and have “consistently held all statutes that have attempted to compel visitation or custody with a grandparent based solely on the best interest of the child standard . . . to be unconstitutional.”⁶

¹ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 Fam. Ct. Rev. 14, 16 (Jan. 2003). See also Karin J. McMullen, *The Scarlet “N:” Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, 83 St. John's L. Rev. 83 (2009).

² *Id.*

³ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 Fam. Ct. Rev. 14, 16 (Jan. 2003).

⁴ *Id.* *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

⁵ Chapter 2008-61, L.O.F.

⁶ *Sullivan v. Sapp*, 866 So. 2d 28, 37 (Fla. 2004).

When a court reviews a statute granting grandparents visitation rights, it must determine if it meets a compelling state interest and does so through the least intrusive means. In 1996, the Florida Supreme Court determined that s. 752.01(e), F.S., which allowed grandparents to seek visitation when the child's family was intact, was facially unconstitutional.⁷ The Court held that "the State may not intrude upon the parents' fundamental right of parents to raise their children except in cases where the child is threatened with harm."⁸

To date, almost all of the provisions in s. 752.01, F.S., have been found to be unconstitutional,⁹ although these provisions are still found in the Florida Statutes because they have not been repealed by the Legislature.

Chapter 39, Florida Statutes – Dependent Children

When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents have the right to unsupervised, reasonable visitation, unless visitation is not in the best interests of the child or would interfere with the goals of the case plan.¹⁰ The court may deny grandparent visitation if it is not in the child's best interest or based on the grandparent's prior criminal history.

When the child is returned to the custody of his or her parent, the visitation rights granted to a grandparent must be terminated.¹¹

Existing grandparent visitation with a child who has been adjudicated dependent does not automatically terminate if the court enters an order for a termination of parental rights. Grandparent visitation rights will only terminate if the court finds that continued grandparent visitation is not in the best interest of the child or visitation would interfere with the Department of Children and Families' goals of permanency planning for the child.¹² Before the court may terminate parental rights, notice must be provided to certain persons, including any grandparent entitled to priority for purposes of adoption.¹³

If the court determines that reunification with a parent and adoption are not in the best interest of the child, the child can be placed with a permanent guardian or with a fit and willing relative. The court must address a number of factors in the order for permanent guardianship or placement with a fit and willing relative, including the frequency and nature of visitation or contact between the child and his or her grandparents.¹⁴

⁷ *Beagle v. Beagle*, 678 So. 2d 1271, 1276 (Fla. 1996).

⁸ *Id.*

⁹ *See Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998); *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999); *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000).

¹⁰ Section 39.509, F.S.

¹¹ *Id.* at (4).

¹² *Id.*

¹³ Section 39.801(3)(a), F.S. A grandparent has the right to notice by the court if a child has lived with the grandparent for at least 6 out of 24 months immediately preceding the filing of a petition for termination of parental rights pending adoption. s. 63.0425(1), F.S.

¹⁴ Sections 39.6221(2)(d) and 39.6231(3)(d), F.S.

III. Effect of Proposed Changes:

The bill makes numerous changes to laws relating to contact between grandparents and grandchildren.

Section 1 amends s. 752.001, F.S., to create definitions for the terms “missing” and “persistent vegetative state.”

Section 2 repeals s. 752. 01, F.S, relating to action by grandparent for right of visitation.

Section 3 creates s. 752.011, F.S., relating to a petition for grandparent visitation of a minor child, to specify limited circumstances under which a grandparent may petition for visitation with a child. The newly created section authorizes grandparents to file a petition for visitation with a child if:

- The parents are deceased, missing, or in a permanent vegetative state; or
- At least one parent is deceased, missing, or in a permanent vegetative state and the other parent has been convicted of a felony or a violent offense.

When a petition for grandparent visitation is filed, the court will hold a preliminary hearing to determine whether a prima facie showing of parental unfitness or significant harm to the minor child exists. If the petitioner establishes a prima facie case, the court will order the case to family mediation and may appoint a guardian ad litem. If mediation does not successfully resolve the issue of grandparent visitation, the court shall proceed with a final hearing.

At the final hearing, the court will determine by clear and convincing evidence whether the parent is unfit or significant harm to the child exists, visitation is in the best interest of the minor child, and visitation will not materially harm the parent-child relationship.

In determining the best interest of the child, the court must consider the totality of the circumstances affecting the mental and emotional well-being of the minor child, including:

- The love, affection, and other emotional ties between the child and the grandparent;
- The length and quality of the previous relationship between the child and the grandparent;
- Whether the grandparent established ongoing personal contact with the child before the death of the parent, before the onset of the parent’s persistent vegetative state, or before the parent was missing;
- The reasons that the parent ended contact or visitation with the grandparent;
- Whether there has been significant and demonstrable mental or emotional harm to the minor child as a result of the disruption in the family unit, whether the child derived support and stability from the grandparent, and whether the continuation of such support and stability is likely to prevent further harm;
- The existence or threat to the minor child of mental injury;
- The present mental, physical, and emotional health of both the minor child and the grandparent;
- The recommendation of a guardian ad litem, if appointed;
- The result of any psychological evaluation of the minor child;
- The preference of the minor child if he or she is sufficiently mature;

- A written testamentary statement by the parent regarding visitation with the grandparent. The absence of a testamentary statement is not deemed to provide evidence that parent would have objected to the requested visitation; and
- Other factors that the court considers necessary in making its determination.

In assessing material harm to the parent and child relationship, the court must look at the totality of the circumstances affecting the parent-child relationship, including:

- Whether there have been previous disputes between the grandparent and the parent over childbearing or other matters related to the care and upbringing of the minor child;
- Whether visitation would materially interfere with or compromise parental authority;
- Whether visitation can be arranged in a manner that does not material detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship and any other consideration related to the disruption of the schedule and routine of the parent and minor child;
- Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the minor child with the intent that the child will benefit from the relationship;
- Whether the requested visitation would expose the minor child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent;
- The nature of the relationship between the child's parent and the grandparent;
- The reasons cited by the parent in ending contact or visitation between the minor child and grandparent that was previously allowed by the parent;
- The psychological toll of visitation disputes on the minor child; and
- Other factors the court considers necessary in making its determination.

The Uniform Child Custody Jurisdiction and Enforcement Act, which governs the resolution of child custody between states, applies to determination of grandparent visitation.¹⁵ The bill encourages consolidation of court determination of grandparent visitation and child custody, parenting, and time-sharing actions to minimize the burden of litigation on the parties. An order for grandparent visitation may be modified by showing that a substantial change in circumstances has occurred and the modification is in the best interests of the child.

The grandparent may file a petition once every 2 years, except on good cause shown that the minor child is suffering or may suffer harm caused by a parent's denial of grandparent visitation.

The bill does not provide for grandparent visitation with a minor child placed for adoption except as provided in s. 752.071, F.S., with respect to adoption by a stepparent or close relative.

Section 4 repeals s. 752.07, F.S., relating to the effect of the adoption of a child by a stepparent on a grandparent's right of visitation and when that right may be terminated.

Section 5 creates s. 752.071, F.S., relating to the effect of adoption by a stepparent or close relative, to authorize the stepparent to petition the court to terminate grandparent visitation,

¹⁵ Part II, ch. 61, F.S.

unless the grandparent can show that the criteria authorizing visitation with a child who remains in parental custody still applies.

Section 6 amends s. 752.015, F.S., relating to mediation of visitation disputes, to replace rules promulgated by the Supreme Court with the Florida Family Law Rules of Procedure.

Section 7 provides an effective date of July 1, 2015.

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 United States Supreme Court has recognized the fundamental liberty interest parents have in the “care, custody and management” of their children.¹⁶ The Florida Supreme Court has likewise recognized that decisions relating to child rearing and education are clearly established as fundamental rights within the Fourteenth Amendment of the United States Constitution and that the fundamental liberty interest in parenting is specifically protected by the privacy provision in the Florida Constitution.¹⁷ Consequently, any statute that infringes these rights is subject to the highest level of scrutiny and must serve a compelling state interest through the least intrusive means necessary.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Possible increased costs for private adoption attorneys due to adding great-grandparents to the list of relatives entitled to service of process on a notice of a petition to terminate parental rights.

¹⁶ *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982).

¹⁷ *Beagle v. Beagle*, 678 So. 2d 1271, 1276 (Fla. 1996).

C. Government Sector Impact:

In its review of the original bill (SB 368), the Department of Children and Families identified a potential fiscal impact related to:

- Possible increased costs for Community-based Care lead agencies, subcontracted agencies, dependency case managers, and foster parents, associated with transporting or supervising great-grandparent visitation; and
- Possible increased costs for Children's Legal Services due to adding great-grandparents to the list of relatives entitled to service of process on a notice of a petition to terminate parental rights.

The department also estimated an increase in personal service of process costs. These costs are approximately \$35 within the state, up to \$180 for out-of-state, and \$280 or higher internationally.¹⁸

Additionally, the Office of the State Courts Administrator indicated that the impact of the original bill (SB 368) on judicial workload was difficult to determine as the number of petitions to be filed as a result of the bill was unknown.¹⁹

The committee substitute narrows the circumstances under which a grandparent or may petition for visitation with a child. As a result, the bill does not have a discernable fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be difficulty in implementing the provisions of the bill as they relate to a parent that is deceased, missing, or in a persistent vegetative state. For example:

- If both parents are deceased, missing, or in a persistent vegetative state, it may be moot for the court to award them attorney fees and court costs or order them to mediation.
- A number of factors the court is required to consider assume that a parent-child relationship exists. However, if the parents are deceased, missing, or in a persistent vegetative state, there is no parent-child relationship.
- The bill provides that a grandparent can only file a petition for visitation once during any 2-year period unless there has been a change in circumstances related to a parental decision to deny visitation. This appears unlikely to happen unless a missing parent returns or a parent in a persistent vegetative state recovers.

A judge would be required to call the child abuse hotline under the provisions of ch. 39, F.S., if the court finds that there is prima facie evidence that the minor child is suffering or is threatened

¹⁸ Department of Children and Families, *2015 Agency Legislative Bill analysis for SB 368* (January 9, 2015); on file with the Senate Committee on Children, Families and Elder Affairs.

¹⁹ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 10, 2015); on file with the Senate Judiciary Committee.

with suffering demonstrable significant mental or emotional harm as a result of not being allowed to visit a grandparent, This may result in the department commencing a child protective investigation pursuant to s. 39.301, F.S.

The bill requires mediation, but does not contain an opt-out clause which provides protection against being ordered to mediation when there is evidence of domestic violence in the family as provided in s. 44.102(2)(c), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 752.001 and 752.015.

This bill creates the following sections of the Florida Statutes: 752.011 and 752.071.

This bill repeals the following sections of the Florida Statutes: 752.01 and 752.07.

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 Fiscal Policy on April 15, 2015:

As recommended by the Appropriations Subcommittee on Criminal and Civil Justice, the CS does the following:

- Creates a definition for the terms “missing” and “persistent vegetative state.”
- Removes all of the provisions relating to grandparent visitation with minor children who are dependent under chapter 39, F.S.
- Makes technical changes to the bill.

- B. **Amendments:**

None.

By Senator Abruzzo

25-00324-15

2015368__

1 A bill to be entitled
 2 An act relating to the rights of grandparents and
 3 great-grandparents; amending s. 39.01, F.S.;
 4 redefining the term "next of kin" to include great-
 5 grandparents; amending s. 39.509, F.S.; providing
 6 great-grandparents the same visitation rights as
 7 grandparents; amending ss. 39.801 and 63.0425, F.S.;
 8 requiring notice to a great-grandparent under certain
 9 circumstances; repealing s. 752.01, F.S., relating to
 10 actions by a grandparent for visitation rights;
 11 creating s. 752.011, F.S.; authorizing the grandparent
 12 of a minor child to petition a court for visitation
 13 under certain circumstances; requiring a preliminary
 14 hearing; providing for the payment of attorney fees
 15 and costs by a petitioner who fails to make a prima
 16 facie showing of harm; authorizing grandparent
 17 visitation after a final hearing if the court makes
 18 specified findings; providing factors for court
 19 consideration; providing for application of the
 20 Uniform Child Custody Jurisdiction and Enforcement
 21 Act; encouraging the consolidation of certain
 22 concurrent actions; providing for modification of an
 23 order awarding grandparent visitation; limiting the
 24 frequency of actions seeking visitation; limiting
 25 application to a minor child placed for adoption;
 26 providing for venue; repealing s. 752.07, F.S.,
 27 relating to the effect of adoption of a child by a
 28 stepparent on grandparent visitation rights; creating
 29 s. 752.071, F.S.; authorizing, after petition, a court

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

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30 to terminate a grandparent visitation order upon
 31 adoption of a minor child by a stepparent or close
 32 relative; amending ss. 39.6221, 39.6231, 63.087,
 33 63.172, and 752.015, F.S.; conforming provisions and
 34 cross-references to changes made by the act; providing
 35 an effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Subsection (45) of section 39.01, Florida
 40 Statutes, is amended to read:

41 39.01 Definitions.—When used in this chapter, unless the
 42 context otherwise requires:

43 (45) "Next of kin" means an adult relative of a child who
 44 is the child's brother, sister, grandparent, great-grandparent,
 45 aunt, uncle, or first cousin.

46 Section 2. Section 39.509, Florida Statutes, is amended to
 47 read:

48 39.509 Visitation rights of grandparents and great-
 49 grandparents ~~Grandparents rights.~~—Notwithstanding any other
 50 ~~provision of~~ law, a maternal or paternal grandparent or great-
 51 grandparent, as well as a step-grandparent or step-great-
 52 grandparent, ~~stepgrandparent~~ is entitled to reasonable
 53 visitation with his or her grandchild or great-grandchild who
 54 has been adjudicated a dependent child and taken from the
 55 physical custody of the parent unless the court finds that such
 56 visitation is not in the best interest of the child or that such
 57 visitation would interfere with the goals of the case plan.
 58 Reasonable visitation may be unsupervised and, where appropriate

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59 and feasible, may be frequent and continuing. ~~An Any~~ order for
60 visitation or other contact must conform to ~~the provisions of~~ s.
61 39.0139.

62 (1) Grandparent or great-grandparent visitation may take
63 place in the home of the grandparent or great-grandparent unless
64 there is a compelling reason for denying such a visitation. The
65 department's caseworker shall arrange the visitation to which a
66 grandparent or great-grandparent is entitled pursuant to this
67 section. The state ~~may shall~~ not charge a fee for any costs
68 associated with arranging the visitation. However, the
69 grandparent or great-grandparent shall pay for the child's cost
70 of transportation ~~if when~~ the visitation is to take place in the
71 grandparent's or great-grandparent's home. The caseworker shall
72 document the reasons for any decision to restrict a
73 grandparent's or great-grandparent's visitation.

74 (2) A grandparent or great-grandparent entitled to
75 visitation pursuant to this section ~~may shall~~ not be restricted
76 from appropriate displays of affection to the child, such as
77 appropriately hugging or kissing his or her grandchild or great-
78 grandchild. Gifts, cards, and letters from the grandparent or
79 great-grandparent and other family members ~~may shall~~ not be
80 denied to a child who has been adjudicated a dependent child.

81 (3) ~~An Any~~ attempt by a grandparent or great-grandparent to
82 facilitate a meeting between the child who has been adjudicated
83 a dependent child and the child's parent or legal custodian, or
84 any other person in violation of a court order shall
85 automatically terminate future visitation rights of the
86 grandparent or great-grandparent.

87 (4) When the child has been returned to the physical

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88 custody of his or her parent, the visitation rights granted
89 pursuant to this section ~~shall~~ terminate.

90 (5) The termination of parental rights does not affect the
91 rights of grandparents or great-grandparents unless the court
92 finds that such visitation is not in the best interest of the
93 child or that such visitation would interfere with the goals of
94 permanency planning for the child.

95 (6) In determining whether grandparental or great-
96 grandparental visitation is not in the child's best interest,
97 ~~the court consideration~~ may consider ~~be given to~~ the following:

98 (a) The finding of guilt, regardless of adjudication, or
99 entry or plea of guilty or nolo contendere to charges under the
100 following statutes, or similar statutes of other jurisdictions:

101 1. Section ~~s-~~ 787.04, relating to removing a minor child
102 minors from the state or concealing a minor child ~~minors~~
103 contrary to court order;

104 2. Section ~~s-~~ 794.011, relating to sexual battery;

105 3. Section ~~s-~~ 798.02, relating to lewd and lascivious
106 behavior;

107 4. Chapter 800, relating to lewdness and indecent exposure;

108 5. Section ~~s-~~ 826.04, relating to incest; or

109 6. Chapter 827, relating to the abuse of children.

110 (b) The designation by a court as a sexual predator as
111 defined in s. 775.21 or a substantially similar designation
112 under laws of another jurisdiction.

113 (c) A report of abuse, abandonment, or neglect under ss.
114 415.101-415.113 or this chapter and the outcome of the
115 investigation concerning such report.

116 Section 3. Paragraph (a) of subsection (3) of section

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117 39.801, Florida Statutes, is amended to read:

118 39.801 Procedures and jurisdiction; notice; service of
119 process.—

120 (3) Before the court may terminate parental rights, in
121 addition to the other requirements set forth in this part, the
122 following requirements must be met:

123 (a) Notice of the date, time, and place of the advisory
124 hearing for the petition to terminate parental rights and a copy
125 of the petition must be personally served upon the following
126 persons, specifically notifying them that a petition has been
127 filed:

128 1. The parents of the child.

129 2. The legal custodians of the child.

130 3. If the parents who would be entitled to notice are dead
131 or unknown, a living relative of the child, unless upon diligent
132 search and inquiry no such relative can be found.

133 4. Any person who has physical custody of the child.

134 5. Any grandparent or great-grandparent entitled to
135 priority for adoption under s. 63.0425.

136 6. Any prospective parent who has been identified under s.
137 39.503 or s. 39.803.

138 7. The guardian ad litem for the child or the
139 representative of the guardian ad litem program, if the program
140 has been appointed.

141
142 The document containing the notice to respond or appear must
143 contain, in type at least as large as the type in the balance of
144 the document, the following or substantially similar language:
145

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146 ~~FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING~~

147 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
148 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
149 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
150 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
151 NOTICE.”

152 Section 4. Section 63.0425, Florida Statutes, is amended to
153 read:

154 63.0425 Grandparent’s or great-grandparent’s right to
155 notice.—

156 (1) If a child has lived with a grandparent or great-
157 grandparent for at least 6 months within the 24-month period
158 immediately preceding the filing of a petition for termination
159 of parental rights pending adoption, the adoption entity shall
160 provide notice to that grandparent or great-grandparent of the
161 hearing on the petition.

162 (2) This section does not apply if the placement for
163 adoption is the result of the death of the child’s parent and a
164 different preference is stated in the parent’s will.

165 (3) This section does not apply in stepparent adoptions.

166 (4) This section does not contravene the provisions of s.
167 63.142(4).

168 Section 5. Section 752.01, Florida Statutes, is repealed.

169 Section 6. Section 752.011, Florida Statutes, is created to
170 read:

171 752.011 Petition for grandparent visitation of a minor
172 child.—A grandparent of a minor child whose parents are
173 deceased, missing, or in a permanent vegetative state, or whose
174 one parent is deceased, missing, or in a permanent vegetative

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175 state and whose other parent has been convicted of a felony or
 176 an offense of violence, may petition the court for court-ordered
 177 visitation with the grandchild under this section.

178 (1) Upon the filing of a petition by a grandparent for
 179 visitation, the court shall hold a preliminary hearing to
 180 determine whether the petitioner has made a prima facie showing
 181 of parental unfitness or danger of significant harm to the minor
 182 child. Absent such a showing, the court shall dismiss the
 183 petition and shall award reasonable attorney fees and costs to
 184 be paid by the petitioner to the respondent.

185 (2) If the court finds that there is prima facie evidence
 186 that a parent is unfit or that there is a danger of significant
 187 harm to the minor child, the court shall proceed toward a final
 188 hearing, may appoint a guardian ad litem, and shall order the
 189 matter to family mediation as provided in s. 752.015.

190 (3) After conducting a final hearing on the issue of
 191 visitation, the court may award reasonable visitation to the
 192 grandparent with respect to the minor child if the court finds
 193 by clear and convincing evidence that a parent is unfit or that
 194 there is a danger of significant harm to the minor child, that
 195 visitation is in the best interest of the minor child, and that
 196 the visitation will not materially harm the parent-child
 197 relationship.

198 (4) In assessing the best interest of the minor child under
 199 subsection (3), the court shall consider the totality of the
 200 circumstances affecting the mental and emotional well-being of
 201 the minor child, including:

202 (a) The love, affection, and other emotional ties existing
 203 between the minor child and the grandparent, including those

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204 resulting from the relationship that had been previously allowed
 205 by the child's parent.

206 (b) The length and quality of the previous relationship
 207 between the minor child and the grandparent, including the
 208 extent to which the grandparent was involved in providing
 209 regular care and support for the child.

210 (c) Whether the grandparent established ongoing personal
 211 contact with the minor child before the death of the parent.

212 (d) The reasons that the surviving parent cited in ending
 213 contact or visitation between the minor child and the
 214 grandparent.

215 (e) Whether there has been demonstrable significant mental
 216 or emotional harm to the minor child as a result of the
 217 disruption in the family unit from which the child derived
 218 support and stability from the grandparent, and whether the
 219 continuation of that support and stability is likely to prevent
 220 further harm.

221 (f) The existence or threat to the minor child of mental
 222 injury as defined in s. 39.01.

223 (g) The present mental, physical, and emotional health of
 224 the minor child.

225 (h) The present mental, physical, and emotional health of
 226 the grandparent.

227 (i) The recommendations of the minor child's guardian ad
 228 litem, if one is appointed.

229 (j) The results of any psychological evaluation of the
 230 minor child.

231 (k) The preference of the minor child if he or she is
 232 determined to be of sufficient maturity to express a preference.

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233 (l) A written testamentary statement by the deceased parent
 234 regarding visitation with the grandparent. The absence of a
 235 testamentary statement is not deemed to provide evidence that
 236 the deceased parent would have objected to the requested
 237 visitation.

238 (m) Other factors that the court considers necessary in
 239 making its determination.

240 (5) In assessing material harm to the parent-child
 241 relationship under subsection (3), the court shall consider the
 242 totality of the circumstances affecting the parent-child
 243 relationship, including:

244 (a) Whether there have been previous disputes between the
 245 grandparent and the parent over childrearing or other matters
 246 related to the care and upbringing of the minor child.

247 (b) Whether visitation would materially interfere with or
 248 compromise parental authority.

249 (c) Whether visitation can be arranged in a manner that
 250 does not materially detract from the parent-child relationship,
 251 including the quantity of time available for enjoyment of the
 252 parent-child relationship and any other consideration related to
 253 disruption of the schedule and routines of the parent and the
 254 minor child.

255 (d) Whether visitation is being sought for the primary
 256 purpose of continuing or establishing a relationship with the
 257 minor child with the intent that the child benefit from the
 258 relationship.

259 (e) Whether the requested visitation would expose the minor
 260 child to conduct, moral standards, experiences, or other factors
 261 that are inconsistent with influences provided by the parent.

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262 (f) The nature of the relationship between the child's
 263 parent and the grandparent.

264 (g) The reasons that the parent cited in ending contact or
 265 visitation between the minor child and the grandparent which was
 266 previously allowed by the parent.

267 (h) The psychological toll of visitation disputes on the
 268 minor child.

269 (i) Other factors that the court considers necessary in
 270 making its determination.

271 (6) Part II of chapter 61, the Uniform Child Custody
 272 Jurisdiction and Enforcement Act, applies to actions brought
 273 under this section.

274 (7) If separate actions under this section and s. 61.13 are
 275 pending concurrently, the courts are strongly encouraged to
 276 consolidate the actions in order to minimize the burden of
 277 litigation on the minor child and the other parties.

278 (8) An order for grandparent visitation may be modified
 279 upon a showing by the person petitioning for modification that a
 280 substantial change in circumstances has occurred and that
 281 modification of visitation is in the best interest of the minor
 282 child.

283 (9) An original action requesting visitation under this
 284 section may be filed by a grandparent only once during any 2-
 285 year period, except on good cause shown that the minor child is
 286 suffering, or may suffer, demonstrable significant mental or
 287 emotional harm caused by a parental decision to deny visitation
 288 between a minor child and the grandparent, which was not known
 289 to the grandparent at the time of filing an earlier action.

290 (10) This section does not provide for grandparent

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291 visitation with a minor child placed for adoption under chapter
 292 63 except as provided in s. 752.071 with respect to adoption by
 293 a stepparent or close relative.

294 (11) Venue shall be in the county where the minor child
 295 primarily resides, unless venue is otherwise governed by chapter
 296 39, chapter 61, or chapter 63.

297 Section 7. Section 752.07, Florida Statutes, is repealed.

298 Section 8. Section 752.071, Florida Statutes, is created to
 299 read:

300 752.071 Effect of adoption by stepparent or close
 301 relative.-After the adoption of a minor child by a stepparent or
 302 close relative, the stepparent or close relative may petition
 303 the court to terminate a court order granting grandparent
 304 visitation under this chapter which was entered before the
 305 adoption. The court may terminate the order unless the
 306 grandparent is able to show that the criteria of s. 752.011
 307 authorizing the visitation continue to be satisfied.

308 Section 9. Subsection (2) of section 39.6221, Florida
 309 Statutes, is amended to read:

310 39.6221 Permanent guardianship of a dependent child.-

311 (2) In its written order establishing a permanent
 312 guardianship, the court shall do all of the following:

313 (a) List the circumstances that make or reasons why the
 314 child's parents unfit are not fit to care for the child and make
 315 why reunification impossible, referencing is not possible by
 316 referring to specific findings of fact made in its order
 317 adjudicating the child dependent or by making separate findings
 318 of fact.†

319 (b) State the reasons why establishment of a permanent

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320 guardianship is being ordered ~~established~~ instead of adoption.†

321 (c) Specify the frequency and nature of visitation or
 322 contact between the child and his or her parents.†

323 (d) Specify the frequency and nature of visitation or
 324 contact between the child and his or her grandparents or great-
 325 grandparents, under s. 39.509.†

326 (e) Specify the frequency and nature of visitation or
 327 contact between the child and his or her siblings.† ~~and~~

328 (f) Require that the permanent guardian not return the
 329 child to the physical care and custody of the person from whom
 330 the child was removed without the approval of the court.

331 Section 10. Subsection (3) of section 39.6231, Florida
 332 Statutes, is amended to read:

333 39.6231 Permanent placement with a fit and willing
 334 relative.-

335 (3) In its written order placing the child with a fit and
 336 willing relative, the court shall do all of the following:

337 (a) List the circumstances that make or reasons why
 338 reunification impossible, referencing is not possible by
 339 ~~referring to~~ specific findings of fact made in its order
 340 adjudicating the child dependent or ~~by~~ making separate findings
 341 of fact.†

342 (b) State the reasons why permanent placement with a fit
 343 and willing relative is being ordered ~~established~~ instead of
 344 adoption.†

345 (c) Specify the frequency and nature of visitation or
 346 contact between the child and his or her parents.†

347 (d) Specify the frequency and nature of visitation or
 348 contact between the child and his or her grandparents or great-

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349 ~~grandparents~~ under s. 39.509.

350 (e) Specify the frequency and nature of visitation or
351 contact between the child and his or her siblings.

352 (f) Require that the relative not return the child to the
353 physical care and custody of the person from whom the child was
354 removed without the approval of the court.

355 Section 11. Paragraph (e) of subsection (4) of section
356 63.087, Florida Statutes, is amended to read:

357 63.087 Proceeding to terminate parental rights pending
358 adoption; general provisions.—

359 (4) PETITION.—

360 (e) The petition must include:

361 1. The minor's name, gender, date of birth, and place of
362 birth. The petition must contain all names by which the minor is
363 or has been known, excluding the minor's prospective adoptive
364 name but including the minor's legal name at the time of the
365 filing of the petition. In the case of an infant child whose
366 adoptive name appears on the original birth certificate, the
367 adoptive name ~~may shall~~ not be included in the petition ~~or, nor~~
368 ~~shall it be included~~ elsewhere in the termination of parental
369 rights proceeding.

370 2. All information required by the Uniform Child Custody
371 Jurisdiction and Enforcement Act and the Indian Child Welfare
372 Act.

373 3. A statement of the grounds under s. 63.089 upon which
374 the petition is based.

375 4. The name, address, and telephone number of any adoption
376 entity seeking to place the minor for adoption.

377 5. The name, address, and telephone number of the division

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378 of the circuit court in which the petition is to be filed.

379 6. A certification of compliance with the requirements of
380 s. 63.0425 regarding notice to grandparents or great-
381 grandparents of an impending adoption.

382 Section 12. Subsection (2) of section 63.172, Florida
383 Statutes, is amended to read:

384 63.172 Effect of judgment of adoption.—

385 (2) If one or both parents of a child die without the
386 relationship of parent and child having been previously
387 terminated and a spouse of the living parent or a close relative
388 of the child thereafter adopts the child, the child's right of
389 inheritance from or through the deceased parent is unaffected by
390 the adoption and, unless the court orders otherwise, the
391 adoption does will not terminate any grandparental or great-
392 grandparental rights delineated under chapter 752. For purposes
393 of this subsection, a close relative of a child is the child's
394 brother, sister, grandparent, great-grandparent, aunt, or uncle.

395 Section 13. Section 752.015, Florida Statutes, is amended
396 to read:

397 752.015 Mediation of visitation disputes.—It is shall be
398 the public policy of this state that families resolve
399 differences over grandparent visitation within the family. It is
400 ~~shall be~~ the further public policy of this state that, when
401 families are unable to resolve differences relating to
402 grandparent visitation, ~~that~~ the family participate in any
403 formal or informal mediation services that may be available. If
404 ~~When~~ families are unable to resolve differences relating to
405 grandparent visitation and a petition is filed pursuant to s.
406 752.011 s. 752.04, the court shall, if such services are

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407 available in the circuit, refer the case to family mediation in
408 accordance with the Florida Family Law Rules of Procedure ~~rules~~
409 ~~promulgated by the Supreme Court.~~

410 Section 14. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/2015

Meeting Date

Topic _____

Bill Number 368

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

368

Bill Number (if applicable)

Topic GRANDPARENTS

Amendment Barcode (if applicable)

Name JACK MURRAY

Job Title _____

Address 200 W. COLLEGE ST. #304
Street

Phone 450-577-5187

TLH FL 32301
City State Zip

Email jmurray@aarp.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Communications, Energy, and Public Utilities
Fiscal Policy
Regulated Industries
Community Affairs

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

Minority Whip
25th District

April 8th, 2015

The Honorable Anitere Flores
The Florida Senate
413 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Flores:

I respectfully request that Senate Bill 368, Rights of Grandparents and Great-grandparents, be considered for placement on the Fiscal Policy Committee agenda. This legislation will provide the opportunity for grandparents and great-grandparents to petition the court for visitation rights of their grandchildren.

Thank you in advance for your consideration. Please let me know if I can provide you with any additional information.

Sincerely,

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

Joseph Abruzzo

Cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



884540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Clemens) recommended the following:

Senate Amendment

Between lines 88 and 89
insert:

(25) That portion of S.R. 9/N.W. 27th Avenue between S.R. 934/N.W. 79th Street and N.W. 41st Street in Miami-Dade County is designated as "Georgia Ayers Way."



605406

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Margolis) recommended the following:

Senate Amendment

Between lines 88 and 89
insert:

(25) That portion of U.S. 41/S.R. 90/S.W. 8th Street
between S.W. 56th Avenue and S.W. 53rd Avenue in Miami-Dade
County is designated as "Lorenzo de Toro Way."



102454

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hukill) recommended the following:

Senate Amendment

Between lines 88 and 89
insert:

(25) That portion of S.R. 371/373/Orange Avenue between
S.R. 263/Capital Circle and S.R. 61/Monroe Street in Leon County
is designated as "C.K. Steele Memorial Highway."



173178

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Legg) recommended the following:

Senate Amendment

Between lines 88 and 89
insert:

(24) That portion of S.R. 583/56th Street between S.R. 574/E. Dr. Martin Luther King Boulevard and Harney Road in Hillsborough County is designated as "Pepin Memorial Road."

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 Fiscal Policy

BILL: CS/CS/SB 388

INTRODUCER: Fiscal Policy Committee; Transportation Committee; and Senator Montford and others

SUBJECT: Transportation Facility Designations

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	Fav/CS
2.	<u>Pace/Price</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 388 creates 28 honorary designations of transportation facilities around the state and directs the Florida Department of Transportation to erect suitable markers designating the transportation facilities.

II. Present Situation:

Section 334.071, F.S., provides that legislative designations of transportation facilities are for honorary or memorial purposes, or to distinguish a particular facility. Such designations are not to be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.¹

When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility.²

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, resolutions

¹ Section 334.071(1), F.S.

² Section 334.071(2), F.S.

supporting the designations must be passed by each affected local government prior to the erection of the markers.³

III. **Effect of Proposed Changes:**

The bill creates 24 honorary transportation facility designations around the state as follows:

Private First Class Joey Moody Bridge

Upon completion of replacement construction, designates bridge number 380096 on U.S. 221/S.R. 55 over the Econfina River in Taylor County is designated as “Private First Class Joey Moody Bridge.”

Private First Class Joey Moody grew upon in Shady Grove on the Econfina River. He attended Shady Grove Grammar School and graduated from Taylor County High School before attending the University of Florida. On June 21, 1952, PFC Moody, serving in Korea, was one of three men sent into enemy fire to repair a crucial communications line and lost his life when a mortar round exploded. He was posthumously awarded the National Defense Medal, the Korean Combat Medal, the Korean Battle Medal, and the Purple Heart.

Emmitt G. Coakley Memorial Highway

The portion of U.S. 1/S.R. 15 between 5th Avenue and C.R. 108 in Nassau County is designated as “Emmitt G. Coakley Memorial Highway.”

Emmitt G. Coakley was a teacher, mentor, and principal in Nassau who retired after 30 years of service. He returned as a substitute teacher for an additional 23 years. He served his community in many ways, including 30 years on the Nassau County Planning and Zoning Board and nine years on the Conditional Use and Variance Board. He was an active member of the Retired Teachers’ Association of Nassau County, Chairman of the Deacon Ministry of Second Baptist Church, and served his country as a member of the United States Army.

Purple Heart Trail

The portion of State Road 60 between the Hillsborough County Line and Mandalay Avenue in Pinellas County is designated as “Purple Heart Trail.”

The purpose of the Purple Heart Trail, according to the Purple Heart website, “is to create a symbolic and honorary system of roads, highways, bridges, and other monuments that give tribute to the men and women who have been awarded the Purple Heart medal. ... Signs placed at various locations annotate those roads and highways where legislation has been passed to designate parts of the national road system as The Purple Heart Trail.”⁴

³ Section 334.071(3), F.S.

⁴ See *The Military Order of the Purple Heart, Purple Heart Trail Program*, available at <http://www.purpleheart.org/PHTrail/> (last visited April 8, 2015).

‘Charlie K’ Kondek Jr., Memorial Highway

That portion of U.S. 19A/S.R. 595 between Tarpon Avenue and the Pasco County line in Pinellas County is designated as “Officer Charles ‘Charlie K’ Kondek, Jr., Memorial Highway.”

Officer Charles ‘Charlie K’ Kondek, Jr., served the citizens of the City of Tarpon Springs as a law enforcement officer for over 17 years. On December 21, 2014, while investigating a noise nuisance complaint, Officer Kondek was ambushed by an armed adversary, exchanged gunfire, and paid the ultimate sacrifice while in service to his community.

Corporal Joseph R. Bertrand Memorial Highway

The portion of S.R. 80 between Hickey Creek Road and Carter Lane in Lee County is designated as “Corporal Joseph R. Bertrand Memorial Highway.”

Corporal Joseph R. Bertrand was a member of the Florida Highway Patrol who served the citizens of the State of Florida for 16 years. On December 22, 1967, Corporal Bertrand was shot and killed while conducting a driving-under-the-influence investigation on State Road 80 in Fort Myers.

Lieutenant Benedict J. Thomas Memorial Highway

The portion of Interstate 75/S.R. 93A between Fowler Avenue and Fletcher Avenue in Hillsborough County is designated as “Lieutenant Benedict J. Thomas Memorial Highway.”

Lieutenant Benedict J. Thomas was a member of the Florida Highway Patrol who served the citizens of the State of Florida for 11 years. On June 9, 1989, Lieutenant Thomas was struck and killed by a passing car while walking back to his vehicle after investigating an abandoned vehicle on Interstate 75 in Tampa.

Trooper Patrick Ambroise Memorial Highway

The portion of the Homestead extension of the Florida Turnpike/S.R. 821 between Milepost 34 and Milepost 36 in Miami-Dade County is designated as “Trooper Patrick Ambroise Memorial Highway.”

Trooper Patrick Ambroise was a member of the Florida Highway Patrol who served the citizens of the State of Florida for four years. On May 15, 2010, while parked in his patrol vehicle on the shoulder of northbound State Road 821, a passing vehicle veered onto the paved emergency shoulder and struck the left rear section of the patrol vehicle, killing Trooper Ambroise.

Mary Ellen Hawkins Street

The portion of Golden Gate Parkway between U.S. 41/S.R. 45/Tamiami Trail and C.R. 851 in Collier County is designated as “Mary Ellen Hawkins Street.”

Mary Ellen Hawkins was Collier County's first female state representative. She served in the Florida House of Representatives from 1974 to 1994 and subsequently remained active in promoting and improving her community.

Elizabeth Inez and Elijah Davis Highway

The portion of S.R. 35/N.E. 58th Avenue between C.R. 314/N.E. 7th Street and S.E. 20th Street in Marion County is designated as "Elizabeth Inez and Elijah Davis Highway."

Elizabeth Inez Davis was a devoted children's advocate and community leader in the Ocala area. She founded the Mount Canaan Community Youth Center. Ms. Davis passed away on December 6, 2002.

Elijah Davis volunteered for over 60 years at the Mount Canaan Community Youth Center and still volunteers at the age of 101.

Lee Klein Way

The portion of S.R. 973/87th Avenue between S.R. 94/Kendall Drive and S.W. 92nd Street in Miami-Dade County is designated as "Lee Klein Way."

Lee Klein began her career as a volunteer charity worker for children's causes in 1956 and, in 1965, founded what is now known as the Children's Cancer Caring Center. Ms. Klein serves as the Chief Executive Officer, Chairman of the Board, and as Patient Program Director of the Center. She has received numerous awards for her work on behalf of children with cancer.

Deputy Scott Pine Way

The portion of C.R. 435/Apopka Vineland Road between Old Winter Garden Road and C.R. 439/Conroy-Windermere Road in Orange County is designated as "Deputy Scott Pine Way."

Deputy Scott Pine took his oath as Deputy Sheriff on May 23, 2011, promising to protect and defend the citizens of Orange County. He received the Deputy of the Month in 2014 and was encouraged to assist and mentor new assigned deputies. On February 11, 2014, Deputy Pine was working patrol on the midnight shift when he responded to a call of vehicle burglary. Upon arrival at the scene, Deputy Pine gave chase to a suspect, and the suspect shot Deputy Pine. He succumbed to his injuries, leaving his wife and three young children.

Deputy Sheriff Atticus Haygood Ellzey Memorial Highway

The portion of U.S. 19/98/S.R. 55 between N. Otter Creek Avenue and S.E. 1st Avenue in Levy County is designated as "Deputy Sheriff Atticus Haygood Ellzey Memorial Highway."

Deputy Sheriff Atticus Haygood Ellzey of the Levy County Sheriff's Office was a lifelong resident of Otter Creek. On January 28, 1945, Deputy Ellzey was shot during an attempt to escort two men from a business establishment. He died of his injuries, leaving his wife and thirteen

children. The Levy County Board of County Commissioners requests the designation in honor of the 70th anniversary of Deputy Ellzey's death.

SP4 Robert Clifford Millender Memorial Highway

The portion of U.S. 98/S.R.30 between Ryan Drive/W. 11th Street and N.E./S.E. 12th Street in Franklin County is designated as "SP4 Robert Clifford Millender Memorial Highway."

SP4 Robert Clifford Millender was inducted into the United States Army on August 7, 1968. After boot camp training, he was transferred to VietNam, where he served for two months before being injured in a land mine explosion. He was returned to Walter Reed General Hospital and discharged from the Army on July 22, 1969. SP4 Millender died of his war-related injuries on January 14, 1970. He received the Purple Heart, the National Defense Service Medal, and the VietNam Service Medal.

Lauren F. Book Boulevard

The portion of U.S. 1/S.R. 5/North Federal Highway between S.R. 842/Broward Boulevard and S.R. 838/Sunrise Boulevard in Broward County is designated as "Lauren F. Book Boulevard."

Lauren F. Book is the founder and Chief Executive Officer of Lauren's Kids. Lauren's Kids educates adults and children about sexual abuse prevention through in-school curricula, awareness campaigns, and speaking engagements around the country and the world. The organization also leads an annual, statewide awareness walk, called "Walk in My Shoes," and provides more than seven million education and awareness materials statewide through direct mail every year.

Dr. Martin Luther King, Jr., Memorial Highway

The portion of S.R. 519/Fiske Boulevard located within the corporate limits of the City of Rockledge in Brevard County is designated as "Dr. Martin Luther King, Jr., Memorial Highway."

The Reverend Kenneth C. Crossman Bridge

The SunRail Bridge, number 750255, over U.S. 17/92/S.R. 15 in Orange County is designated as "The Reverend Kenneth C. Crossman Bridge."

Reverend Crossman, known as "the Bridge Builder," worked throughout his service to bring together diverse people and communities. He is recognized for his work on race relations and racial reconciliation. The Reverend Kenneth C. Crossman Scholarship was established at Bethune-Cookman University in 2004 as a memorial to Reverend Crossman.

Pat Frank Road

The portion of East Street between East Twiggs Street and U.S. 41B/S.R. 60/East Kennedy Boulevard in Hillsborough County is designated as "Pat Frank Road."

A former chair of the Hillsborough County Board of County Commissioners, and, currently, the Hillsborough County Clerk of the Circuit Court, Pat Frank is noted for her distinguished career in public service. Starting with her election to the Hillsborough County School Board – which she later chaired – voters then sent her to the Florida House of Representatives, followed by the Florida Senate for a decade. Lauded for her legislative service, she was the first woman to receive recognition as a House “Most Effective First Term Member” and, later, as “Most Respected Senator,” and has received over 50 awards for her public service and volunteer activities.

Sandra Warshaw Freedman Street

The portion of N. Franklin Street between East Twiggs Street and U.S. 41B/S.R. 60/East Jackson Street in Hillsborough County is designated as “Sandra Warshaw Freedman Street.”

On July 16, 1986, Sandra Warshaw Freedman became Tampa’s first woman mayor, and broke a glass ceiling by appointing many minorities and women to top management positions in city government. She also organized Tampa’s first march against hate crimes and banned city employees from using racist, sexist, and religious slurs.

Helen Gordon Davis Boulevard

The portion of Davis Boulevard between Adalia Avenue and Adriatic Avenue in Hillsborough County is designated as “Helen Gordon Davis Boulevard.”

Helen Gordon Davis was born in New York City and moved to Tampa in 1948. In 1952, she was the first white woman in Florida to join the NAACP. Ms. Davis founded Florida’s first women’s center in 1971, and in 1974, she was the first woman elected from Hillsborough County to the Florida House of Representatives. She was reelected for six consecutive terms and, in 1988, was elected to the Florida Senate. Ms. Davis served as a Florida legislator for almost two decades and she championed the civil rights of women and minorities.

Francisco Rodriguez Avenue

The portion of North Willow Avenue between West Cypress Street and West Cass Street in Hillsborough County is designated as “Francisco Rodriguez Avenue.”

The son of a Cuban cigar maker, Francisco Rodriguez was a key organizer in the Civil Rights Movement in the late 1950’s. Prior to becoming a prominent civil rights attorney, Mr. Rodriguez was a school teacher and a U.S. Marine, barred from officer training because of his skin color (though he still applied). He later became a leader with the NAACP and led the fight in the courts to end segregation in Hillsborough County’s schools, parks, and other public facilities.

Vyrle Davis Avenue

The portion of U.S. 19A/S.R. 595/5th Avenue North between 25th Street North and 28th Street North in Pinellas County is designated as “Vyrle Davis Avenue.”

Vyrle Davis was St. Petersburg High School's first black principal, later becoming the county's first black area superintendent. He founded the Ebony Scholars program in 1984, which has awarded high-achieving black students more than \$500,000 in scholarships. He founded COQUEB and AVEREC, which advocate for quality education of black students and voter education, respectively.

Nona and Popa Road

The portion of the San Juan Street Extension in Anastasia State Park between Santander Street and Park Road in St. Johns County is designated as "Nona and Popa Road."

This designation is in honor of all grandmothers and grandfathers who take grandchildren to state parks.

Col. William W. Wood Memorial Highway

The portion of S.R. 368 between U.S. 98/S.R. 30 and S.R. 390 in Bay County is designated as "Col. William W. Wood Memorial Highway."

Col. William W. Wood was a regular United States Army Soldier assigned to the Army National Guard's 1st Battalion, 184th Infantry Regiment. He was a Lt. Colonel while directing security operations following an explosion when another bomb went off in Baghdad, Iraq. He died on October 27, 2005, leaving his wife and daughter, and was posthumously promoted to Colonel.

Virginia Gardens Boulevard

The portion of S.R. 948/N.W. 36th Street between Curtiss Parkway/N.W. 57th Avenue and N.W. 67th Avenue in Miami-Dade County is designated as "Virginia Gardens Boulevard."

This designation is for the portion of State Road 948 that runs adjacent to the Village of Virginia Gardens.

Georgia Ayers Way

The portion of S.R. 9/N.W. 27th Avenue between S.R. 934/N.W. 79th Street and N.W. 41st Street in Miami-Dade County is designated as "Georgia Ayers Way."

A community activist since the 1960's, Georgia Ayers was assigned to community relations boards and advisory boards to facilitate relations between the community and local police. Among Ms. Ayers' many contributions to the community, she founded the Alternative Program with a Miami-Dade Circuit judge in 1982, working with the court system to offer an alternative to jail time for people charged with felonies or nonviolent crimes. She also founded the area's Daily Bread Food Bank. Ms. Ayers recently passed away at the age of 86.

Lorenzo de Toro Way

The portion of U.S. 41/S.R. 90/S.W. 8th Street between S.W. 56th Avenue and S.W. 53rd Avenue in Miami-Dade County is designated as “Lorenzo de Toro Way.”

Mr. de Toro is the found of *Revista Ideal*, the longest-existing published magazine of the Cuban exile community. July of 2015 marks the 45th anniversary of the publication.

C.K. Steele Memorial Highway

The portion of S.R. 371/373/Orange Avenue between S.R. 263/Capital Circle and S.R. 61/Monroe Street in Leon County is designated as “C.K. Steele Memorial Highway.”

In 1956, 38 year-old C.K. Steele moved to Tallahassee where he served as minister at the Bethel Baptist Church until his death in 1980. He organized a bus boycott in Tallahassee in 1956 after two black college students were arrested for sitting in the “whites only” section of a city bus, successfully integrating bus service in the community. He also worked to integrate Tallahassee’s schools, restaurants, theaters, and other public facilities. He became a national figure in the civil rights movement, helping to organize the Southern Christian Leadership Conference and serving as its vice-president. He participated in many national civil rights protests, including the famous march in Selma, Alabama.

Pepin Memorial Road

The portion of S.R. 583/56th Street between S.R. 574/E. Dr. Martin Luther King Boulevard and Harney Road in Hillsborough County is designated as “Pepin Memorial Road.”

Arthur Pepin founded Pepin Distributing Company and was a major philanthropist in Tampa, including substantial contributions to what is now known as the Pepin Heart Hospital & Dr. Kiran C. Patel Research Institute. Mr. Pepin passed away in 2000. His wife, Polly, passed away in 2012.

The bill directs the FDOT to erect suitable markers for each of the described designations.

The bill takes effect on July 1, 2015.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The estimated cost to erect the designation markers required under this bill is \$28,000. This is based on the assumption that 2 markers are required for each designation for a total of 56 signs at a cost of no less than \$500 each. The estimate includes sign fabrication, installation, and maintenance over time but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDOT advises the following designations are not located on the State Highway System:

- Mary Ellen Hawkins Street;
- Deputy Scott Pine Way;
- Pat Frank Road;
- Sandra Warshaw Freedman Street;
- Helen Gordon Davis Boulevard;
- Francisco Rodriguez Avenue; and
- Nona and Popa Road.⁵

VIII. Statutes Affected:

This bill creates an undesignated section of Florida Law.

⁵ Emails from the FDOT regarding the designations (on file with the Senate Transportation Committee).

IX. Additional Information:

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

CS/CS by Fiscal Policy on April 15, 2015:

The CS/CS adds four additional designations as follows:

- “Georgia Ayers Way” in Miami-Dade County;
- “Lorenzo de Toro Way in Miami-Dade County;
- “C.K. Steele Memorial Highway” in Leon County; and
- “Pepin Memorial Road.”

CS by Transportation on April 2, 2015:

The CS establishes an additional designation, “Virginia Gardens Boulevard” in Miami-Dade County, and makes two technical corrections.

- B. **Amendments:**

None.

By the Committee on Transportation; and Senators Montford and Gaetz

596-03418-15

2015388c1

A bill to be entitled

An act relating to transportation facility designations; providing honorary designations of various transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Transportation facility designations; Department of Transportation to erect suitable markers.-

(1) Upon completion of replacement construction, bridge number 380096 on U.S. 221/S.R. 55 over the Econfina River in Taylor County is designated as "Private First Class Joey Moody Bridge."

(2) That portion of U.S. 1/S.R. 15 between 5th Avenue and C.R. 108 in Nassau County is designated as "Emmitt G. Coakley Memorial Highway."

(3) That portion of State Road 60 between the Hillsborough County Line and Mandalay Avenue in Pinellas County is designated as "Purple Heart Trail."

(4) That portion of U.S. 19A/S.R. 595 between Tarpon Avenue and the Pasco County line in Pinellas County is designated as "Officer Charles 'Charlie K' Kondek, Jr., Memorial Highway."

(5) That portion of S.R. 80 between Hickey Creek Road and Carter Lane in Lee County is designated as "Corporal Joseph R. Bertrand Memorial Highway."

(6) That portion of Interstate 75/S.R. 93A between Fowler

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

596-03418-15

2015388c1

Avenue and Fletcher Avenue in Hillsborough County is designated as "Lieutenant Benedict J. Thomas Memorial Highway."

(7) That portion of the Homestead Extension of the Florida Turnpike/S.R. 821 between mile marker 34 and mile marker 36 in Miami-Dade County is designated as "Trooper Patrick Ambroise Memorial Highway."

(8) That portion of Golden Gate Parkway between U.S. 41/S.R. 45/Tamiami Trail and C.R. 851 in Collier County is designated as "Mary Ellen Hawkins Street."

(9) That portion of S.R. 35/N.E. 58th Avenue between C.R. 314/N.E. 7th Street and S.E. 20th Street in Marion County is designated as "Elizabeth Inez and Elijah Davis Highway."

(10) That portion of S.R. 973/87th Avenue between S.R. 94/Kendall Drive and S.W. 92nd Street in Miami-Dade County is designated as "Lee Klein Way."

(11) That portion of C.R. 435/Apopka Vineland Road between Old Winter Garden Road and C.R. 439/Conroy-Windemere Road in Orange County is designated as "Deputy Scott Pine Way."

(12) That portion of U.S. 19/98/S.R. 55 between N. Otter Creek Avenue and S.E. 1st Avenue in Levy County is designated as "Deputy Sheriff Atticus Haygood Ellzey Memorial Highway."

(13) That portion of U.S. 98/S.R.30 between Ryan Drive/W. 11th Street and N.E./S.E. 12th Street in Franklin County is designated as "SP4 Robert Clifford Millender Memorial Highway."

(14) That portion of U.S. 1/S.R. 5/North Federal Highway between S.R. 842/Broward Boulevard and S.R. 838/Sunrise Boulevard in Broward County is designated as "Lauren F. Book Boulevard."

(15) That portion of S.R. 519/Fiske Boulevard located

Page 2 of 4

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

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59 within the corporate limits of the City of Rockledge in Brevard
 60 County is designated as "Dr. Martin Luther King, Jr., Memorial
 61 Highway."

62 (16) The SunRail Bridge, number 750255, over U.S.
 63 17/92/S.R. 15 in Orange County is designated as "The Reverend
 64 Kenneth C. Crossman Bridge."

65 (17) That portion of East Street between East Twiggs Street
 66 and U.S. 41B/S.R. 60/East Kennedy Boulevard in Hillsborough
 67 County is designated as "Pat Frank Road."

68 (18) That portion of N. Franklin Street between East Twiggs
 69 Street and U.S. 41B/S.R. 60/East Jackson Street in Hillsborough
 70 County is designated as "Sandra Warshaw Freedman Street."

71 (19) That portion of Davis Boulevard between Adalia Avenue
 72 and Adriatic Avenue in Hillsborough County is designated as
 73 "Helen Gordon Davis Boulevard."

74 (20) That portion of North Willow Avenue between West
 75 Cypress Street and West Cass Street in Hillsborough County is
 76 designated as "Francisco Rodriguez Avenue."

77 (21) That portion of U.S. 19A/S.R. 595/5th Avenue North
 78 between 25th Street North and 28th Street North in Pinellas
 79 County is designated as "Vyrle Davis Avenue."

80 (22) That portion of the San Juan Street Extension in
 81 Anastasia State Park between Santander Street and Park Road in
 82 St. Johns County is designated as "Nona and Popa Road."

83 (23) That portion of S.R. 368 between U.S. 98/S.R. 30 and
 84 S.R. 390 in Bay County is designated as "Col. William W. Wood
 85 Memorial Highway."

86 (24) That portion of S.R. 948/N.W. 36th Street between
 87 Curtiss Parkway/N.W. 57th Avenue and N.W. 67th Avenue in Miami-

596-03418-15 2015388c1

88 Dade County is designated as "Virginia Gardens Boulevard."

89 (25) The Department of Transportation is directed to erect
 90 suitable markers designating the transportation facilities as
 91 described in this section.

92 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-15

Meeting Date

388

Bill Number (if applicable)

173178

Amendment Barcode (if applicable)

Topic Trans Faculty Designations

Name Natalie King

Job Title VP

Address 235 W Brandon Blvd
Street LEW

Phone 813 924 8218

Brandon FL 33511
City State Zip

Email Natalie.A.King@nyllc.com

Speaking: For Against Information

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

Representing Peppin 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.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD
3rd District

April 7, 2015

Senator Anitere Flores, Chair
Senate Fiscal Policy Committee
413 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores:

I respectfully request that CS/SB 388 be scheduled for a hearing before the Senate Fiscal Policy Committee. CS/SB 388 is the omnibus transportation facility designation bill.

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

cc: Jennifer Hrdlicka, Staff Director

WJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



797088

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 390 and 391
insert:

Section 14. Section 817.414, Florida Statutes, is created
to read:

817.414 Sale of counterfeit security signs and decals.—A
person who willfully and knowingly sells or attempts to sell a
counterfeit sign or decal in this state with the name or logo of
a security company without the express written consent of the
company commits:



797088

12 (1) For the first offense, a misdemeanor of the second
13 degree, punishable as provided in s. 775.082 or s. 775.083.

14 (2) For a second or subsequent offense, a misdemeanor of
15 the first degree, punishable as provided in s. 775.082 or s.
16 775.083.

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

18 And the title is amended as follows:

19 Delete line 47

20 and insert:

21 new; creating s. 817.414, F.S.; prohibiting the sale
22 of counterfeit security company signs or decals;
23 providing criminal penalties; amending s. 817.481,
24 F.S.; clarifying provisions;

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 Fiscal Policy

BILL: CS/CS/CS/SB 390

INTRODUCER: Fiscal Policy Committee; Criminal Justice Committee; Judiciary Committee; and Senator Richter

SUBJECT: Fraud

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
3.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
4.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 390 amends multiple provisions in ch. 817, F.S., related to fraudulent practices. The most significant provisions of the bill:

- Prohibit a person from falsely personating or representing another person in a manner that causes damage to the other person's credit history or rating;
- Authorize a sentencing court to order restitution for costs and fees an identity theft victim incurs in clearing his or her credit history or rating and establishes a civil cause of action against the defendant who has harmed the victim;
- Provide a process for an identity theft victim to obtain documentation of an alleged fraudulent transaction from a business entity and make the business entity immune from liability for disclosures made in good faith;
- Replace the term "corporation" with the term "business entity" to ensure that all businesses, regardless of their form, have the same protections against fraud;
- Prohibit the fraudulent transfer or issuance of a membership interest in a limited liability company;
- Prohibit the selling of counterfeit signs or decals with the name or logo of a security company without the express written consent of the company;
- Increase the criminal penalty for fraudulently obtaining goods or services from a health care provider;

- Make existing laws prohibiting the fraudulent use of an individual's personal identification information also applicable to the fraudulent use of a business' identification information;
- Specify criminal penalties for the fraudulent use of or intent to use the identification information of a dissolved business entity; and
- Specify criminal penalties for knowingly providing false information in a public record to facilitate the commission of another crime.

The Criminal Justice Impact Conference has found that the bill will result in the need for additional prison beds, but the amount cannot be determined.

II. Present Situation:

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.¹ Identity fraud, which is also known as identity theft, is a criminal act that occurs when a person illegally obtains someone else's personal information and uses that information to commit fraud or theft.² According to the Federal Trade Commission's most recent Consumer Sentinel Network Data Book, "Florida is the state with the highest per capita rate of reported identity theft complaints...."³

Identity thieves often take names, Social Security numbers (coupled with birth dates), bank account and credit card numbers, and passwords to obtain credit and credit cards, drain money from bank accounts, establish new accounts, apply for loans using the victims' names, and commit other crimes to enrich themselves.⁴ Operating under anonymity and hidden from view, identity thieves often ruin someone's finances and credit long before they are discovered.

Individual or Consumer Identity Theft

An unsuspecting person might not realize that he or she has been the victim of an identity theft until months, or sometimes even years, after the fraud has occurred. The loss of personal identification information can have devastating effects. Current law does not appear to specifically require businesses to give victims of identity theft or law enforcement officers documents related to the alleged fraudulent use of the victim's identity. Accordingly, it can be a difficult task for victims to collect the necessary documents to restore their identity and credit history.

¹ Black's Law Dictionary (9th ed. 2009).

² Federal Bureau of Investigation, *Identity Theft Overview*, available at http://www.fbi.gov/about-us/investigate/cyber/identity_theft/identity-theft-overview (last visited April 10, 2015).

³ Federal Trade Commission, *Consumer Sentinel Network Data Book for January-December 2013* (February 2014) p. 3, available at <http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf> (last visited on April 10, 2015).

⁴ Florida Office of the Attorney General, *About Identity Theft Crimes*, available at <http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument> (last visited April 10, 2015).

Existing law defines personal identification information as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.⁵

Business Identity Theft

The crime of business identity theft is virtually the same as personal identity theft except that a business's identity is stolen. Quite often, the losses are much greater and sometimes involve a more sophisticated network of thieves. Some thieves have also resorted to taking the identity of businesses that are dissolved and using that identity to commit fraud. Currently, several of the fraud statutes in ch. 817, F.S., apply only to "individuals" and not to business entities. Therefore, businesses are not similarly protected against fraud.

Additional Fraud Provisions in Chapter 817

Many of the provisions in ch. 817, F.S., have not been substantially revised since they were enacted decades ago. As a result, some of these statutes do not reflect more modern methods of advertising and manufacturing, the use of public records, the occurrence of electronic transmission of personal identification information, and the different forms of business entities that are currently authorized by law.

III. Effect of Proposed Changes:

The bill amends ch. 817, F.S., to provide individuals and businesses greater protections against identity theft. In general terms, these changes affect individuals by allowing them to better identify when identity theft has been committed against them and by removing barriers to restoring their identity and credit after the crime has occurred. Additional forms of restitution are provided, which might allow the victims additional methods of recovering their financial losses. For business entities,⁶ the bill provides greater protections against fraud and identity theft. The

⁵ Section 817.568(1)(f), F.S.

⁶ The bill defines the term "business entity" for purposes of ch. 817, F.S., and replaces current references to "corporation" or "firm" throughout the chapter with "business entity." A business entity is defined to mean any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

bill also amends miscellaneous provisions in ch. 817, F.S., to update them to reflect modern terminology, currently authorized business structures, and current business practices.

Identity Theft Committed Against Individuals (Section 2)

Obtaining Property by False Personation

The bill amends s. 817.02, F.S., to expand the crime of obtaining property by false personation to address falsely personating or representing another person in a manner that damages the credit history or credit rating, or otherwise causes harm to the other person. Currently, a person who commits this crime is subject to the criminal penalties for larceny.⁷ The new provision under the bill does not apply to crimes subject to s. 817.568, F.S., which establishes criminal penalties for fraudulent use of another person's personal identification information.

Additional Restitution for Victims

The bill amends s. 817.02, F.S., to allow a court, when sentencing a defendant under this section, to order restitution⁸ for the victim's⁹ out-of-pocket costs, including attorney fees and fees associated with certified public accountant services that the victim incurred clearing his or her credit history or credit rating, or costs incurred with a civil or administrative proceeding to satisfy a debt, lien, or other obligation that arises from the defendant's actions. The sentencing court may also issue orders necessary to correct any public record that contains false information given in violation of s. 817.02, F.S. The bill also amends the section to create a civil cause of action against a person who violates this section as provided in s. 772.11, F.S., which creates a civil remedy for a victim of theft or exploitation.

Information Made Available to Identity Theft Victims (Section 3)

The bill creates s. 817.032, F.S., to establish a procedures for victims¹⁰ of identity theft to obtain documentation of fraudulent applications submitted or fraudulent business transactions from a business entity that has entered into a commercial transaction with the perpetrator of identity theft.

The Process

Within 30 days after a victim's request, and subject to verification of the victim's identity and identity theft claim, a business entity that has entered into an alleged fraudulent transaction or

⁷ Larceny is not currently defined in statute. Acts that were previously referred to as larceny are now prosecuted as theft crimes under s. 812.014, F.S. *See Nooe v. State*, 892 So.2d 1135, 1138 (Fla. 5th DCA 2005) (Section 812.014 "includes a variety of offenses related to unlawful appropriation of property, including larceny, obtaining by false pretenses and misappropriation"). Punishments for theft are generally commensurate with the monetary value of the property stolen.

⁸ The sentencing court may order restitution under this section that is in addition to restitution permitted under s. 775.089, F.S. Under s. 775.089, F.S., a judge is required to order the defendant to make restitution to the victim for damage or loss caused by the defendant's offense and damage or loss that is related to the defendant's criminal episode, unless the court finds clear and compelling reasons not to order the restitution. The restitution may be monetary or nonmonetary.

⁹ The bill defines a victim, in this subsection, as a person whose identity was falsely personated or who suffers a loss of property as a result of false personation.

¹⁰ A victim is defined in this section as a person whose identification or financial information is used or transferred or alleged to be used or transferred without his or her consent with the intent to commit, aid, or abet an identity theft or similar crime.

accepted a fraudulent application must provide a copy of the application and business transaction records, which evidence a transaction of alleged identity theft, to:

- The victim;
- A law enforcement agency or officer specified by the victim in the request; or
- A law enforcement agency investigating the identity theft and authorized by the victim to receive those records.

The aforementioned requirement does not apply to a third party providing a service to effect, administer, facilitate, process, or enforce a financial transaction initiated by an individual.

Identifying Information

Before the business entity is required to provide the requested application or transaction records, unless the business entity, at its discretion, has a high degree of confidence that it knows the identity of the victim making the records request, the victim must provide to the business entity:

- Certain forms of positive identification of the victim (government-issued identification and personal identification information of the same type provided to the business entity by the unauthorized person), at the election of the business entity; and
- Proof of a claim of identity theft (a copy of the police report of the claim and an affidavit of fact), at the election of the business entity.

Request Requirements

The victim's request to the business entity must be in writing and mailed or delivered to an address specified by the business entity. If the business entity so requests, the victim must include relevant information about the alleged transaction, including, if known or readily obtainable by the victim, the date of the application or transaction and any other identifying information such as an account number or transaction number. The information required to be provided to the victim must be provided at no charge to the victim.

Authority to Decline a Request

A business entity may decline to provide the information requested by the victim if the business entity, in exercising good faith, determines that:

- This provision of law does not require disclosure of the requested information;
- After reviewing the victim's identification materials and alleged claim, the business entity does not have a high degree of confidence that it knows the true identity of the person requesting the information;
- The request is based upon a misrepresentation of fact by the requestor;
- The information requested is Internet navigational data or similar information involving a person's visit to a website or online service; or
- The disclosure is otherwise prohibited by state or federal law.

Civil Liability, Recordkeeping Requirement, Affirmative Defense

A business entity is shielded from civil liability for disclosing information under this section if the disclosure is made in good faith in accordance with the provisions of this section. A business entity is also shielded from civil liability for a decision to decline to provide information in accordance with an authorized reason for non-disclosure (as specified in the section). This

section does not impose any recordkeeping obligations on business entities. If a civil action is brought for the purpose of enforcing a person's right to a business entity's records, it is an affirmative defense, which the defendant must establish by a preponderance of the evidence, for a business entity to file an affidavit or answer which states that the entity has made a reasonably diligent search of its available business records and the records that have been requested do not exist or are not reasonably available.

Identity Theft Committed Against Businesses (Section 17)

Criminal Use of Personal Identification Information

Existing s. 817.568, F.S., sets forth criminal offenses involving the use of another's personal identification information. In particular, subsections (2), (4), and (9) of s. 817.568, F.S., establish several criminal offenses that involve the illegal use of an individual's personal identification information. Because s. 817.568(1)(d), F.S., defines an "individual" as "a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity," subsections (2), (4), and (9) *only apply to individuals*, not business entities. Therefore, if a person uses the personal identification information of a business, that person is not subject to the penalties set forth in the statute.

The bill amends s. 817.568, F.S., to replace references to "individual" with "person." "Person" is defined in s. 817.568(1)(e), F.S., as having the same definition found in s. 1.01(3), F.S., which "includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Accordingly, the bill makes the criminal penalties in s. 817.568, F.S., applicable to those persons who unlawfully use the personal identification information of a business entity to commit certain fraudulent acts.

Existing s. 817.568(2), F.S., specifies that the fraudulent use of personal identification information is felony of the third degree.¹¹ The bill replaces the term "individual" with the term "person" to include the fraudulent use of a business' identification information. Any person who fraudulently uses personal identification information commits:

- A second degree felony¹² if the financial amount involved is equal to or greater than \$5,000 or the thief fraudulently uses the personal identification of 10 to 19 individuals without their consent. The court must also sentence the defendant to a mandatory minimum sentence of three years.¹³
- A first degree felony¹⁴ if the financial amount involved is \$50,000 or more or the personal identification of 20 to 29 individuals is used without their consent. The accompanying mandatory minimum sentence is 5 years. If the financial amount involved is \$100,000 or

¹¹ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. *See* section 775.082(10), F.S. If total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. *See* ss. 775.082 and 775.083, F.S.

¹² A second degree felony is punishable by up to 15 years imprisonment, a fine of up to \$10,000, or both. *See* ss. 775.082 and 775.083, F.S.

¹³ Section 816.568(2)(b), F.S.

¹⁴ A first degree felony is generally punishable by up to 30 years imprisonment, a fine of up to \$10,000, or both. *See* ss. 775.082 and 775.083, F.S.

more or the personal identification information of 30 or more people is used without their consent, the mandatory minimum sentence is 10 years.¹⁵

Harassment by Use of Personal Identification Information

Existing s. 817.568(4), F.S., provides that it is a first degree misdemeanor¹⁶ to willfully and without authorization possess, use, or attempt to use an individual's personal identification information without his or her consent and does so to harass that person. The bill replaces the term "individual" with the term "person." This change expands the application of this subsection to include someone who unlawfully uses the personal identification information of a business entity to harass someone.

Prohibited Use of Counterfeit or Fictitious Personal Identification Information

Existing s. 817.568(9), F.S., provides that it is a third degree felony to willfully and fraudulently create or use, or possess with the intent to fraudulently use, counterfeit or fictitious personal identification information concerning a fictitious individual, or concerning a real individual without that real individual's consent, with the intent to use that information to commit or facilitate a fraud on another person. The bill replaces the term "individual" with the term "person." This change expands the application of this subsection to include a person who unlawfully uses the personal identification information of a business entity.

Using the Personal Identification Information of Deceased Individuals or Dissolved Business Entities

Existing s. 817.568(8), F.S., currently prohibits the fraudulent use of a deceased individual's personal identification information. The bill expands the application of this subsection to include and prohibit the fraudulent use of a dissolved business entity's personal identification information.

Section 817.568(8)(a) F.S., is amended to create a third degree felony for a person to willfully and fraudulently use, or possess with the intent to fraudulently use, the personal identification information of a deceased individual or a dissolved business entity. Whoever fraudulently uses the personal identification information of a deceased individual or a dissolved business entity commits:

- A second degree felony, if the monetary amount involved is \$5,000 or more or the person uses the personal identification information of 10 to 19 deceased individuals or dissolved business entities. The mandatory minimum sentence is 3 years.¹⁷
- A first degree felony (aggravated fraudulent use of the personal identification information of multiple deceased individuals or dissolved business entities), if the monetary amount is \$50,000 or more, or the perpetrator fraudulently uses the personal identification of 20 to 29 deceased individuals or dissolved business entities. The accompanying mandatory minimum sentence is 5 years of imprisonment. If the monetary amount involved is \$100,000 or more,

¹⁵ Section 816.568(2)(c), F.S.

¹⁶ A first degree misdemeanor is punishable by a term not to exceed 1 year imprisonment, a fine of up to \$1,000, or both. See ss. 775.082 and 775.083, F.S.

¹⁷ Section 817.658(8)(b), F.S.

or the person fraudulently uses the personal identification information of 30 or more deceased individuals or business entities, the mandatory minimum sentence is 10 years.¹⁸

Replacing the Term “Corporation” with the Term “Business Entity” (Sections 1, 5, 6, 10, and 12)

The bill creates s. 817.011, F.S., to define “business entity” for purposes of ch. 817, F.S., to mean “any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.” The bill also replaces references to a “corporation” with the word “business entity” in:

- Section 817.15, F.S. (false entries);
- Section 817.39, F.S. (simulated forms of court or legal process); and
- Section 817.411, F.S. (false information in advertisements).

As a result of these changes, all businesses regardless of their form are now protected by the fraud provisions of those subsections and subject to criminal penalties for violations of these laws.

Unlawful Acts through Electronic Means (Sections 11, 12, and 13)

Existing s. 817.40, F.S., contains the definitions for use in construing the statutes involving false, misleading, and deceptive advertising and sales. The bill amends the definition of “misleading advertising” in s. 817.40(5), F.S., to include statements disseminated in “electronic” form.

Existing s. 817.411, F.S., prohibits false advertisements, announcements, or statements regarding certain items of value being covered by insurance guaranties where there is no insurance or the insurance does not insure against the risks covered. The statute lists a variety of methods used to disseminate this information before the public. The bill amends this section to cover the electronic dissemination of those false claims.

Existing s. 817.412, F.S., provides that it is a first degree misdemeanor to sell goods that exceed \$100 and misrepresent them as being new or original when they are used, repossessed, or have been used for a sales demonstration. The bill amends this section to include goods that are misrepresented using an electronic medium.

Sale of Counterfeit Security Signs and Decals (Section 14)

The bill creates s. 817.414, F.S. to prohibit the sale of counterfeit signs or decals with the name or logo of a security company without the express written consent of the company. The bill provides that a person who willfully and knowingly commits this crime commits a second degree misdemeanor for the first offense and a first degree misdemeanor for a second or subsequent offense.

¹⁸ Section 817.568(8)(c), F.S.

Fraudulently Obtaining Goods or Services from a Health Care Provider (Section 16)

Existing s. 817.50, F.S., provides that it is a second degree misdemeanor to willfully and with intent to defraud, obtain, or attempt to obtain goods, products, merchandise, or services from a health care provider in this state. The bill increases the degree of this crime to a third degree felony.

Criminal Use of a Public Record or of Public Records Information (Section 18)

Existing s. 817.569, F.S., provides that a person who knowingly uses a public record or knowingly used information obtainable only through that public record to facilitate or further the commission of:

- A first degree misdemeanor, commits a first degree misdemeanor; or
- A felony, commits a third degree felony.

The bill expands the elements of this offense to include knowingly providing false information that becomes part of a public record.

Wrongful Use of a City Name and Wrongful Stamping or Marking of a City Name (Sections 7 and 8)

Existing s. 817.17, F.S., prohibits a manufacturer in the state from marking certain articles or packages for the manufactured articles as though they originated in a certain “city” when they did not. This section does not prohibit the sale of those articles if there is no “manufactory of similar goods in the city.” Currently, there is no criminal penalty for violation of this law. The bill amends the statute to provide that a violation is a second degree misdemeanor.¹⁹ The bill also prohibits falsely attributing the origin of a product to any “county or other political subdivision of the state.”

Existing s. 817.18, F.S., provides that it is a second degree misdemeanor to knowingly sell or offer for sale, within the state, manufactured articles that have printed, stamped, marked, engraved, or branded upon them or their packaging, the name of any city other than where the articles are manufactured. If there is no “manufactory of similar goods in the city,” then the section does not apply. The bill similarly amends this section to include the name of any “county or other political subdivision” of the state.

Fraudulent Issue of Stock Certificate of Indicia of Membership Interest (Section 9)

Existing s. 817.19, F.S., provides that it is a third degree felony for an officer, agent, clerk, or servant of a corporation or other person to fraudulently:

- Issue or transfer a certificate of stock of a corporation to a person not entitled to that stock; or
- Sign the certificate with the intent that it will be so issued or transferred.

¹⁹ A second degree misdemeanor is punishable by a term of imprisonment not to exceed 60 days, a fine not to exceed \$500, or both. *See* ss. 775.082 and 775.083, F.S.

The bill amends this section to include the fraudulent issue or transfer of any indicia of a membership interest in a limited liability company.

Criminal Punishment Code (Section 19)

The bill amends the Criminal Punishment Code's offense severity ranking chart to reflect the changes made in the titles of s. 817.569(2), and s. 817.568(2)(b), F.S., under the bill.

Other Affected Statutes (Sections 4, 5, and 15)

The bill amends ss. 817.11, 817.14, and 817.481 to make conforming changes made by the bill and stylistic changes. The bill transfers ss. 817.12 and 817.13, F.S., into s. 817.11, F.S. (dealing with obtaining property by fraudulent promise to provide inside information).

Effective Date (Section 20)

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, the requirement that businesses provide victims of identity theft with records involving their theft might have a positive fiscal impact on those who have been the victims of identity theft by assisting victims in recovering economic losses. The restitution provisions in this bill, assuming that the perpetrators of identity theft have any assets, might also allow victims of identity theft to recover expenses incurred in trying to resolve issues involved in the identity theft.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill will require an increase in the need for prison beds. However, the amount of the increase cannot be predicted and is therefore unquantifiable.

The Office of the State Courts Administrator estimates that the bill will increase judicial workload. However, the office stated that in “each of the last three years, ... there were fewer than 250 criminal cases filed under ch. 817, F.S., which suggests that the increase in workload should not be overwhelming to the court system.”²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.02, 817.11, 817.14, 817.15, 817.17, 817.18, 817.19, 817.39, 817.40, 817.411, 817.412, 817.481, 817.50, 817.568, 817.569, and 921.0022.

This bill creates the following sections of the Florida Statutes: 817.011, 817.032, and 817.414.

This bill transfers, renumbers, and amends the following sections of the Florida Statutes: 817.12 and 817.13.

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

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

CS/CS/CS by Fiscal Policy on April 15, 2015:

The committee substitute provides that a person who willfully and knowingly sells or attempts to sell a counterfeit sign or decal in this state with the name or logo of a security company without the express written consent of the company commits a second degree misdemeanor for the first offense and a first degree misdemeanor for a second or subsequent offense.

CS/CS by Criminal Justice on March 30, 2015:

- Exempts third-party processors from the requirements to provide transaction information directly to a consumer.

²⁰ Office of State Courts Administrator, *2015 Judicial Impact Statement, CS/CS/SB 390*, April 8, 2015 (on file with the Senate Fiscal Policy Committee).

- Requires a police report and an affidavit to be provided to a business entity when processing a request for information.
- Provides that a business entity is not required to disclose information if disclosure is prohibited by state or federal law.
- Provides that a business entity is not civilly liable for a good-faith disclosure or a non-disclosure when statutorily authorized.

CS by Judiciary on February 17, 2015:

The committee substitute makes several changes to the bill, most of which are technical changes that do not affect the meaning of the bill. One substantive change allows a sentencing court the discretion to order restitution for a victim's out-of-pocket costs incurred by his or her certified public accountant in restoring the victim's credit or to rectify other wrongs associated with identity theft. An additional substantive change is a change of the word "consumer" to "person." This change may entitle businesses that are identity theft victims to obtain records of a fraudulent transaction from other businesses.

B. Amendments:

None.

By the Committees on Criminal Justice; and Judiciary; and
Senator Richter

591-03137-15

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1 A bill to be entitled
2 An act relating to fraud; creating s. 817.011, F.S.;
3 defining the term "business entity"; amending s.
4 817.02, F.S.; providing for restitution to victims for
5 certain victim out-of-pocket costs; providing for a
6 civil cause of action for certain victims; creating s.
7 817.032, F.S.; defining the term "victim"; requiring
8 business entities to provide copies of business
9 records of fraudulent transactions involving identity
10 theft to victims and law enforcement agencies in
11 certain circumstances; providing an exception;
12 providing for verification of a victim's identity and
13 claim; providing procedures for claims; requiring that
14 certain information be provided to victims without
15 charge; specifying circumstances in which business
16 entities may decline to provide information; providing
17 a limitation on civil liability for business entities
18 that provide or decline to provide information in
19 certain circumstances; specifying that no new record
20 retention is required; providing an affirmative
21 defense to business entities in actions seeking
22 enforcement of provisions; amending s. 817.11, F.S.;
23 making editorial changes; transferring, renumbering,
24 and amending ss. 817.12 and 817.13, F.S.; combining
25 offense, penalty, and evidence provisions and
26 transferring such provisions to s. 817.11, F.S.;
27 amending s. 817.14, F.S.; clarifying provisions;
28 amending s. 817.15, F.S.; substituting the term
29 "business entity" for the term "corporation"; amending

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30 ss. 817.17 and 817.18, F.S.; including counties and
31 other political subdivisions in provisions prohibiting
32 the false marking of goods or packaging with a
33 location of origin; reorganizing penalty provisions;
34 amending s. 817.19, F.S.; prohibiting fraudulent
35 issuance of indicia of membership interest in a
36 limited liability company; amending s. 817.39, F.S.;
37 substituting the term "business entity" for the term
38 "corporation"; amending s. 817.40, F.S.; specifying
39 that the term "misleading advertising" includes
40 electronic forms of dissemination; amending s.
41 817.411, F.S.; substituting the term "business entity"
42 for the term "corporation"; specifying that certain
43 false statements made through electronic means are
44 prohibited; amending s. 817.412, F.S.; specifying that
45 electronic statements are included in provisions
46 prohibiting false representations of used goods as
47 new; amending s. 817.481, F.S.; clarifying provisions;
48 amending s. 817.50, F.S.; revising criminal penalties
49 for fraudulently obtaining goods or services from a
50 health care provider; amending s. 817.568, F.S.;
51 expanding specified identity theft offenses to include
52 all persons rather than being limited to natural
53 persons; including dissolved business entities within
54 certain offenses involving fraudulent use of personal
55 identification information of deceased persons;
56 amending s. 817.569, F.S.; prohibiting a person from
57 knowingly providing false information that becomes
58 part of a public record to facilitate or further the

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59 commission of certain offenses; providing criminal
60 penalties; amending s. 921.0022, F.S.; conforming
61 provisions to changes made by the act; providing an
62 effective date.

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

65
66 Section 1. Section 817.011, Florida Statutes, is created to
67 read:

68 817.011 Definition.—As used in this chapter, the term
69 “business entity” means any corporation, partnership, limited
70 partnership, company, limited liability company, proprietorship,
71 firm, enterprise, franchise, association, self-employed
72 individual, or trust, whether fictitiously named or not, doing
73 business in this state.

74 Section 2. Section 817.02, Florida Statutes, is amended to
75 read:

76 817.02 Obtaining property by false personation.—

77 (1) Whoever falsely personates or represents another
78 person, and in such assumed character:

79 (a) Receives any property intended to be delivered to that
80 person ~~the party so personated~~, with intent to convert the same
81 to his or her own use; or

82 (b) To the extent not subject to s. 817.568, damages the
83 credit history or rating of, or otherwise causes harm to, the
84 person whose identity has been assumed through the taking of
85 property from any person,

86
87 shall be punished as if he or she had been convicted of larceny.

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88 (2) (a) In sentencing a defendant convicted of a violation
89 of this section, in addition to restitution to the victim under
90 s. 775.089, the court may order restitution for the victim’s
91 out-of-pocket costs, including attorney fees and fees associated
92 with services provided by certified public accountants licensed
93 under chapter 473, incurred by the victim in clearing the
94 victim’s credit history or credit rating, or costs incurred in
95 connection with a civil or administrative proceeding to satisfy
96 a debt, lien, or other obligation of the victim arising as a
97 result of the actions of the defendant.

98 (b) The sentencing court may issue such orders as are
99 necessary to correct a public record that contains false
100 information given in violation of this section.

101 (3) (a) A victim of the conduct subject to this section
102 shall have a civil cause of action against a person who has
103 engaged in the conduct prohibited by this section as provided in
104 s. 772.11.

105 (b) For purposes of this subsection, the term “victim”
106 includes, to the extent not already included within s. 817.568,
107 a person whose identity was falsely personated or who suffers a
108 loss of property as a result of the false personation.

109 Section 3. Section 817.032, Florida Statutes, is created to
110 read:

111 817.032 Information available to identity theft victims.—

112 (1) DEFINITION.—As used in this section, the term “victim”
113 means a person whose means of identification or financial
114 information is used or transferred or is alleged to be used or
115 transferred without the authority of that person with the intent
116 to commit or to aid or abet an identity theft or a similar

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117 crime.

118 (2) GENERALLY.—

119 (a) For the purpose of documenting fraudulent transactions
 120 resulting from identity theft, within 30 days after the date of
 121 receipt of a request from a victim in accordance with subsection
 122 (4), and subject to verification of the identity of the victim
 123 and the claim of identity theft in accordance with subsection
 124 (3), a business entity that has provided credit to; provided for
 125 consideration products, goods, or services to; accepted payment
 126 from; or otherwise entered into a commercial transaction for
 127 consideration with, a person who has allegedly made unauthorized
 128 use of the means of identification of the victim, shall provide
 129 a copy of the application and business transaction records in
 130 the control of the business entity, whether maintained by the
 131 business entity or by another person on behalf of the business
 132 entity, evidencing any transaction alleged to be a result of
 133 identity theft to:

134 1. The victim;

135 2. A federal, state, or local governmental law enforcement
 136 agency, or officer specified by the victim in such a request; or

137 3. A law enforcement agency investigating the identity
 138 theft and authorized by the victim to take receipt of records
 139 provided under this section.

140 (b) This subsection does not apply to a third party
 141 providing a service to effect, administer, facilitate, process,
 142 or enforce a financial transaction initiated by an individual.

143 (3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business
 144 entity provides any information under subsection (2), unless the
 145 business entity, at its discretion, has a high degree of

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146 confidence that it knows the identity of the victim making a
 147 request under subsection (2), the victim shall provide to the
 148 business entity:

149 (a) As proof of positive identification of the victim, at
 150 the election of the business entity:

151 1. The presentation of a government-issued identification
 152 card;

153 2. Personal identifying information of the same type as
 154 provided to the business entity by the unauthorized person; or

155 3. Personal identifying information that the business
 156 entity typically requests from new applicants or for new
 157 transactions, at the time of the victim's request for
 158 information, including any documentation described in
 159 subparagraphs 1. and 2.

160 (b) As proof of a claim of identity theft, at the election
 161 of the business entity:

162 1. A copy of a police report evidencing the claim of the
 163 victim of identity theft; and

164 2. A properly completed affidavit of fact which is
 165 acceptable to the business entity for that purpose.

166 (4) PROCEDURES.—The request of a victim under subsection
 167 (2) must:

168 (a) Be in writing;

169 (b) Be mailed or delivered to an address specified by the
 170 business entity, if any; and

171 (c) If asked by the business entity, include relevant
 172 information about any transaction alleged to be a result of
 173 identity theft to facilitate compliance with this section,
 174 including:

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175 1. If known by the victim or readily obtainable by the
 176 victim, the date of the application or transaction.
 177 2. If known by the victim or readily obtainable by the
 178 victim, any other identifying information such as an account
 179 number or transaction number.
 180 (5) NO CHARGE TO VICTIM.—Information required to be
 181 provided under subsection (2) shall be provided without charge.
 182 (6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business
 183 entity may decline to provide information under subsection (2)
 184 if, in the exercise of good faith, the business entity
 185 determines that:
 186 (a) This section does not require disclosure of the
 187 information;
 188 (b) After reviewing the information provided pursuant to
 189 subsection (3), the business entity does not have a high degree
 190 of confidence in knowing the true identity of the individual
 191 requesting the information;
 192 (c) The request for the information is based on a
 193 misrepresentation of fact by the individual requesting the
 194 information;
 195 (d) The information requested is Internet navigational data
 196 or similar information about a person's visit to a website or
 197 online service; or
 198 (e) The disclosure is otherwise prohibited by state or
 199 federal law.
 200 (7) LIMITATION ON CIVIL LIABILITY.—A business entity may
 201 not be held civilly liable in this state for a disclosure made
 202 in good faith pursuant to this section or a decision to decline
 203 to provide information as provided in subsection (6).

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204 (8) NO NEW RECORDKEEPING OBLIGATION.—This section does not
 205 create an obligation on the part of a business entity to obtain,
 206 retain, or maintain information or records that are not
 207 otherwise required to be obtained, retained, or maintained in
 208 the ordinary course of its business or under other applicable
 209 law.
 210 (9) AFFIRMATIVE DEFENSE.—In any civil action brought to
 211 enforce this section, it is an affirmative defense, which the
 212 defendant must establish by a preponderance of the evidence, for
 213 a business entity to file an affidavit or answer stating that:
 214 (a) The business entity has made a reasonably diligent
 215 search of its available business records.
 216 (b) The records requested under this section do not exist
 217 or are not reasonably available.
 218 Section 4. Section 817.11, Florida Statutes, is amended,
 219 and sections 817.12 and 817.13, Florida Statutes, are
 220 transferred and renumbered as subsections (2) and (3),
 221 respectively, of section 817.11, Florida Statutes, and amended,
 222 to read:
 223 817.11 Obtaining property by fraudulent promise to furnish
 224 inside information.—
 225 (1) A No person may not ~~shall~~ defraud or attempt to defraud
 226 any individual out of ~~anything~~ ~~any thing~~ of value by assuming to
 227 have or be able to obtain any secret, advance or inside
 228 information regarding any person, transaction, act or thing,
 229 whether such person, transaction, act or thing exists or not.
 230 (2) ~~817.12~~ A person who violates this section commits
 231 penalty for violation of s. 817.11. Any person guilty of
 232 violating the provisions of s. 817.11 shall be deemed guilty of

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233 a felony of the third degree, punishable as provided in s.
234 775.082, s. 775.083, or s. 775.084.

235 ~~(3) 817.13 Paraphernalia as evidence of violation of s.~~
236 ~~817.11.~~ All paraphernalia of whatsoever kind in possession of
237 any person and used in defrauding or attempting to defraud as
238 specified in this section ~~s. 817.11~~ shall be held and accepted
239 by any court of competent jurisdiction in this state as prima
240 facie evidence of guilt.

241 Section 5. Section 817.14, Florida Statutes, is amended to
242 read:

243 817.14 Procuring assignments of produce upon false
244 representations.—A Any person acting for himself or herself or
245 another person, who shall procure any consignment of produce
246 grown in this state, to himself or herself or such other, for
247 sale on commission or for other compensation by any knowingly
248 false representation as to the prevailing market price at such
249 time for such produce at the point to which it is consigned, or
250 as to the price which such person for whom he or she is acting
251 is at said time paying to other consignors for like produce at
252 said place, or as to the condition of the market for such
253 produce at such time and place, and any such person acting for
254 another who shall procure any consignment for sale as aforesaid
255 by false representation of authority to him or her by such other
256 to make a guaranteed price to the consignor, commits shall be
257 guilty of a misdemeanor of the first degree, punishable as
258 provided in s. 775.082 or s. 775.083.

259 Section 6. Section 817.15, Florida Statutes, is amended to
260 read:

261 817.15 Making False entries in, etc., or books of business

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262 entity corporation.—Any officer, agent, clerk or servant of a
263 business entity corporation who makes a false entry in the books
264 thereof, with intent to defraud, and any person whose duty it is
265 to make in such books a record or entry of the transfer of
266 stock, or of the issuing and canceling of certificates thereof,
267 or of the amount of stock issued by such business entity
268 corporation, who omits to make a true record or entry thereof,
269 with intent to defraud, commits shall be guilty of a felony of
270 the third degree, punishable as provided in s. 775.082, s.
271 775.083, or s. 775.084.

272 Section 7. Section 817.17, Florida Statutes, is amended to
273 read:

274 817.17 Wrongful use of city, county, or other political
275 subdivision name.—

276 (1) A ~~No~~ person or persons engaged in manufacturing in this
277 state, may not shall cause to be printed, stamped, marked,
278 engraved or branded, upon any of the articles manufactured by
279 them, or on any of the boxes, packages, or bands containing such
280 manufactured articles, the name of any city, county, or other
281 political subdivision of in the state, other than that in which
282 said articles are manufactured; provided, that ~~nothing in~~ this
283 section does not shall prohibit any person from offering for
284 sale any goods having marked thereon the name of any city,
285 county, or other political subdivision of the state in Florida
286 other than that in which said goods were manufactured, if there
287 be no manufactory of similar goods in the city, county, or other
288 political subdivision the name of which is used.

289 (2) A person violating this section commits a misdemeanor
290 of the second degree, punishable as provided in s. 775.083.

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291 Section 8. Section 817.18, Florida Statutes, is amended to
292 read:

293 817.18 Wrongful marking with a city, county, or other
294 political subdivision name stamping, marking, etc.; penalty.-

295 (1) ~~A~~ No person ~~may not shall~~ knowingly sell or offer for
296 sale, within the state, any manufactured articles which shall
297 have printed, stamped, marked, engraved, or branded upon them,
298 or upon the boxes, packages, or bands containing said
299 manufactured articles, the name of any city, county, or other
300 political subdivision of ~~in~~ the state, other than that in which
301 such articles were manufactured; provided, that ~~nothing in~~ this
302 section does not shall prohibit any person from offering for
303 sale any goods, having marked thereon the name of any city,
304 county, or other political subdivision of the state in Florida,
305 other than that in which said goods are manufactured, if there
306 be no manufactory of similar goods in the city, county, or other
307 political subdivision the name of which is used.

308 (2) ~~A~~ Any person violating ~~the provisions of this or the~~
309 ~~preceding~~ section commits shall be guilty of a misdemeanor of
310 the second degree, punishable as provided in s. 775.083.

311 Section 9. Section 817.19, Florida Statutes, is amended to
312 read:

313 817.19 Fraudulent issue of stock certificate or indicia of
314 membership interest of stock of corporation.-Any officer, agent,
315 clerk or servant of a corporation, or any other person, who
316 fraudulently issues or transfers a certificate of stock of a
317 corporation or indicia of a membership interest in a limited
318 liability company to any person not entitled thereto, or
319 fraudulently signs such certificate or other indicia of

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320 membership interest, in blank or otherwise, with the intent that
321 it shall be so issued or transferred by himself or herself or
322 any other person, commits shall be guilty of a felony of the
323 third degree, punishable as provided in s. 775.082, s. 775.083,
324 or s. 775.084.

325 Section 10. Subsections (1) and (3) of section 817.39,
326 Florida Statutes, are amended to read:

327 817.39 Simulated forms of court or legal process, or
328 official seal or stationery; publication, sale or circulation
329 unlawful; penalty.-

330 (1) Any person, ~~firm,~~ or business entity corporation who
331 prints shall print, for the purpose of sale or distribution and
332 for use in the state, or who circulates, publishes, or offers
333 shall circulate, publish, or offer for sale any letter, paper,
334 document, notice of intent to bring suit, or other notice or
335 demand, which simulates a form of court or legal process, or any
336 person who without authority of the state prints shall print,
337 for the purpose of sale or distribution for use in the state, or
338 who without authority of the state circulates, publishes, or
339 offers shall circulate, publish, use, or offer for sale any
340 letters, papers, or documents which simulate the seal of the
341 state, or the stationery of a state agency or fictitious state
342 agency commits is guilty of a misdemeanor of the second degree,
343 punishable as provided in s. 775.082 or s. 775.083.

344 (3) ~~Nothing in~~ This section does not shall prevent the
345 printing, publication, sale, or distribution of genuine legal
346 forms for the use of attorneys or clerks of courts.

347 Section 11. Subsection (5) of section 817.40, Florida
348 Statutes, is amended to read:

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349 817.40 False, misleading and deceptive advertising and
 350 sales; definitions.—When construing ss. 817.40, 817.41, 817.43–
 351 817.47, and each and every word, phrase or part thereof, where
 352 the context will permit:

353 (5) The phrase “misleading advertising” includes any
 354 statements made, or disseminated, in oral, written, electronic,
 355 or printed form or otherwise, to or before the public, or any
 356 portion thereof, which are known, or through the exercise of
 357 reasonable care or investigation could or might have been
 358 ascertained, to be untrue or misleading, and which are or were
 359 so made or disseminated with the intent or purpose, either
 360 directly or indirectly, of selling or disposing of real or
 361 personal property, services of any nature whatever, professional
 362 or otherwise, or to induce the public to enter into any
 363 obligation relating to such property or services.

364 Section 12. Section 817.411, Florida Statutes, is amended
 365 to read:

366 817.411 False information; advertising.—~~A No person, firm~~
 367 or business entity may not ~~corporation shall~~ knowingly publish,
 368 disseminate, circulate, or place before the public, or cause
 369 directly or indirectly, to be made, published, disseminated,
 370 circulated, or placed before the public, in a newspaper,
 371 magazine or other publication, or in the form of a notice,
 372 circular, pamphlet, letter or poster, or over any radio or
 373 television station, electronically, or in any other way, any
 374 advertisement, announcement, or statement containing any
 375 assertion, representation, or statement that commodities,
 376 mortgages, promissory notes, securities, or other things of
 377 value offered for sale are covered by insurance guaranties where

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378 such insurance is nonexistent or does not in fact insure against
 379 the risks covered.

380 Section 13. Section 817.412, Florida Statutes, is amended
 381 to read:

382 817.412 Sale of used goods as new; penalty.—

383 (1) It is unlawful for a seller in a transaction where the
 384 purchase price of goods exceeds \$100 to misrepresent orally, in
 385 writing, electronically, or by failure to speak that the goods
 386 are new or original when they are used or repossessed or where
 387 they have been used for sales demonstration.

388 (2) A person who violates ~~the provisions of~~ this section
 389 commits a misdemeanor of the first degree, punishable as
 390 provided in s. 775.082 or s. 775.083.

391 Section 14. Subsection (1) of section 817.481, Florida
 392 Statutes, is amended to read:

393 817.481 Credit or purchases ~~cards~~; obtaining illicitly
 394 ~~goods by use of false, expired, etc.~~; penalty.—

395 (1) It shall be unlawful for any person knowingly to obtain
 396 or attempt to obtain credit, or to purchase or attempt to
 397 purchase any goods, property, or service, by the use of any
 398 false, fictitious, counterfeit, or expired credit card,
 399 telephone number, credit number, or other credit device, or by
 400 the use of any credit card, telephone number, credit number, or
 401 other credit device of another person without the authority of
 402 the person to whom such card, number or device was issued, or by
 403 the use of any credit card, telephone number, credit number, or
 404 other credit device in any case where such card, number or
 405 device has been revoked and notice of revocation has been given
 406 to the person to whom issued.

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407 Section 15. Section 817.50, Florida Statutes, is amended to
408 read:

409 817.50 Fraudulently obtaining goods ~~or~~ services, ~~etc.~~,
410 from a health care provider.—

411 (1) Whoever shall, willfully and with intent to defraud,
412 obtain or attempt to obtain goods, products, merchandise, or
413 services from any health care provider in this state, as defined
414 in s. 641.19(14), commits a felony misdemeanor of the third
415 ~~second~~ degree, punishable as provided in s. 775.082, ~~or~~ s.
416 775.083, or s. 775.084.

417 (2) If any person gives to any health care provider in this
418 state a false or fictitious name or a false or fictitious
419 address or assigns to any health care provider the proceeds of
420 any health maintenance contract or insurance contract, then
421 knowing that such contract is no longer in force, is invalid, or
422 is void for any reason, such action shall be prima facie
423 evidence of the intent of such person to defraud the health care
424 provider. However, this subsection does not apply to
425 investigative actions taken by law enforcement officers for law
426 enforcement purposes in the course of their official duties.

427 Section 16. Paragraph (f) of subsection (1) and subsections
428 (2), (4), (8), and (9) of section 817.568, Florida Statutes, are
429 amended to read:

430 817.568 Criminal use of personal identification
431 information.—

432 (1) As used in this section, the term:

433 (f) "Personal identification information" means any name or
434 number that may be used, alone or in conjunction with any other
435 information, to identify a specific person individual, including

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436 any:

437 1. Name, postal or electronic mail address, telephone
438 number, social security number, date of birth, mother's maiden
439 name, official state-issued or United States-issued driver
440 license or identification number, alien registration number,
441 government passport number, employer or taxpayer identification
442 number, Medicaid or food assistance account number, bank account
443 number, credit or debit card number, or personal identification
444 number or code assigned to the holder of a debit card by the
445 issuer to permit authorized electronic use of such card;

446 2. Unique biometric data, such as fingerprint, voice print,
447 retina or iris image, or other unique physical representation;

448 3. Unique electronic identification number, address, or
449 routing code;

450 4. Medical records;

451 5. Telecommunication identifying information or access
452 device; or

453 6. Other number or information that can be used to access a
454 person's financial resources.

455 (2) (a) Any person who willfully and without authorization
456 fraudulently uses, or possesses with intent to fraudulently use,
457 personal identification information concerning another person ~~an~~
458 ~~individual~~ without first obtaining that person's individual's
459 consent, commits the offense of fraudulent use of personal
460 identification information, which is a felony of the third
461 degree, punishable as provided in s. 775.082, s. 775.083, or s.
462 775.084.

463 (b) Any person who willfully and without authorization
464 fraudulently uses personal identification information concerning

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465 ~~a person an individual~~ without first obtaining that person's
 466 ~~individual's~~ consent commits a felony of the second degree,
 467 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 468 if the pecuniary benefit, the value of the services received,
 469 the payment sought to be avoided, or the amount of the injury or
 470 fraud perpetrated is \$5,000 or more or if the person
 471 fraudulently uses the personal identification information of 10
 472 or more persons individuals, but fewer than 20 persons
 473 ~~individuals~~, without their consent. Notwithstanding any other
 474 provision of law, the court shall sentence any person convicted
 475 of committing the offense described in this paragraph to a
 476 mandatory minimum sentence of 3 years' imprisonment.

477 (c) Any person who willfully and without authorization
 478 fraudulently uses personal identification information concerning
 479 ~~a person an individual~~ without first obtaining that person's
 480 ~~individual's~~ consent commits a felony of the first degree,
 481 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 482 if the pecuniary benefit, the value of the services received,
 483 the payment sought to be avoided, or the amount of the injury or
 484 fraud perpetrated is \$50,000 or more or if the person
 485 fraudulently uses the personal identification information of 20
 486 or more persons individuals, but fewer than 30 persons
 487 ~~individuals~~, without their consent. Notwithstanding any other
 488 provision of law, the court shall sentence any person convicted
 489 of committing the offense described in this paragraph to a
 490 mandatory minimum sentence of 5 years' imprisonment. If the
 491 pecuniary benefit, the value of the services received, the
 492 payment sought to be avoided, or the amount of the injury or
 493 fraud perpetrated is \$100,000 or more, or if the person

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494 fraudulently uses the personal identification information of 30
 495 or more persons individuals without their consent,
 496 notwithstanding any other provision of law, the court shall
 497 sentence any person convicted of committing the offense
 498 described in this paragraph to a mandatory minimum sentence of
 499 10 years' imprisonment.

500 (4) Any person who willfully and without authorization
 501 possesses, uses, or attempts to use personal identification
 502 information concerning ~~a person an individual~~ without first
 503 obtaining that person's individual's consent, and who does so
 504 for the purpose of harassing that person individual, commits the
 505 offense of harassment by use of personal identification
 506 information, which is a misdemeanor of the first degree,
 507 punishable as provided in s. 775.082 or s. 775.083.

508 (8) (a) Any person who willfully and fraudulently uses, or
 509 possesses with intent to fraudulently use, personal
 510 identification information concerning a deceased individual or
 511 dissolved business entity commits the offense of fraudulent use
 512 or possession with intent to use personal identification
 513 information of a deceased individual or dissolved business
 514 entity, a felony of the third degree, punishable as provided in
 515 s. 775.082, s. 775.083, or s. 775.084.

516 (b) Any person who willfully and fraudulently uses personal
 517 identification information concerning a deceased individual or
 518 dissolved business entity commits a felony of the second degree,
 519 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 520 if the pecuniary benefit, the value of the services received,
 521 the payment sought to be avoided, or the amount of injury or
 522 fraud perpetrated is \$5,000 or more, or if the person

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523 fraudulently uses the personal identification information of 10
 524 or more but fewer than 20 deceased individuals or dissolved
 525 business entities. Notwithstanding any other provision of law,
 526 the court shall sentence any person convicted of committing the
 527 offense described in this paragraph to a mandatory minimum
 528 sentence of 3 years' imprisonment.

529 (c) Any person who willfully and fraudulently uses personal
 530 identification information concerning a deceased individual or
 531 dissolved business entity commits the offense of aggravated
 532 fraudulent use of the personal identification information of
 533 multiple deceased individuals or dissolved business entities, a
 534 felony of the first degree, punishable as provided in s.
 535 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
 536 the value of the services received, the payment sought to be
 537 avoided, or the amount of injury or fraud perpetrated is \$50,000
 538 or more, or if the person fraudulently uses the personal
 539 identification information of 20 or more but fewer than 30
 540 deceased individuals or dissolved business entities.
 541 Notwithstanding any other provision of law, the court shall
 542 sentence any person convicted of the offense described in this
 543 paragraph to a minimum mandatory sentence of 5 years'
 544 imprisonment. If the pecuniary benefit, the value of the
 545 services received, the payment sought to be avoided, or the
 546 amount of the injury or fraud perpetrated is \$100,000 or more,
 547 or if the person fraudulently uses the personal identification
 548 information of 30 or more deceased individuals or dissolved
 549 business entities, notwithstanding any other provision of law,
 550 the court shall sentence any person convicted of an offense
 551 described in this paragraph to a mandatory minimum sentence of

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552 10 years' imprisonment.

553 (9) Any person who willfully and fraudulently creates or
 554 uses, or possesses with intent to fraudulently use, counterfeit
 555 or fictitious personal identification information concerning a
 556 fictitious ~~person individual~~, or concerning a real person
 557 ~~individual~~ without first obtaining that real person's
 558 ~~individual's~~ consent, with intent to use such counterfeit or
 559 fictitious personal identification information for the purpose
 560 of committing or facilitating the commission of a fraud on
 561 another person, commits the offense of fraudulent creation or
 562 use, or possession with intent to fraudulently use, counterfeit
 563 or fictitious personal identification information, a felony of
 564 the third degree, punishable as provided in s. 775.082, s.
 565 775.083, or s. 775.084.

566 Section 17. Section 817.569, Florida Statutes, is amended
 567 to read:

568 817.569 Criminal use of a public record or public records
 569 information; providing false information; penalties.—A person
 570 who knowingly uses any public record, as defined in s. 119.011,
 571 ~~or~~ who knowingly uses information obtainable only through such
 572 public record, or who knowingly provides false information that
 573 becomes part of a public record to facilitate or further the
 574 commission of:

575 (1) A misdemeanor of the first degree, commits a
 576 misdemeanor of the first degree, punishable as provided in s.
 577 775.082 or s. 775.083.

578 (2) A felony, commits a felony of the third degree,
 579 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

580 Section 18. Paragraphs (a) and (e) of subsection (3) of

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581 section 921.0022, Florida Statutes, are amended to read:
 582 921.0022 Criminal Punishment Code; offense severity ranking
 583 chart.-
 584 (3) OFFENSE SEVERITY RANKING CHART
 585 (a) LEVEL 1
 586
 587

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2) (b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2) (b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1) (a)	3rd	Tamper, adjust, change, etc.,

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594 an odometer.
 320.26(1) (a) 3rd Counterfeit, manufacture, or
 sell registration license
 plates or validation stickers.
 595
 322.212 3rd Possession of forged, stolen,
 (1) (a)-(c) counterfeit, or unlawfully
 issued driver license;
 possession of simulated
 identification.
 596
 322.212(4) 3rd Supply or aid in supplying
 unauthorized driver license or
 identification card.
 597
 322.212(5) (a) 3rd False application for driver
 license or identification card.
 598
 414.39(2) 3rd Unauthorized use, possession,
 forgery, or alteration of food
 assistance program, Medicaid
 ID, value greater than \$200.
 599
 414.39(3) (a) 3rd Fraudulent misappropriation of
 public assistance funds by
 employee/official, value more
 than \$200.
 600

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	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
601	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
602	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
603	562.27(1)	3rd	Possess still or still apparatus.
604	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
605	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
606	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
607	815.04(5)(a)	3rd	Offense against intellectual

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			property (i.e., computer programs, data).
608	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
609	817.569(2)	3rd	Use of public record or public records information <u>or providing false information</u> to facilitate commission of a felony.
610	826.01	3rd	Bigamy.
611	828.122(3)	3rd	Fighting or baiting animals.
612	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
613	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
614	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
615			

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	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
616			
	838.15(2)	3rd	Commercial bribe receiving.
617			
	838.16	3rd	Commercial bribery.
618			
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
619			
	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
620			
	849.01	3rd	Keeping gambling house.
621			
	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
622			
	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
623			

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	849.25(2)	3rd	Engaging in bookmaking.
624			
	860.08	3rd	Interfere with a railroad signal.
625			
	860.13(1)(a)	3rd	Operate aircraft while under the influence.
626			
	893.13(2)(a)2.	3rd	Purchase of cannabis.
627			
	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
628			
	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
629			
	(e) LEVEL 5		
630			
631			
	Florida Statute	Felony Degree	Description
632			
	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
633			
	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
634			

	591-03137-15		2015390c2
	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
635			
	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
636			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
637			
	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
638			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
639			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
640			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
641			
	440.381(2)	2nd	Submission of false,

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

	591-03137-15		2015390c2
			misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
642			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
643			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
644			
	790.01(2)	3rd	Carrying a concealed firearm.
645			
	790.162	2nd	Threat to throw or discharge destructive device.
646			
	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
647			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
648			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
649			

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

	591-03137-15		2015390c2
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
650			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
651			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
652			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
653			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
654			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
655			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
656			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
657			

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

	591-03137-15		2015390c2
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
658			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
659			
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
660			
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
661			
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more <u>persons</u> individuals .
662			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or

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	591-03137-15		2015390c2	reencoder.
663	825.1025(4)	3rd		Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
664	827.071(4)	2nd		Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
665	827.071(5)	3rd		Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
666	839.13(2)(b)	2nd		Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
667	843.01	3rd		Resist officer with violence to person; resist arrest with violence.
668	847.0135(5)(b)	2nd		Lewd or lascivious exhibition

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

	591-03137-15		2015390c2	using computer; offender 18 years or older.
669	847.0137 (2) & (3)	3rd		Transmission of pornography by electronic device or equipment.
670	847.0138 (2) & (3)	3rd		Transmission of material harmful to minors to a minor by electronic device or equipment.
671	874.05(1)(b)	2nd		Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
672	874.05(2)(a)	2nd		Encouraging or recruiting person under 13 years of age to join a criminal gang.
673	893.13(1)(a)1.	2nd		Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
674	893.13(1)(c)2.	2nd		Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,

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

591-03137-15

2015390c2

(2) (c) 6., (2) (c) 7., (2) (c) 8.,
(2) (c) 9., (3), or (4) drugs)
within 1,000 feet of a child
care facility, school, or
state, county, or municipal
park or publicly owned
recreational facility or
community center.

675

893.13(1)(d)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
university.

676

893.13(1)(e)2. 2nd Sell, manufacture, or deliver
cannabis or other drug
prohibited under s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) within
1,000 feet of property used for
religious services or a
specified business site.

677

893.13(1)(f)1. 1st Sell, manufacture, or deliver
cocaine (or other s.

591-03137-15

2015390c2

893.03(1)(a), (1)(b), (1)(d),
or (2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
public housing facility.

678

893.13(4)(b) 2nd Deliver to minor cannabis (or
other s. 893.03(1)(c),
(2)(c)1., (2)(c)2., (2)(c)3.,
(2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4)
drugs).

679

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

680

Section 19. This act shall take effect October 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

April 8, 2015

The Honorable Anitere Flores, Chair
Senate Committee on Fiscal Policy
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Flores:

Senate Bill 390, relating to Fraud/Business Identity Theft, has been referred to the Committee on Fiscal Policy. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

Cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

390
Bill Number (if applicable)

Topic FRAUD

Amendment Barcode (if applicable)

Name JACK MURRAY

Job Title _____

Address 200 W. COLLEGE ST. # 304
Street

Phone 750-577-5187

TLH FL 32301
City State Zip

Email jmurray@aaaf.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 15, 2015

Meeting Date

390

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Quigley

Job Title _____

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

BILL: CS/SB 414

INTRODUCER: Commerce and Tourism Committee and Senator Altman

SUBJECT: Service Animals

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 414 amends s. 413.08, F.S., to revise definitions, clarify the rights of an individual with a disability to use a service animal in public accommodations, and provide penalties for an individual who knowingly misrepresents himself or herself as being qualified to have a service animal in a public accommodation.

This bill has an indeterminate fiscal impact.

II. Present Situation:

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)¹ prohibits discrimination against individuals with disabilities² in employment,³ in the provision of public services,⁴ and in public accommodations and businesses.⁵ One of the requirements of the ADA is that public entities and businesses

¹ 42 U.S.C. 12101 *et seq.*

² Under the ADA, a disability is broadly defined to mean a physical or mental impairment that substantially limits the major life activities of an individual, having a record of such impairment, or being regarded as having such an impairment.

42 U.S.C. 12102(1).

³ 42 U.S.C. 12112.

⁴ 42 U.S.C. 12132.

⁵ 42 U.S.C. 12182.

provide reasonable accommodations to disabled individuals accompanied by a service animal in all areas that are open to the public.⁶

A service animal is defined as a dog that is individually trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.⁷ The work or tasks performed by a service dog must be directly related to the individual's disability.⁸ Emotional support, comfort, and companionship provided by a dog, even for therapeutic or medical purposes, are insufficient to classify it as a service animal.⁹

Service dogs must be harnessed or leashed, unless doing so interferes with the dog's work or the individual's disability prevents doing so.¹⁰ A person with a disability cannot be asked to remove his or her service dog from the premises, unless it is out of control and the dog's handler does not take action to control it, or if the dog is not housebroken.¹¹ However, if the dog is removed under such circumstances, the business or public entity must still allow the individual with a disability the opportunity to remain at the business or public entity without the service dog.¹²

Generally, when it is clear that a dog is trained to do work or perform tasks (such as a guide dog), a business or public entity may not ask about the necessity of the service dog. If it is not obvious what service or task the dog is providing, extremely limited questions are allowed: staff may only ask if a service dog is required because of a disability, and what tasks the dog has been trained to perform.¹³ Any other questions, including the nature and extent of the person's disability or medical documentation, are prohibited.¹⁴

Although the definition of a service animal is limited to dogs, the ADA contains an additional provision related to miniature horses that have been individually trained to work or perform tasks for individuals with disabilities.¹⁵ Miniature horses are an alternative to individuals with disabilities who may be allergic to dogs or whose religious belief precludes the use of dogs.¹⁶ Additionally, miniature horses also have life spans considerably longer than dogs and are generally stronger than most dogs. Similar to the requirements for service dogs, public entities and public accommodations and businesses must permit the use of a miniature horse by an

⁶ 28 C.F.R. 36.302(a) and (c)(7) and 35.136(a) and (g).

⁷ 28 C.F.R. 35.104 and 36.104.

⁸ *Id.*

⁹ *Id.*; ADA National Network, *Service Animals and Emotional Support Animals: Where are they allowed and under what conditions?*, 3 (2014), available at [http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014\(1\).pdf](http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014(1).pdf) (last visited 4/12/2015).

¹⁰ 28 C.F.R. ss. 35.136(d) and 36.302(b)(4).

¹¹ 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).

¹² 28 C.F.R. ss. 35.136(c) and 36.302(c)(3).

¹³ 28 C.F.R. ss. 35.136(f) and 36.302(c)(6).

¹⁴ *Id.*

¹⁵ 28 C.F.R. 35.136(i) and 36.302(c)(9). Miniature horses generally range in height from 2 to 3 feet to the shoulders and weigh between 70 and 100 pounds. U.S. Dep't of Justice, Civil Rights Division, *Service Animals*, 3 (July 2011), available at http://www.ada.gov/service_animals_2010.pdf (last visited 4/12/2015).

¹⁶ U.S. Dep't. of Justice, *Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 96 (Sept. 15, 2010) available at http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf (last visited April 1, 2015).

individual with a disability, where reasonable. In determining whether permitting a miniature horse is reasonable, a facility must consider four factors:

- Whether the miniature horse is housebroken;
- Whether the miniature horse is under the owner's control;
- Whether the facility can accommodate the miniature horse's type, size, and weight; and
- Whether the miniature horse's presence will compromise safety requirements.¹⁷

If a business or public entity violates the ADA, a private party may file suit to obtain a court order to stop the violation. No monetary damages will be available in such suits; however, a reasonable attorney's fee may be awarded.¹⁸ Individuals may also file complaints with the U.S. Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged.¹⁹ In suits brought by the Attorney General, monetary damages and civil penalties may be awarded. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.²⁰

Fair Housing Act

The federal Fair Housing Act (FHA)²¹ prohibits discrimination against a person with a disability in the sale or rental of housing.²² Similar to the ADA, the FHA also requires a property owner to provide reasonable accommodations, including permitting the use of service animals, for a person with a disability.²³ However, unlike the ADA, which does not require reasonable accommodations for emotional support animals, accommodation of untrained emotional support animals may be required under the FHA if such an accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.²⁴

A property owner may not ask about the existence, nature, or extent of a person's disability. However, an individual with a disability who requests a reasonable accommodation may be asked to provide documentation so that the property owner can properly review the accommodation request. They can ask a person to certify, in writing, that the tenant or a member of his or her family is a person with a disability; the need for the animal to assist the person with that specific disability; and that the animal actually assists the person with a disability.²⁵

Air Carrier Access Act

The federal Air Carrier Access Act prohibits discrimination, by an air carrier, against an individual with disabilities in the provision of air transportation.²⁶ In air transportation, emotional and psychiatric service animals are also allowable.²⁷ Air carriers are generally required to

¹⁷ 28 C.F.R. 35.136(i) and 36.302(c)(9).

¹⁸ 42 U.S.C. 12188 and 2000a-3.

¹⁹ 42 U.S.C. 12188(b)(1)(B).

²⁰ 42 U.S.C. 12188(b)(2).

²¹ 42 U.S.C. 3601 *et seq.*

²² 42 U.S.C. 3604(f).

²³ *Id.*; 24 C.F.R. 5.303.

²⁴ 73 Fed Reg. 63834, 63836.

²⁵ *Id.*

²⁶ 49 U.S.C. 41705.

²⁷ 14 C.F.R. 382.117

accommodate service animals; however, an air carrier is not required to accommodate certain unusual service animals, such as snakes, reptiles, and spiders. If the service animal is precluded from traveling in the cabin, the airline must advise the passenger of the reason for the denial and document the denial in writing.²⁸

The Air Carrier Access Act preempts any state law that relates to the price, route, or service of an air carrier governed by its provisions.²⁹

Florida Service Animal Law

Section 413.08, F.S., specifies Florida law regarding service animals, and while it is similar to the ADA and FHA, s. 413.08, F.S., contains some significant differences from the ADA and the FHA. Consequently, businesses and public entities in Florida that comply with Florida law may be in violation of the ADA or the FHA.

Section 413.08, F.S., provides that an individual with a disability is entitled to equal access in public accommodations,³⁰ public employment,³¹ and housing.³² An “individual with a disability” means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise has a physical impairment that substantially limits one or more major life activities.³³ Unlike the ADA and FHA, this definition does not include mental impairment. Consequently, s. 413.08, F.S., is narrower in scope than the ADA and FHA.

Under s. 413.08, F.S., an individual with a disability has the right to be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy.³⁴ However, unlike the ADA, s. 413.08, F.S., does not require a public accommodation to provide reasonable accommodations to such individuals.

Section 413.08, F.S., defines “service animal” broadly to mean “an animal that is trained to perform tasks for an individual with a disability,” and does not limit service animals only to dogs as in the ADA.³⁵ Additionally, because the definition of “individual with a disability” under s. 413.08, F.S., does not include mental impairment, an animal that is trained to perform work or tasks for an individual with a mental impairment is not considered a service animal under this section, as it would be under the ADA.

²⁸ *Id.* at (a), (f), and (g). The air carrier must take into account such factors as whether the animal is too large or heavy to be accommodated in the cabin, whether the animal poses a direct threat to the health and safety of others, whether it would cause a significant disruption of cabin service, or whether the service animal would be denied entry to a foreign country that is the flight’s destination.

²⁹ 49 U.S.C. 41713.

³⁰ Section 413.08(2), F.S. Pursuant to s. 413.08(1)(c), F.S., a public accommodation is “a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public . . . transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited”

³¹ Section 413.08(5), F.S.

³² Section 413.08(6), F.S.

³³ Section 413.08(1)(b), F.S.

³⁴ Section 413.08(3), F.S.

³⁵ Section 413.08(1)(d), F.S.

Similar to the ADA, s. 413.08, F.S., provides that documentation that a service animal is trained is not a precondition for providing service, though a public accommodation may ask if an animal is a service animal or what tasks it is trained to perform.³⁶ However, unlike the ADA, s. 413.08, F.S., does not prohibit asking about the nature or extent of an individual's disability nor does it require the service animal to be under the control of its handler and have a harness or leash. Although s. 413.08, F.S., permits a public accommodation to exclude or remove a service animal if its behavior poses a direct threat to the health and safety of others,³⁷ unlike the ADA it does not specify that a public accommodation may remove a service animal if it is out of control or not housebroken.

Like the FHA, under s. 413.08, F.S., an individual with a disability is entitled to rent or purchase any housing accommodations subject to the same conditions that are applicable to everyone.³⁸ An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for the service animal.³⁹ Unlike the FHA, s. 413.08, F.S., does not provide an individual with a disability who has an emotional support animal with the same housing accommodation rights as an individual with a disability who has a service animal.

Section 413.08, F.S., provides that any person who denies or interferes with the rights of a person with a disability or an individual training a service animal commits a second-degree misdemeanor.⁴⁰

III. Effect of Proposed Changes:

The bill amends s. 413.08, F.S., to revise definitions, clarify the rights of an individual with a disability to use a service animal in public accommodations, and provide penalties for an individual who knowingly misrepresents himself or herself as being qualified to have a service animal in a public accommodation. The bill aligns Florida's disability rights law regarding service animals to the ADA and the FHA.

Definitions

The bill revises the definition of "individual with a disability" to mean a person with a physical or *mental impairment* that substantially limits one or more major life activities, such as caring for oneself, walking, seeing, speaking, and performing manual tasks. A "physical or mental impairment" is defined to include physiological disorders that affect one or more bodily functions, and *mental or psychological disorders* as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

The bill revises the definition of "public accommodations" to include a timeshare that is a transient public lodging establishment, which means it is rented to guests more than three times

³⁶ Section 413.08(3)(a), F.S.

³⁷ Section 413.08(3)(e), F.S.

³⁸ Section 413.08(6), F.S.

³⁹ *Id.* at (6)(b).

⁴⁰ A second degree misdemeanor is punishable by up to 60 days in jail and a fine up to \$500. ss. 775.082(4)(b) and 775.083(1)(e), F.S.

in a calendar year for periods of less than a month, or is held out to the public as a place that regularly rents to guests.⁴¹ The bill specifically excludes air carriers covered by the federal Air Carrier Access Act of 1986 and regulations adopted by the U.S. Department of Transportation from the definition of “public accommodation.”

The definition of “service animal” is revised to include animals trained to work or perform tasks to assist individuals with physical, sensory, psychiatric, intellectual, or other mental disabilities. The work or tasks performed by the service animal must be directly related to the disability. The bill includes examples of work or tasks performed by a service animal, such as alerting an individual to the presence of allergens, providing physical support with balance and stability to an individual with a mobility disability, reminding an individual with mental illness to take his or her medications, and calming an individual with posttraumatic stress disorder during an anxiety attack. The bill specifies that any crime-deterrent effect due to an animal’s presence or the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks within the definition of a service animal. Further, for the purposes of the provisions related to public accommodations, a service animal is limited to dogs and miniature horses.

Public Accommodations

The bill requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by a person with a disability. The bill also provides that a service animal must be kept under the control of its handler by a leash or harness, unless doing so interferes with the service animal’s work or tasks or the individual’s disability prevents doing so. A public accommodation may remove the animal if it is out of control and the handler does not take effective measures to control it, the animal is not housebroken, or the animal’s behavior poses a direct threat to the health and safety of others. A public accommodation may not ask about the nature or extent of an individual’s disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work or tasks the animal has been trained to perform.

The bill provides an additional penalty for any person who interferes with the rights of an individual with a disability or a person training a service animal. In addition to the current second degree misdemeanor penalty, the bill also requires such person to complete 30 hours of community service for an organization that serves individuals with disabilities or other court-determined organization within 6 months of the court’s order.

Housing Accommodations

The bill clarifies that the provisions of s. 413.08(6), F.S., do not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals. Section 413.08(6), F.S., provides that an individual with a disability is entitled to rent or lease housing accommodations, under the same conditions as other individuals.⁴²

⁴¹ Section 509.013(4)(a)1., F.S., defines the term “transient public lodging establishment.”

⁴² This section does not require a person providing the rental property to modify the property to provide a higher degree of care for an individual with a disability than for an individual without a disability.

Misrepresentation of Service Animals

The bill creates a second degree misdemeanor to knowingly and willfully misrepresent oneself as using a service animal and being qualified to use a service animal or as a trainer of a service animal. A violation is punishable by up to 60 days in jail and a fine up to \$500,⁴³ and 30 hours of community service for an organization that serves individuals with disabilities or other court-determined organization, to be completed within 6 months.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By aligning Florida law with the ADA and FHA, businesses in Florida that comply with Florida law may no longer be out of compliance with the ADA and FHA with regard to service animals and emotional support animals. The bill may provide greater accessibility to businesses and housing for individuals with disabilities who use service animals and emotional support animals.

Persons in violation of section 413.08, F.S., may be assessed fines, jail time, court costs, and community service. Specifically, the bill creates a second degree misdemeanor to misrepresent that one is qualified to use or train a service animal and current law provides for a second degree misdemeanor for any person who interferes with the rights of an individual with a disability or a person training a service animal related to public accommodations.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. State and local governments may receive additional fines for violations of the provisions of the bill, but this impact will likely be

⁴³ Sections 775.082(4)(b) and 775.083(1)(e), F.S.

insignificant. The judicial system may incur costs related to prosecution and enforcement of the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 413.08 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 March 30, 2015:

Excludes air carriers governed by the Air Carrier Access Act of 1986 and its regulations from the definition of public accommodations.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Altman

577-03102-15

2015414c1

1 A bill to be entitled
 2 An act relating to service animals; amending s.
 3 413.08, F.S.; providing and revising definitions;
 4 requiring a public accommodation to permit use of a
 5 service animal by an individual with a disability
 6 under certain circumstances; prohibiting a public
 7 accommodation from inquiring about the nature or
 8 extent of an individual's disability; providing
 9 conditions for a public accommodation to exclude or
 10 remove a service animal; revising penalties for
 11 certain persons or entities who interfere with use of
 12 a service animal in specified circumstances;
 13 specifying that the act does not limit certain rights
 14 or remedies granted under federal or state law;
 15 providing a penalty for knowing and willful
 16 misrepresentation with respect to use or training of a
 17 service animal; providing an effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:
 20
 21 Section 1. Section 413.08, Florida Statutes, is amended to
 22 read:
 23 413.08 Rights and responsibilities of an individual with a
 24 disability; use of a service animal; prohibited discrimination
 25 in public employment, public accommodations, and ~~or~~ housing
 26 accommodations; penalties.—
 27 (1) As used in this section and s. 413.081, the term:
 28 (a) "Housing accommodation" means any real property or
 29 portion thereof which is used or occupied, or intended,

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2015414c1

30 arranged, or designed to be used or occupied, as the home,
 31 residence, or sleeping place of one or more persons, but does
 32 not include any single-family residence, the occupants of which
 33 rent, lease, or furnish for compensation not more than one room
 34 therein.
 35 (b) "Individual with a disability" means a person who has a
 36 physical or mental impairment that substantially limits one or
 37 more major life activities of the individual ~~is deaf, hard of~~
 38 ~~hearing, blind, visually impaired, or otherwise physically~~
 39 ~~disabled~~. As used in this paragraph, the term:
 40 1. "Major life activity" means a function such as caring
 41 for one's self, performing manual tasks, walking, seeing,
 42 hearing, speaking, breathing, learning, and working "Hard of
 43 hearing" means an individual who has suffered a permanent
 44 hearing impairment that is severe enough to necessitate the use
 45 of ~~amplification devices to discriminate speech sounds in verbal~~
 46 ~~communication~~.
 47 2. "Physical or mental impairment" means:
 48 a. A physiological disorder or condition, disfigurement, or
 49 anatomical loss that affects one or more bodily functions; or
 50 b. A mental or psychological disorder that meets one of the
 51 diagnostic categories specified in the most recent edition of
 52 the Diagnostic and Statistical Manual of Mental Disorders
 53 published by the American Psychiatric Association, such as an
 54 intellectual or developmental disability, organic brain
 55 syndrome, traumatic brain injury, posttraumatic stress disorder,
 56 or an emotional or mental illness "Physically disabled" means
 57 ~~any person who has a physical impairment that substantially~~
 58 ~~limits one or more major life activities.~~

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59 (c) "Public accommodation" means a common carrier,
60 airplane, motor vehicle, railroad train, motor bus, streetcar,
61 boat, or other public conveyance or mode of transportation;
62 hotel; a timeshare that is a transient public lodging
63 establishment as defined in s. 509.013; lodging place; place of
64 public accommodation, amusement, or resort; and other places to
65 which the general public is invited, subject only to the
66 conditions and limitations established by law and applicable
67 alike to all persons. The term does not include air carriers
68 covered by the Air Carrier Access Act of 1986, 49 U.S.C. s.
69 41705, and by regulations that implement such act that are
70 adopted by the United States Department of Transportation.

71 (d) "Service animal" means an animal that is trained to do
72 work or perform tasks for an individual with a disability,
73 including a physical, sensory, psychiatric, intellectual, or
74 other mental disability. The work done or tasks performed must
75 be directly related to the individual's disability and may
76 include, but are not limited to, guiding an individual ~~a person~~
77 who is visually impaired or blind, alerting an individual ~~a~~
78 ~~person~~ who is deaf or hard of hearing, pulling a wheelchair,
79 assisting with mobility or balance, alerting and protecting an
80 individual ~~a person~~ who is having a seizure, retrieving objects,
81 alerting an individual to the presence of allergens, providing
82 physical support and assistance with balance and stability to an
83 individual with a mobility disability, helping an individual
84 with a psychiatric or neurological disability by preventing or
85 interrupting impulsive or destructive behaviors, reminding an
86 individual with mental illness to take prescribed medications,
87 calming an individual with posttraumatic stress disorder during

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2015414c1

88 an anxiety attack, or doing other specific work or performing
89 other special tasks. For purposes of subsections (2), (3), and
90 (4), the term is limited to a dog or miniature horse. A service
91 animal is not a pet. The crime-deterrent effect of an animal's
92 presence and the provision of emotional support, well-being,
93 comfort, or companionship do not constitute work or tasks for
94 purposes of this definition.

95 (2) An individual with a disability is entitled to full and
96 equal accommodations, advantages, facilities, and privileges in
97 all public accommodations. A public accommodation must modify
98 its policies, practices, and procedures to permit use of a
99 service animal by an individual with a disability. This section
100 does not require any person, firm, business, or corporation, or
101 any agent thereof, to modify or provide any vehicle, premises,
102 facility, or service to a higher degree of accommodation than is
103 required for a person not so disabled.

104 (3) An individual with a disability has the right to be
105 accompanied by a service animal in all areas of a public
106 accommodation that the public or customers are normally
107 permitted to occupy.

108 (a) The service animal must be under the control of its
109 handler and must have a harness, leash, or other tether, unless
110 either the handler is unable because of a disability to use a
111 harness, leash, or other tether, or the use of a harness, leash,
112 or other tether would interfere with the service animal's safe,
113 effective performance of work or tasks, in which case the
114 service animal must be otherwise under the handler's control by
115 means of voice control, signals, or other effective means.

116 (b)(a) Documentation that the service animal is trained is

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117 not a precondition for providing service to an individual
 118 accompanied by a service animal. A public accommodation may not
 119 ask about the nature or extent of an individual's disability. To
 120 determine the difference between a service animal and a pet, a
 121 public accommodation may ask if an animal is a service animal
 122 required because of a disability and what work or ~~what~~ tasks the
 123 animal has been trained to perform ~~in order to determine the~~
 124 difference between a service animal and a pet.

125 (c) ~~(b)~~ A public accommodation may not impose a deposit or
 126 surcharge on an individual with a disability as a precondition
 127 to permitting a service animal to accompany the individual with
 128 a disability, even if a deposit is routinely required for pets.

129 (d) ~~(c)~~ An individual with a disability is liable for damage
 130 caused by a service animal if it is the regular policy and
 131 practice of the public accommodation to charge nondisabled
 132 persons for damages caused by their pets.

133 (e) ~~(d)~~ The care or supervision of a service animal is the
 134 responsibility of the individual owner. A public accommodation
 135 is not required to provide care or food or a special location
 136 for the service animal or assistance with removing animal
 137 excrement.

138 (f) ~~(e)~~ A public accommodation may exclude or remove any
 139 animal from the premises, including a service animal, if the
 140 animal is out of control and the animal's handler does not take
 141 effective action to control it, the animal is not housebroken,
 142 or the animal's behavior poses a direct threat to the health and
 143 safety of others. Allergies and fear of animals are not valid
 144 reasons for denying access or refusing service to an individual
 145 with a service animal. If a service animal is excluded or

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146 removed for being a direct threat to others, the public
 147 accommodation must provide the individual with a disability the
 148 option of continuing access to the public accommodation without
 149 having the service animal on the premises.

150 (4) Any person, firm, or corporation, or the agent of any
 151 person, firm, or corporation, who denies or interferes with
 152 admittance to, or enjoyment of, a public accommodation or, with
 153 regard to a public accommodation, otherwise interferes with the
 154 rights of an individual with a disability or the trainer of a
 155 service animal while engaged in the training of such an animal
 156 pursuant to subsection (8), commits a misdemeanor of the second
 157 degree, punishable as provided in s. 775.082 or s. 775.083, and
 158 must perform 30 hours of community service for an organization
 159 that serves individuals with disabilities, or for another entity
 160 or organization at the discretion of the court, to be completed
 161 in not more than 6 months.

162 (5) It is the policy of this state that an individual with
 163 a disability be employed in the service of the state or
 164 political subdivisions of the state, in the public schools, and
 165 in all other employment supported in whole or in part by public
 166 funds, and an employer may not refuse employment to such a
 167 person on the basis of the disability alone, unless it is shown
 168 that the particular disability prevents the satisfactory
 169 performance of the work involved.

170 (6) An individual with a disability is entitled to rent,
 171 lease, or purchase, as other members of the general public, any
 172 housing accommodations offered for rent, lease, or other
 173 compensation in this state, subject to the conditions and
 174 limitations established by law and applicable alike to all

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175 persons.

176 (a) This section does not require any person renting,
 177 leasing, or otherwise providing real property for compensation
 178 to modify her or his property in any way or provide a higher
 179 degree of care for an individual with a disability than for a
 180 person who is not disabled.

181 (b) An individual with a disability who has a service
 182 animal or who obtains a service animal is entitled to full and
 183 equal access to all housing accommodations provided for in this
 184 section, and such a person may not be required to pay extra
 185 compensation for such ~~the service~~ animal. However, such a person
 186 is liable for any damage done to the premises or to another
 187 person on the premises by the ~~such an~~ animal. A housing
 188 accommodation may request proof of compliance with vaccination
 189 requirements.

190 (c) This subsection does not limit the rights or remedies
 191 of a housing accommodation or an individual with a disability
 192 that are granted by federal law or another law of this state
 193 with regard to other assistance animals.

194 (7) An employer covered under subsection (5) who
 195 discriminates against an individual with a disability in
 196 employment, unless it is shown that the particular disability
 197 prevents the satisfactory performance of the work involved, or
 198 any person, firm, or corporation, or the agent of any person,
 199 firm, or corporation, providing housing accommodations as
 200 provided in subsection (6) who discriminates against an
 201 individual with a disability, commits a misdemeanor of the
 202 second degree, punishable as provided in s. 775.082 or s.
 203 775.083.

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204 (8) Any trainer of a service animal, while engaged in the
 205 training of such an animal, has the same rights and privileges
 206 with respect to access to public facilities and the same
 207 liability for damage as is provided for those persons described
 208 in subsection (3) accompanied by service animals.

209 (9) A person who knowingly and willfully misrepresents
 210 herself or himself, through conduct or verbal or written notice,
 211 as using a service animal and being qualified to use a service
 212 animal or as a trainer of a service animal commits a misdemeanor
 213 of the second degree, punishable as provided in s. 775.082 or s.
 214 775.083, and must perform 30 hours of community service for an
 215 organization that serves individuals with disabilities, or for
 216 another entity or organization at the discretion of the court,
 217 to be completed in not more than 6 months.

218 Section 2. This act shall take effect July 1, 2015.

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THE FLORIDA SENATE
APPEARANCE RECORD

4-15-2015

Meeting Date

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

SB 414

Bill Number (if applicable)

Topic

SB 414 - Service Animals

Name

Samantha Tapia

Amendment Barcode (if applicable)

Job Title

Address

111 Palmetto Terrace

Street

Tampa FL

City

State

33610

Zip

Phone

Email

est123@post.com

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

Self

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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)

4-15-2015

Meeting Date

SB 414

Bill Number (if applicable)

Topic SB 414 - Service Animals

Amendment Barcode (if applicable)

Name Cesar Silva

Job Title MBA Candidate

Address 111 Palmetto Terrace

Street

Phone _____

Tampa FL 33610

City

State

Zip

Email c.silva@mail.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

April 15, 2015

Meeting Date

414

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Quigley

Job Title _____

Address 2617 Mahan Drive
Street

Phone 850-877-2165

Tallahassee FL 32308
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/15

Meeting Date

804 414

Bill Number (if applicable)

Topic Service Animals

Amendment Barcode (if applicable)

Name Sylvia Smith

Job Title Director of Public Policy

Address 2473 Cave Drive

Phone 488 - 9071

Street

Tallahassee FL 32308

Email Sylvias@

City

State

Zip

disabilityrightsflorida.org

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

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

Representing Disability Rights Florida

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

4-15-18

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

SB 414

Meeting Date

Bill Number (if applicable)

Topic Service Animals

Amendment Barcode (if applicable)

Name Margaret S. Hooper

Job Title Public Policy Coordinator

Address 124 Merritt Drive #203

Phone 850-921-7263

Street

Tallahassee FL 32301

Email ~~Hooper~~ Margaret@FDOL.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Developmental Disabilities Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

April 9, 2015

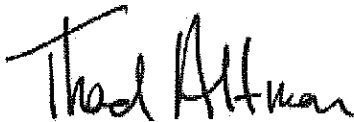
The Honorable Anitere Flores
Senate Committee on Fiscal Policy, Chair
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair Flores:

I respectfully request that CS/SB 414, related to *Service Animals*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,



Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building
Tamra Lyon, Committee Administrative Assistant

TA/dmw

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

April 14, 2015

The Honorable Anitere Flores
Senate Committee on Fiscal Policy, Chair
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair Flores,

Senate Bill 414, related to *Service Animals*, is on the Fiscal Policy Committee agenda tomorrow, April 15, 2015. Due to a scheduling conflict I will be unable to attend.

Please recognize my Legislative Assistant, Rick Kendust, to present SB 414 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building
Tamra Lyon, Committee Administrative Assistant

TA/dmw

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 418

INTRODUCER: Regulated Industries Committee and Senator Richter

SUBJECT: Construction Defect Claims

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 418 amends ch. 558, F.S., relating to construction defect claims. The bill contains a legislative finding that the opportunity to resolve claims without legal process should be extended to insurers of a contractor, subcontractor, supplier, or design professional and contains a finding that the settlement negotiations should be confidential. The bill revises the definition of “completion of a building or improvement” to include a temporary certificate of occupancy.

The bill amends requirements for filing a notice of claim. The notice must describe the claim in reasonable detail and must identify the location of the defect sufficiently to enable the responding party to locate the defect without undue burden. It does not require destructive testing.

The bill provides requirements for the exchange of documents by the parties and provides that a party may assert any claim of privilege recognized under Florida law respecting any of the disclosure obligations mandated by ch. 558, F.S.

II. Present Situation:

Legislative Findings

The legislative findings for ch. 558, F.S., provide that it is beneficial to have an effective alternative dispute mechanism for construction defect disputes in which the claimant provides

the contractor, subcontractor, supplier, or designer responsible for the alleged defect sufficient notice and an opportunity to cure the defect without having to resort to litigation.¹

Definitions

A construction defect, is a deficiency in, or arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property² resulting from:

- Defective material, products, or components used in the construction or remodeling;
- A violation of applicable building codes which allows an action under limited conditions;³
- A failure of the design of real property to meet applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction.⁴

The term “action” means a lawsuit or arbitration proceeding for damages to or loss of real or personal property caused by an alleged construction defect.⁵

Completion of a building or improvement is the issuance of a certificate of occupancy (or its equivalent) for the entire building or improvement issued by the appropriate governmental body (such as a city or county). In cases where a certificate of occupancy or the equivalent authorization is not issued, completion means the substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.⁶

A claimant is a property owner, including a subsequent purchaser or association,⁷ who asserts a claim for damages against a contractor, subcontractor, supplier, or design professional concerning a construction defect, or a subsequent owner who asserts a claim for indemnification for such damages. Under the construction defect procedure, a contractor, subcontractor, supplier, or design professional is not designated as a claimant.⁸

A contractor is any person⁹ that is legally engaged in the business of designing, developing, constructing, manufacturing, repairing, or remodeling real property.¹⁰ A subcontractor is a person who is a contractor who performs labor and supplies material on behalf of another

¹ Section 558.001, F.S.

² Section 558.002(8), F.S., defines real property as improved land, and improvements on such land, such as fixtures, manufactured housing, or mobile homes; public transportation projects are excluded.

³ See s. 553.84, F.S.

⁴ Section 558.002(5), F.S.

⁵ See s. 558.002(1), F.S.

⁶ Section 558.002(4), F.S.

⁷ An “association” is defined in s. 558.002(2), F.S., as having the same meaning as in s. 718.103(2), F.S., (condominiums), s. 719.103(2), F.S., (cooperatives), s. 720.301(9), F.S., (homeowners) or s. 723.075, F.S., (mobile home subdivisions).

⁸ Section 558.002(3), F.S.

⁹ As defined in s. 1.01, F.S., a “person” includes “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”

¹⁰ Section 558.002(6), F.S.

contractor for construction or remodeling of real property,¹¹ and a supplier is a person who does not perform labor, but does provide materials, equipment, or other supplies for the construction or remodeling of real property.¹²

Notice of Claim Requirements

Before an action may be brought by a claimant alleging a construction defect, the claimant must serve¹³ a written notice of claim on the contractor, subcontractor, supplier, or design professional. The written notice must be provided at least 60 days before filing the action, or in the case of an association representing more than 20 parcels (association claimant), at least 120 days before the filing.¹⁴

A construction defect claim arising from work performed under a contract requires the written notice of claim to be served on the person with whom the claimant contracted, and must describe the claim in detail sufficient to determine the nature of the construction defect and a description of the damage or loss resulting from it, if known.¹⁵

The person who receives the claim (claim recipient) within 10 days after service of the notice of claim (within 30 days for an association claimant) can serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom the claim recipient reasonably believes is responsible for each defect specified in the notice of claim (the subsequent claim recipient). The claim recipient must identify the specific defect for which it believes the particular subsequent claim recipient is responsible.¹⁶

Within 15 days after service of a copy of the notice of claim to a subsequent claim recipient (within 30 days for an association claimant), the subsequent claim recipient must serve a written response to the claim recipient, including:

- A report, if any, of the scope of any inspection of the property;
- The findings and results of the inspection;
- A statement of whether the subsequent claim recipient is willing to make repairs to the property or whether such claim is disputed;
- A description of any repairs the subsequent claim recipient is willing to make to remedy the alleged construction defect; and
- A timetable for the completion of such repairs.¹⁷

¹¹ Section 558.002(10), F.S.

¹² Section 558.002(11), F.S.

¹³ Service of a notice of a construction defect means delivery by certified mail with a United States Postal Service record of evidence of delivery or attempted delivery to the last known address of the addressee, by hand delivery, or by delivery by any courier with written evidence of delivery. *See* s. 558.002(9), F.S.

¹⁴ Section 558.004(1), F.S.

¹⁵ *See* s. 558.004(6), (7), and (8), F.S.

¹⁶ Section 558.004(3), F.S.

¹⁷ Section 558.004(4), F.S.

Within 45 days after service of the notice of claim (within 75 days for an association claimant), the claim recipient must serve a written response to the claimant providing:

- A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable for the completion of such repairs;
- A written offer to compromise and settle the claim by monetary payment, that will not obligate the claim recipient's insurer, and a timetable for making payment;
- A written offer to compromise and settle the claim by a combination of repairs and monetary payment, that will not obligate the claim recipient's insurer, that includes a detailed description of the proposed repairs and a timetable for the completion of such repairs and making payment (the (5)(c) option);
- A written statement that the claim recipient disputes the claim and will not remedy the defect or compromise and settle the claim; or
- A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the claim recipient's insurer within 30 days after notification to the insurer by means of serving the claim, which service occurs at the same time the claimant is notified of this settlement option. A written statement under this option may also include an offer under the (5)(c) option above, but such offer must be contingent upon the claimant also accepting the determination of the insurer whether to make any monetary payment in addition to the offer. If the insurer for the claim recipient makes no response within the 30 days following service, then the claimant is deemed to have met all conditions necessary to filing an action on the noticed claim.¹⁸

Insurance Claims

Section 558.004(13), F.S., provides that the construction defect procedure does not relieve the claim recipient from complying with the terms of any liability insurance policy. Further, the providing of a copy of a notice of claim to an insurer does not constitute a claim for insurance purposes.

Exchange of Documents and Other Information

Upon request, the claimant or the claim recipient must exchange:¹⁹

- Any design plans, specifications, and as-built plans;
- Any documents detailing the design drawings or specifications;
- Photographs, videos, and expert reports that describe any defect upon which the claim is made;
- Subcontracts; and
- Purchase orders for the work that is claimed defective or any part of such materials.²⁰

¹⁸ Section 558.004(5)(a)-(e), F.S.

¹⁹ The exchange must occur within 30 days after service of a written request. The written request must contain an offer to pay the reasonable costs of reproduction.

²⁰ Section 558.004(15), F.S.

III. Effect of Proposed Changes:

Legislative Findings

The bill amends the legislative findings to add the insurer of the contractor, subcontractor, supplier, or design professional as a party that should be provided the opportunity to resolve a construction defect claim through the construction defect procedure. The bill also contains a finding that the procedure is a confidential settlement negotiation.

Definitions

The bill amends the definition of “completion of a building or improvement,” to mean the issuance of a certificate of occupancy whether temporary or otherwise. Currently, the completion of a building or improvement is only when the certificate of occupancy (or its equivalent) for the entire building or improvement is issued by the appropriate governmental body (such as a city or county).²¹

Warranties commence with the completion of a building or improvement. Express warranties are granted to purchasers by developers, and other warranties are granted by contractors, subcontractors, and suppliers to both developers and purchasers. The bill amends the definition of “completion of a building or improvement” in s. 718.203(3), F.S., of the Condominium Act and s. 719.203(3), F.S., of the Cooperative Act to make those definitions consistent with the amended definition in s. 558.002(4), F.S. The warranties would begin once a temporary certificate of occupancy is issued.

Notice of Claim Requirements

The bill clarifies the requirement that the notice of claim describe in reasonable detail the nature of each alleged construction defect and the damage or loss resulting from the defect, if known. The claimant or its agents must identify the location of the alleged defect based upon at least visual inspection. The information in the notice of claim must allow the claim recipient to locate the alleged defect without “undue burden.” The claimant has no obligation to perform destructive or other testing to identify the location of the alleged defect.

The bill repeals the statement of repair requirements a subsequent claim recipient had to include in its response to a claim recipient. Currently claim recipients are required to include offers or statements in the response to the claimant. The bill requires the subsequent claim recipient’s written response to include one of these offers or statements in its response to the claim recipient. The response is no longer required to include a statement of repairs the subsequent claim recipient is willing to make and the timetable for completion.

²¹ See s. 558.002(4), F.S. In cases where a certificate of occupancy or the equivalent authorization is not issued, completion means the substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

Insurance Claims

Current law provides that sending a copy of a claim to an insurer does not constitute the making of a claim for insurance purposes. The bill provides that an insurance policy may allow for such action to constitute a valid claim for coverage under the policy.

Exchange of Documents and Other Information

The bill eliminates the requirement for a claimant or any claim recipient (or any subsequent claim recipient) to exchange documents detailing the design drawings or specifications upon request. The bill requires those parties provide, upon request, maintenance records and other documents related to the discovery, investigation, causation, and extent of alleged construction defects identified in a notice of claim, as well as any resulting damages. A party may assert any claim of privilege recognized under Florida law respecting any of the disclosure obligations mandated by ch. 558, F.S.

The bill is effective October 1, 2015.

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:

Revision to the term “completion of a building or improvement” may affect persons and associations eligible to file or receive notices of claim (and insurers of those persons) by changing the calculation of the time period for which warranties under s. 718.203, F.S., and s. 719.203, F.S., are effective.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation, the bill will not impact to department. According to Office of the State Courts Administrator, there is an

indeterminate minimal fiscal impact to the courts that can be absorbed with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 558.001, 558.002, 558.004, 718.203, and 719.203.

IX. Additional Information:

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

CS by Regulated Industries on March 31, 2015:

The committee substitute provides that a claim for an alleged construction defect must be based, at a minimum, upon a visual inspection by the claimant or its agents, and must identify the location of the defect. There is no duty to conduct destructive or other testing. The committee substitute removes the requirement that the notice must identify the specific location of the defect and identify the specific provisions of the building code, project plans, project drawings, specifications or other information that serve as the basis of the claim. It also removes the provision that failure to include this information in the notice is prima facie evidence of a defective notice of claim. It also removes the provisions concerning frivolous claims, monetary sanctions, and attorney fees.

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senator Richter

580-03238-15

2015418c1

A bill to be entitled

An act relating to construction defect claims; amending s. 558.001, F.S.; revising legislative intent; amending s. 558.002, F.S.; revising the definition of the term "completion of a building or improvement"; amending s. 558.004, F.S.; providing additional requirements for a notice of claim; revising requirements for a response; revising provisions relating to production of certain records; amending ss. 718.203 and 719.203, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 558.001, Florida Statutes, is amended to read:

558.001 Legislative findings and declaration.—The Legislature finds that it is beneficial to have an alternative method to resolve construction disputes that would reduce the need for litigation as well as protect the rights of property owners. An effective alternative dispute resolution mechanism in certain construction defect matters should involve the claimant filing a notice of claim with the contractor, subcontractor, supplier, or design professional that the claimant asserts is responsible for the defect, and should provide the contractor, subcontractor, supplier, or design professional, and the insurer of the contractor, subcontractor, supplier, or design professional, with an opportunity to resolve the claim through

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

580-03238-15

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confidential settlement negotiations without resort to further legal process.

Section 2. Subsection (4) of section 558.002, Florida Statutes, is amended to read:

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

(4) "Completion of a building or improvement" means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of ~~for~~ the entire building or improvement, or an the equivalent authorization ~~to occupy or use the improvement~~, issued by the governmental body having jurisdiction. ~~and~~. In jurisdictions where no certificate of occupancy or ~~the~~ equivalent authorization is issued, the term means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

Section 3. Subsections (1), (4), (13), and (15) of section 558.004, Florida Statutes, are amended to read:

558.004 Notice and opportunity to repair.—

(1) (a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. If the construction defect claim arises from work performed under a contract, the written notice of claim must be served on the person with whom the claimant contracted.

(b) The notice of claim must describe ~~the claim~~ in reasonable detail ~~sufficient to determine the general nature of~~

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59 each alleged construction defect and, if known, a description of
 60 the damage or loss resulting from the defect, ~~if known~~. Based
 61 upon at least a visual inspection by the claimant or its agents,
 62 the notice of claim must identify the location of each alleged
 63 construction defect sufficiently to enable the responding
 64 parties to locate the alleged defect without undue burden. The
 65 claimant has no obligation to perform destructive or other
 66 testing for purposes of this notice.

67 (c) The claimant shall endeavor to serve the notice of
 68 claim within 15 days after discovery of an alleged defect, but
 69 the failure to serve notice of claim within 15 days does not bar
 70 the filing of an action, subject to s. 558.003. This subsection
 71 does not preclude a claimant from filing an action sooner than
 72 60 days, or 120 days as applicable, after service of written
 73 notice as expressly provided in subsection (6), subsection (7),
 74 or subsection (8).

75 (4) Within 15 days after service of a copy of the notice of
 76 claim pursuant to subsection (3), or within 30 days after
 77 service of the copy of the notice of claim involving an
 78 association representing more than 20 parcels, the contractor,
 79 subcontractor, supplier, or design professional must serve a
 80 written response to the person who served a copy of the notice
 81 of claim. The written response ~~must shall~~ include a report, if
 82 any, of the scope of any inspection of the property ~~and,~~ the
 83 findings and results of the inspection. The written response
 84 must include one or more of the offers or statements specified
 85 in paragraphs (5) (a)-(e), as chosen by the responding
 86 contractor, subcontractor, supplier, or design professional,
 87 with all of the information required for that offer or

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88 ~~statement, a statement of whether the contractor, subcontractor,~~
 89 ~~supplier, or design professional is willing to make repairs to~~
 90 ~~the property or whether such claim is disputed, a description of~~
 91 ~~any repairs they are willing to make to remedy the alleged~~
 92 ~~construction defect, and a timetable for the completion of such~~
 93 ~~repairs. This response may also be served on the initial~~
 94 ~~claimant by the contractor.~~

95 (13) This section does not relieve the person who is served
 96 a notice of claim under subsection (1) from complying with all
 97 contractual provisions of any liability insurance policy as a
 98 condition precedent to coverage for any claim under this
 99 section. However, notwithstanding the foregoing or any
 100 contractual provision, the providing of a copy of such notice to
 101 the person's insurer, if applicable, shall not constitute a
 102 claim for insurance purposes unless the terms of the policy
 103 specify otherwise. Nothing in this section shall be construed to
 104 impair technical notice provisions or requirements of the
 105 liability policy or alter, amend, or change existing Florida law
 106 relating to rights between insureds and insurers except as
 107 otherwise specifically provided herein.

108 (15) Upon request, the claimant and any person served with
 109 notice pursuant to subsection (1) shall exchange, within 30 days
 110 after service of a written request, which request must cite this
 111 subsection and include an offer to pay the reasonable costs of
 112 reproduction, any design plans, specifications, and as-built
 113 plans; ~~any documents detailing the design drawings or~~
 114 ~~specifications;~~ photographs ~~and,~~ videos of the alleged
 115 construction defect identified in the notice of claim; ~~and~~
 116 expert reports that describe any defect upon which the claim is

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2015418c1

117 made; subcontracts; ~~and~~ purchase orders for the work that is
 118 claimed defective or any part of such materials; and maintenance
 119 records and other documents related to the discovery,
 120 investigation, causation, and extent of the alleged defect
 121 identified in the notice of claim and any resulting damages. A
 122 party may assert any claim of privilege recognized under the
 123 laws of this state with respect to any of the disclosure
 124 obligations specified in this chapter. In the event of
 125 subsequent litigation, any party who failed to provide the
 126 requested materials shall be subject to such sanctions as the
 127 court may impose for a discovery violation. Expert reports
 128 exchanged between the parties may not be used in any subsequent
 129 litigation for any purpose, unless the expert, or a person
 130 affiliated with the expert, testifies as a witness or the report
 131 is used or relied upon by an expert who testifies on behalf of
 132 the party for whom the report was prepared.

133 Section 4. Subsection (3) of section 718.203, Florida
 134 Statutes, is amended to read:

135 718.203 Warranties.—

136 (3) "Completion of a building or improvement" means
 137 issuance of a certificate of occupancy, whether temporary or
 138 otherwise, that allows for occupancy or use of ~~for~~ the entire
 139 building or improvement, or an ~~the~~ equivalent authorization
 140 issued by the governmental body having jurisdiction, ~~and~~ In
 141 jurisdictions where no certificate of occupancy or equivalent
 142 authorization is issued, the term ~~it~~ means substantial
 143 completion of construction, finishing, and equipping of the
 144 building or improvement according to the plans and
 145 specifications.

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146 Section 5. Subsection (3) of section 719.203, Florida
 147 Statutes, is amended to read:

148 719.203 Warranties.—

149 (3) "Completion of a building or improvement" means
 150 issuance of a certificate of occupancy, whether temporary or
 151 otherwise, that allows for occupancy or use of ~~for~~ the entire
 152 building or improvement, or an ~~the~~ equivalent authorization
 153 issued by the governmental body having jurisdiction, ~~and~~ In
 154 jurisdictions where no certificate of occupancy or equivalent
 155 authorization is issued, the term ~~it~~ means substantial
 156 completion of construction, finishing, and equipping of the
 157 building or improvement according to the plans and
 158 specifications.

159 Section 6. This act shall take effect October 1, 2015.

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The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 8, 2015

Dear Chair Flores,

I respectfully request that **Committee Substitute for Senate Bill #418**, relating to Construction Defect Claims, be placed on the Committee on Fiscal Policy agenda at your earliest possible convenience. The Committee on Fiscal Policy is CS/Senate Bill #418's final committee of reference. Any questions you have pertaining to this legislation, please contact me or my office.

Thank you in advance for your consideration.

A handwritten signature in black ink, appearing to read "Garrett Richter".

Senator Garrett Richter
Florida Senate, District 23

cc: Jeninifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

418

Meeting Date

Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

Name Warren Husband

Job Title Attorney

Address 215 S. Monroe Street

Phone 205-9000

Street

Tallahassee

FL

32301

Email whh@metzlaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Associated General Contractors Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

9/15

Meeting Date

418

Bill Number (if applicable)

Topic Construction Defect

Amendment Barcode (if applicable)

Name Rusty Payton

Job Title CEO

Address 2600 Centennial Place

Phone 850-567-1033

Street

Tally FL 32306

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Home Builders

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4 116 12015

Meeting Date

Topic _____

Bill Number 418

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-2015
Meeting Date

CS/SB 413
Bill/Number (if applicable)

Topic Construction Defect

Amendment Barcode (if applicable)

Name Buddy Dewar

Job Title Vice President

Address 208 W. College Ave
Street

Phone _____

Tallahassee FL
City State Zip

Email _____

Speaking: For Against Information

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

Representing National Fire Sprinkler 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

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

4/15/15

Meeting Date

SB 468

Bill Number (if applicable)

Topic Construction Defect

Amendment Barcode (if applicable)

Name Richard Watson

Job Title Legislative Counsel

Address P.O. Box 10038

Phone 850-222-0700

Street

Tallahassee, FL 32302

Email rlw@watson.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Builders & Contractors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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



682776

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Clemens) recommended the following:

Senate Amendment (with directory amendment)

Delete lines 394 - 405

and insert:

REGISTRATION.—No county health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immune deficiency syndrome or human immunodeficiency virus status without first registering with the Department of Health, reregistering each year, complying with all other applicable provisions of state



682776

11 law, and meeting the following requirements:

12 (d) The program must meet all the requirements of informed
13 ~~consent criteria contained in~~ subsection (2).

14 (j) Nothing in this subsection shall be construed to
15 require a facility licensed under chapter 395 or chapter 483 or
16 a person licensed under the provisions of chapter 457, chapter
17 458, chapter 459, chapter 460, chapter 461, chapter 466, or
18 chapter 467 to register with the Department of Health or to
19 comply with the requirements of this subsection if a testing
20 program is part of routine medical care or if the facility or
21 person does not conspicuously advertise to significant numbers
22 of the general ~~he or she does not advertise or hold himself or~~
23 ~~herself out to the public as conducting testing programs for~~
24 human immunodeficiency virus infection or specializing in such
25 testing.

26
27 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

28 And the directory clause is amended as follows:

29 Delete line 13

30 and insert:

31 (g), and (h) of subsection (2) and paragraphs (d) and (j) of
32 subsection

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 Fiscal Policy

BILL: CS/CS/SB 512

INTRODUCER: Fiscal Policy Committee; Health Policy Committee; and Senators Thompson and Soto

SUBJECT: HIV Testing

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harper</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 512 defines “health care setting” and “nonhealth care setting” for the purposes of human immunodeficiency virus (HIV) testing, and differentiates between the notification and informed consent procedures for performing an HIV test in such settings.

Regardless of the setting, the person tested must be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify him or her and of the availability and location of sites that perform anonymous testing.

The bill repeals the requirement that hospitals licensed under ch. 395, F.S., must have written informed consent for the HIV test to be able to release HIV test results contained in hospital medical records.

The bill amends the significant exposure exceptions to informed consent to repeal the consent requirements and delineate the exceptions into a medical personnel exception and a nonmedical personnel exception.

The bill updates the definition of “preliminary HIV test” to reflect current advances in HIV testing.

The bill has no fiscal impact.

II. Present Situation:

Human Immunodeficiency Virus

HIV is an immune system virus that can lead to acquired immunodeficiency syndrome, or AIDS. HIV affects specific cells of the immune system and, over time, the virus can destroy so many of these cells that the body cannot fight off infections and disease. However, with proper medical care, HIV can be controlled for most patients.¹

In the United States, HIV is spread mainly by having unprotected sex with someone who has HIV or by sharing needles, syringes, or other equipment used to prepare injection drugs with someone who has HIV.² The Centers for Disease Control and Prevention (CDC) estimates that more than 1.2 million persons 13 years of age and older in the U.S. are living with HIV, including 168,300 (14 percent) who are unaware of their infection. Approximately 50,000 people get infected with HIV each year.³

HIV in Florida

The Florida Department of Health (DOH) estimates that approximately 130,000 individuals are living with HIV in Florida.⁴ In 2013, Florida ranked first nationally in the number of new HIV infection cases diagnosed, with over 5,300 new cases. In 2014, there were more than 6,000 newly reported HIV infections in Florida.⁵

HIV Testing

The CDC supports HIV testing that occurs during an individual's routine healthcare visit.⁶ The most common types of HIV tests, test for the antibodies the human body makes against HIV. These tests are performed using blood or oral fluid and are considered "preliminary." If the result is positive, follow-up diagnostic testing is required to confirm the presence of HIV. Other HIV tests can detect both antibodies and antigen (part of the virus itself). These antibody-antigen tests can find recent HIV infection earlier than tests that detect only antibodies, but antibody-antigen combination tests are only available for testing blood, not oral fluid.⁷

¹ Centers for Disease Control and Prevention, *About HIV/AIDS*, (updated January 16, 2015), available at <http://www.cdc.gov/hiv/basics/whatishiv.html> (last visited April 9, 2015).

² Centers for Disease Control and Prevention, *HIV Transmission*, (updated January 16, 2015), available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited April 9, 2015).

³ Centers for Disease Control and Prevention, *HIV in the United States: At A Glance* (updated March 12, 2014), available at <http://www.cdc.gov/hiv/statistics/basics/ata glance.html> (last visited April 9, 2015).

⁴ Florida Health, *HIV AIDS*, available at <http://www.floridahealth.gov/diseases-and-conditions/aids/>, (last visited April 9, 2015).

⁵ Florida Health, *HIV Disease: United States vs. Florida*, available at http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/fact-sheet/2014/2014-us-vs-fl-fact-sheet.pdf (last visited April 9, 2015).

⁶ Centers for Disease Control and Prevention, *State HIV Testing Laws: Consent and Counseling Requirements* (updated July 11, 2013), available at <http://www.cdc.gov/hiv/policies/law/states/testing.html> (last visited April 9, 2015).

⁷ Centers for Disease Control and Prevention, *Testing*, (updated March 24, 2015), available at <http://www.cdc.gov/hiv/basics/testing.html> (last visited April 9, 2015).

HIV Testing in Florida

Section 381.004, F.S., governs HIV testing in Florida and was enacted to create an environment in Florida in which people will agree to or seek HIV testing because they are sufficiently informed about HIV infection and assured about the privacy of a decision to be tested.⁸

A “HIV test” is a test ordered to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.⁹ In Florida, county health departments (CHDs) are the primary sources for state-sponsored HIV programs. County health departments and any other person conducting a testing program for AIDS or HIV must register with the DOH and meet the necessary requirements.¹⁰

In 2013, CHD programs administered more than 428,000 HIV tests which resulted in 4,200 positive test results.¹¹

Informed Consent

Every person tested for HIV in Florida must first give his or her informed consent before a test is administered, except as specified in s. 381.004(2)(h), F.S. Informed consent for HIV testing requires:

- An explanation that the information identifying the person to be tested and the results of the test are confidential and protected against further disclosure to the extent permitted by law;
- Notice that persons who test positive will be reported to the local CHD; and
- Notice that anonymous testing is available and the locations of the anonymous sites.¹²

Informed consent must be in writing when it is:

- From the potential donor or donor’s legal representative prior to first donation of blood, blood components, organs, skin, semen, or other human tissue or body part;
- For insurance purposes; and
- For contract purposes in a health maintenance organization.¹³

Currently, test results contained in medical records of hospitals licensed under ch. 395, F.S., can be released under s. 395.3025, F.S., if the hospital has obtained written informed consent for the HIV test.

Informed consent is not required in numerous situations including when a significant exposure has occurred.¹⁴

⁸ Florida Health, *Florida’s Omnibus AIDS Act: A Brief Legal Guide for Health Care Professionals*, Jack P. Hartog, Esq., (August 2013), available at http://www.floridahealth.gov/diseases-and-conditions/aids/operations_managment/documents/Omnibus-booklet-update-2013.pdf (last visited April 9, 2015).

⁹ Section 381.004(1)(a), F.S.

¹⁰ Section 381.004(1), F.S.

¹¹ *Supra* note 5.

¹² Rule 64D-2.004, F.A.C.

¹³ *Id.*

¹⁴ *See* s. 381.004(2)(h), F.S.

Significant exposure exceptions

Significant exposure is the exposure:

- To blood or body fluids through needlestick, instruments, or sharps;
- Of mucous membranes to visible blood or body fluids, to which universal precautions of the CDC apply; and
- Of skin to visible blood or body fluids, especially when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.¹⁵

If significant exposure occurs to **medical personnel** in the course of employment or within the scope of practice and the source of the exposure has voluntarily had blood taken for another purpose, it can be tested for HIV without informed consent from the source of the exposure.

Before the HIV test is performed:

- The source of the exposure must be requested to consent to the HIV test. If consent cannot be obtained, all information concerning the HIV test must be documented in only in the medical personnel's medical record.
- Reasonable attempts to locate the source of the exposure and to obtain consent must be made, and documented.
- It must be documented in the medical record of the medical personnel that there has been a significant exposure and that, in the physician's medical judgment, the test is medically necessary to determine the course of treatment for the medical personnel.¹⁶

If significant exposure has occurs to **medical personnel** in course of employment or within the scope of practice or to a **nonmedical personnel** while providing emergency medical assistance during a medical emergency and, consent for an HIV test must be requested. Before the HIV test is performed:

- The source of the exposure must be requested to consent to the HIV test, if capable of providing consent. If consent cannot be obtained all of the information about the performance of the test, and its results must be documented in the medical or nonmedical personnel's record.
- It must be documented in the medical record of the medical personnel or nonmedical personnel that a significant exposure has occurred and in the physician's medical judgment test is medically necessary to determine the course of treatment for the medical or nonmedical personnel.

The result of the HIV test is only entered into the source of the exposure's medical record if written consent is provided.¹⁷

In both of these exceptions, if the source of the exposure will not voluntarily submit to HIV testing, a court order may be sought directing the source of the exposure to submit to HIV testing. A sworn statement from a physician that a significant exposure has occurred and testing is medically necessary to determine the course of treatment constitutes probable cause for the

¹⁵ Section 381.004(1)(c), F.S.

¹⁶ Section 381.004(1)(h)10., F.S.

¹⁷ Section 381.004(1)(h)11., F.S.

issuance of the court order. The results of the test must be released to the source of the exposure and to the person who was exposed.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 381.004, F.S., by adding definitions of “health care setting” and “nonhealth care setting,” differentiating between notification and informed consent requirements for the two settings, and making technical and conforming changes.

“Health care setting” is defined as a setting devoted to the diagnosis and care of persons or the provision of medical services to persons, such as:

- County health department clinics;
- Hospitals;
- Urgent care clinics;
- Substance abuse treatment clinics;
- Primary care settings;
- Community clinics;
- Blood banks;
- Mobile medical clinics; and
- Correctional health care facilities.

“Nonhealth care setting” is defined as a site that conducts HIV testing for the sole purpose of identifying HIV infection but does not provide medical treatment. A nonhealth care setting includes:

- Community-based organizations;
- Outreach settings;
- County health department HIV testing programs; and
- Mobile clinics.

The bill excludes hospitals licensed under ch. 395, F.S., from registering with the DOH as an entity that conducts HIV testing or meeting the DOH’s requirements to conduct HIV testing if the:

- Testing program is part of routine medical care; or
- Facility or person does not conspicuously advertise to significant numbers of the general public as conducting testing programs for HIV or specializing in HIV testing.

The bill updates the definition of a “preliminary HIV test” to reflect advances in HIV testing and deletes obsolete language.

Notification and Informed Consent

Before performing an HIV test in a health care setting, the person to be tested must be **notified** orally or in writing that the HIV test is planned and that he or she has the right to decline the test. If the person to be tested declines the HIV test, the decision must be documented in the person’s medical record. A person who has signed a general consent form for medical care is not required

¹⁸ Sections 381.004(1)(h)10.f. and 381.004(1)(h)11.f., F.S.

to sign or otherwise provide a separate consent form an HIV test during the period in which the general consent form is in effect.

Before performing a HIV test in a nonhealth care setting, a provider must obtain the **informed consent** of the person to be tested. Informed consent must be preceded by an explanation of the right to confidential treatment of information that identifies the subject of the test and the HIV test results, as provided by law.

The person being tested, in the health or nonhealth care setting, must also be informed that:

- Persons who test positive will be reported to the local CHD with sufficient information to identify him or her; and
- Anonymous testing is available and the locations of the anonymous sites.¹⁹

The bill repeals the requirement that hospitals licensed under ch. 395, F.S., must have written informed consent for the HIV test to be able to release HIV test results contained in hospital medical records. Hospitals can now release HIV test results in accordance with standard patient record provisions.

The bill makes conforming changes to the situations when informed consent, now notification or informed consent, does not apply.

Significant exposure exceptions

The bill amends the exceptions related to personnel acting in the course of employment and in emergency medical situations, to instead provide for exceptions related to medical personnel and nonmedical personnel.

An individual can be tested if he or she significantly exposes medical personnel acting within the course of employment and in emergency medical situations. The bill repeals the requirement that a blood sample be available for testing that was voluntarily taken for another purpose from the source of the exposure. The occurrence of the exposure must be recorded only in the personal record of the medical personnel. The bill repeals the related consent requirements and requirements related to recording information related to the performance and results of the test in the medical personnel's record and in the individual's record upon consent and to requiring a physician to first document the need for the test. The bill also repeals requirements to provide the source of the exposure with counseling if the test is performed without consent. To obtain a court order for testing, the individual must not be available and not voluntarily come to a health facility for testing; under current law, the court order may be obtained if the source of the exposure will not voluntarily submit to testing.

An individual can be tested if he or she significantly exposes nonmedical personnel acting in emergency medical situations. The bill makes similar changes to this exception as described above, and repeals all references to medical personnel in this section.

Section 2 amends s. 456.032(2), F.S., to conform a cross-reference.

¹⁹ Rule 64D-2.004, F.A.C.

Section 3 provides an effective date of July 1, 2015.

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:

Section 1 of the bill contains a stand-alone flush-left paragraph that contains language inconsistent with the preceding paragraph. The bill amends s. 381.004(2)(a), F.S., to provide the condition of “*Before* performing an HIV test” (emphasis added); however, the stand-alone paragraph after s. 381.004(2)(a)2, F.S., refers to “the test subject.” Test subject, as currently defined in s. 381.004(e), F.S., means the person upon whom an HIV test is performed. Technically, a person would not be considered a test subject until during or *after* the HIV test is performed. Therefore, the proposed bill language under this section is inconsistent as to when and to whom information should be given regarding reporting a positive HIV test result to a county health department. The bill language in the stand-alone paragraph may be revised to refer to “the person to be tested” instead of “test subject,” or the phrase “After performing an HIV test” may be substituted for “Before performing an HIV test” if the condition continues to apply to a test subject.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.004 and 456.032.

IX. Additional Information:

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

CS/CS by Fiscal Policy on April 15, 2015:

The CS excludes hospitals licensed under ch. 395, F.S., from registering with the DOH as an entity that conducts HIV testing or meeting the DOH's requirements to conduct HIV testing if the:

- Testing program is part of routine medical care; or
- Facility or person does not conspicuously advertise to significant numbers of the general public as conducting testing programs for HIV or specializing in HIV testing.

The CS requires *all programs* to meet the informed consent provisions.

CS by Health Policy on March 17, 2015:

The CS revises the definitions of “health care setting” and “nonhealth care setting” for the purposes of HIV testing, and further clarifies the notification and informed consent procedures for performing an HIV test in such settings. The CS revises and clarifies provisions to address the occurrence of a significant exposure to medical personnel and nonmedical personnel. The CS provides that a county health department and any other person in Florida offering HIV tests in a nonhealth care setting may not conduct testing without first registering with the DOH.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senators Thompson and Soto

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A bill to be entitled

An act relating to HIV testing; amending s. 381.004, F.S.; revising and providing definitions; specifying the notification and consent procedures for performing an HIV test in a health care setting and a nonhealth care setting; amending s. 456.032, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (1) of section 381.004, Florida Statutes, is reordered and amended, and paragraphs (a), (b), (g), and (h) of subsection (2) and paragraph (d) of subsection (4) of that section are amended, to read:

381.004 HIV testing.—

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

(a) “Health care setting” means a setting devoted to the diagnosis and care of persons or the provision of medical services to persons, such as county health department clinics, hospitals, urgent care clinics, substance abuse treatment clinics, primary care settings, community clinics, blood banks, mobile medical clinics, and correctional health care facilities.

~~(b)(a)~~ “HIV test” means a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.

~~(c)(b)~~ “HIV test result” means a laboratory report of a human immunodeficiency virus test result entered into a medical record on or after July 6, 1988, or any report or notation in a

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medical record of a laboratory report of a human immunodeficiency virus test. ~~As used in this section,~~ The term ~~“HIV test result”~~ does not include test results reported to a health care provider by a patient.

(d) “Nonhealth care setting” means a site that conducts HIV testing for the sole purpose of identifying HIV infection but does not provide medical treatment. The term includes community-based organizations, outreach settings, county health department HIV testing programs, and mobile vans.

~~(f)(e)~~ “Significant exposure” means:

1. Exposure to blood or body fluids through needlestick, instruments, or sharps;

2. Exposure of mucous membranes to visible blood or body fluids, to which universal precautions apply according to the National Centers for Disease Control and Prevention, including, without limitations, the following body fluids:

a. Blood.

b. Semen.

c. Vaginal secretions.

d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).

e. Synovial fluid.

f. Pleural fluid.

g. Peritoneal fluid.

h. Pericardial fluid.

i. Amniotic fluid.

j. Laboratory specimens that contain HIV (e.g., suspensions of concentrated virus); or

3. Exposure of skin to visible blood or body fluids, especially when the exposed skin is chapped, abraded, or

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59 afflicted with dermatitis or the contact is prolonged or
60 involving an extensive area.

61 ~~(e)(d)~~ "Preliminary HIV test" means an antibody or
62 ~~antibody-antigen~~ screening test, such as the enzyme-linked
63 immunosorbent assays (IA), or a rapid test approved by the
64 United States Food and Drug Administration (ELISAs) or the
65 Single-Use Diagnostic System (SUDS).

66 ~~(g)(c)~~ "Test subject" or "subject of the test" means the
67 person upon whom an HIV test is performed, or the person who has
68 legal authority to make health care decisions for the test
69 subject.

70 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
71 RESULTS; COUNSELING; CONFIDENTIALITY.—

72 (a) Before performing an HIV test:

73 1. In a health care setting, the person to be tested must
74 be notified orally or in writing that the HIV test is planned
75 and that he or she has the right to decline the test. If the
76 person to be tested declines the test, such decision shall be
77 documented in the person's medical record. A person who has
78 signed a general consent form for medical care is not required
79 to sign or otherwise provide a separate consent for an HIV test
80 during the period in which the general consent form is in effect
81 ~~No person in this state shall order a test designed to identify~~
82 ~~the human immunodeficiency virus, or its antigen or antibody,~~
83 ~~without first obtaining the informed consent of the person upon~~
84 ~~whom the test is being performed, except as specified in~~
85 ~~paragraph (h). Informed consent shall be preceded by an~~
86 ~~explanation of the right to confidential treatment of~~
87 ~~information identifying the subject of the test and the results~~

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88 ~~of the test to the extent provided by law. Information shall~~
89 ~~also be provided on the fact that a positive HIV test result~~
90 ~~will be reported to the county health department with sufficient~~
91 ~~information to identify the test subject and on the availability~~
92 ~~and location of sites at which anonymous testing is performed.~~
93 ~~As required in paragraph (3)(c), each county health department~~
94 ~~shall maintain a list of sites at which anonymous testing is~~
95 ~~performed, including the locations, phone numbers, and hours of~~
96 ~~operation of the sites. Consent need not be in writing provided~~
97 ~~there is documentation in the medical record that the test has~~
98 ~~been explained and the consent has been obtained.~~

99 2. In a nonhealth care setting, a provider must obtain the
100 informed consent of the person upon whom the HIV test is being
101 performed. Informed consent must be preceded by an explanation
102 of the right to confidential treatment of information
103 identifying the subject of the test and the HIV test results as
104 provided by law.

105
106 The test subject must also be informed that a positive HIV test
107 result will be reported to the county health department with
108 sufficient information to identify the test subject and must be
109 provided with the availability and location of sites at which
110 anonymous testing is performed. As required in paragraph (3)(c),
111 each county health department shall maintain a list of sites at
112 which anonymous HIV testing is performed, including the
113 locations, telephone numbers, and hours of operation of the
114 sites.

115 (b) Except as provided in paragraph (h), informed consent
116 must be obtained from a legal guardian or other person

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117 authorized by law ~~if when~~ the person:

- 118 1. Is not competent, is incapacitated, or is otherwise
 119 unable to make an informed judgment; or
 120 2. Has not reached the age of majority, except as provided
 121 in s. 384.30.

122 (g) Human immunodeficiency virus test results contained in
 123 the medical records of a hospital licensed under chapter 395 may
 124 be released in accordance with s. 395.3025 without being subject
 125 to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9.,
 126 or paragraph (f) ~~;~~ ~~provided the hospital has obtained written~~
 127 ~~informed consent for the HIV test in accordance with provisions~~
 128 ~~of this section.~~

129 (h) ~~Paragraph (a) does not apply Notwithstanding the~~
 130 ~~provisions of paragraph (a), informed consent is not required:~~

- 131 1. When testing for sexually transmissible diseases is
 132 required by state or federal law, or by rule including the
 133 following situations:
 134 a. HIV testing pursuant to s. 796.08 of persons convicted
 135 of prostitution or of procuring another to commit prostitution.
 136 b. HIV testing of inmates pursuant to s. 945.355 before
 137 ~~prior to~~ their release from prison by reason of parole,
 138 accumulation of gain-time credits, or expiration of sentence.
 139 c. Testing for HIV by a medical examiner in accordance with
 140 s. 406.11.
 141 d. HIV testing of pregnant women pursuant to s. 384.31.
 142 2. Those exceptions provided for blood, plasma, organs,
 143 skin, semen, or other human tissue pursuant to s. 381.0041.
 144 3. For the performance of an HIV-related test by licensed
 145 medical personnel in bona fide medical emergencies if when the

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146 test results are necessary for medical diagnostic purposes to
 147 provide appropriate emergency care or treatment to the person
 148 being tested and the patient is unable to consent, as supported
 149 by documentation in the medical record. Notification of test
 150 results in accordance with paragraph (c) is required.

151 4. For the performance of an HIV-related test by licensed
 152 medical personnel for medical diagnosis of acute illness if
 153 ~~where~~, in the opinion of the attending physician, providing
 154 notification ~~obtaining informed consent~~ would be detrimental to
 155 the patient, as supported by documentation in the medical
 156 record, and the test results are necessary for medical
 157 diagnostic purposes to provide appropriate care or treatment to
 158 the person being tested. Notification of test results in
 159 accordance with paragraph (c) is required if it would not be
 160 detrimental to the patient. This subparagraph does not authorize
 161 the routine testing of patients for HIV infection without
 162 notification ~~informed consent~~.

163 5. If when HIV testing is performed as part of an autopsy
 164 for which consent was obtained pursuant to s. 872.04.

165 6. For the performance of an HIV test upon a defendant
 166 pursuant to the victim's request in a prosecution for any type
 167 of sexual battery where a blood sample is taken from the
 168 defendant voluntarily, pursuant to court order for any purpose,
 169 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.
 170 960.003; however, the results of an any HIV test performed shall
 171 be disclosed solely to the victim and the defendant, except as
 172 provided in ss. 775.0877, 951.27, and 960.003.

173 7. If when an HIV test is mandated by court order.

174 8. For epidemiological research pursuant to s. 381.0031,

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175 for research consistent with institutional review boards created
 176 by 45 C.F.R. part 46, or for the performance of an HIV-related
 177 test for the purpose of research, if the testing is performed in
 178 a manner by which the identity of the test subject is not known
 179 and may not be retrieved by the researcher.

180 9. ~~If~~ When human tissue is collected lawfully without the
 181 consent of the donor for corneal removal as authorized by s.
 182 765.5185 or enucleation of the eyes as authorized by s. 765.519.

183 10. For the performance of an HIV test upon an individual
 184 who comes into contact with medical personnel in such a way that
 185 a significant exposure has occurred during the course of
 186 employment, ~~or~~ within the scope of practice, or during the
 187 course of providing emergency medical assistance to the
 188 individual and where a blood sample is available that was taken
 189 from that individual voluntarily by medical personnel for other
 190 purposes. The term "medical personnel" includes a licensed or
 191 certified health care professional; an employee of a health care
 192 professional or health care facility; employees of a laboratory
 193 licensed under chapter 483; personnel of a blood bank or plasma
 194 center; a medical student or other student who is receiving
 195 training as a health care professional at a health care
 196 facility; and a paramedic or emergency medical technician
 197 certified by the department to perform life-support procedures
 198 under s. 401.23.

199 a. The occurrence of a significant exposure must be
 200 documented by medical personnel under the supervision of a
 201 licensed physician and recorded only in the personal record of
 202 the medical personnel. ~~Prior to performance of an HIV test on a~~
 203 ~~voluntarily obtained blood sample, the individual from whom the~~

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204 ~~blood was obtained shall be requested to consent to the~~
 205 ~~performance of the test and to the release of the results. If~~
 206 ~~consent cannot be obtained within the time necessary to perform~~
 207 ~~the HIV test and begin prophylactic treatment of the exposed~~
 208 ~~medical personnel, all information concerning the performance of~~
 209 ~~an HIV test and any HIV test result shall be documented only in~~
 210 ~~the medical personnel's record unless the individual gives~~
 211 ~~written consent to entering this information on the individual's~~
 212 ~~medical record.~~

213 ~~b. Reasonable attempts to locate the individual and to~~
 214 ~~obtain consent shall be made, and all attempts must be~~
 215 ~~documented. If the individual cannot be found or is incapable of~~
 216 ~~providing consent, an HIV test may be conducted on the available~~
 217 ~~blood sample. If the individual does not voluntarily consent to~~
 218 ~~the performance of an HIV test, the individual shall be informed~~
 219 ~~that an HIV test will be performed, and counseling shall be~~
 220 ~~furnished as provided in this section. However, HIV testing~~
 221 ~~shall be conducted only after appropriate medical personnel~~
 222 ~~under the supervision of a licensed physician documents, in the~~
 223 ~~medical record of the medical personnel, that there has been a~~
 224 ~~significant exposure and that, in accordance with the written~~
 225 ~~protocols based on the National Centers for Disease Control and~~
 226 ~~Prevention guidelines on HIV postexposure prophylaxis and in the~~
 227 ~~physician's medical judgment, the information is medically~~
 228 ~~necessary to determine the course of treatment for the medical~~
 229 ~~personnel.~~

230 ~~b.e. Costs of an any HIV test of a blood sample performed~~
 231 ~~with or without the consent of the individual, as provided in~~
 232 ~~this subparagraph, shall be borne by the medical personnel or~~

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233 the employer of the medical personnel. However, costs of testing
 234 or treatment not directly related to the initial HIV tests or
 235 costs of subsequent testing or treatment may not be borne by the
 236 medical personnel or the employer of the medical personnel.

237 ~~c.d.~~ In order to use ~~utilize~~ the provisions of this
 238 subparagraph, the medical personnel must ~~either~~ be tested for
 239 HIV pursuant to this section or provide the results of an HIV
 240 test taken within 6 months before ~~prior to~~ the significant
 241 exposure if such test results are negative.

242 d. If the source of the exposure is not available and will
 243 not voluntarily present to a health facility to be tested for
 244 HIV, the medical personnel or the employer of such person acting
 245 on behalf of the employee may seek a court order directing the
 246 source of the exposure to submit to HIV testing. A sworn
 247 statement by a physician licensed under chapter 458 or chapter
 248 459 that a significant exposure has occurred and that, in the
 249 physician's medical judgment, testing is medically necessary to
 250 determine the course of treatment constitutes probable cause for
 251 the issuance of an order by the court. The results of the test
 252 shall be released to the source of the exposure and to the
 253 person who experienced the exposure.

254 e. A person who receives the results of an HIV test
 255 pursuant to this subparagraph shall maintain the confidentiality
 256 of the information received and of the persons tested. Such
 257 confidential information is exempt from s. 119.07(1).

258 ~~f. If the source of the exposure will not voluntarily~~
 259 ~~submit to HIV testing and a blood sample is not available, the~~
 260 ~~medical personnel or the employer of such person acting on~~
 261 ~~behalf of the employee may seek a court order directing the~~

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262 ~~source of the exposure to submit to HIV testing. A sworn~~
 263 ~~statement by a physician licensed under chapter 458 or chapter~~
 264 ~~459 that a significant exposure has occurred and that, in the~~
 265 ~~physician's medical judgment, testing is medically necessary to~~
 266 ~~determine the course of treatment constitutes probable cause for~~
 267 ~~the issuance of an order by the court. The results of the test~~
 268 ~~shall be released to the source of the exposure and to the~~
 269 ~~person who experienced the exposure.~~

270 11. For the performance of an HIV test upon an individual
 271 who comes into contact with nonmedical ~~medical~~ personnel in such
 272 a way that a significant exposure has occurred ~~during the course~~
 273 ~~of employment or within the scope of practice of the medical~~
 274 ~~personnel~~ while the nonmedical ~~medical~~ personnel provides
 275 emergency medical assistance during a medical emergency
 276 ~~treatment to the individual; or notwithstanding s. 384.287, an~~
 277 ~~individual who comes into contact with nonmedical personnel in~~
 278 ~~such a way that a significant exposure has occurred while the~~
 279 ~~nonmedical personnel provides emergency medical assistance~~
 280 ~~during a medical emergency. For the purposes of this~~
 281 ~~subparagraph, a medical emergency means an emergency medical~~
 282 ~~condition outside of a hospital or health care facility that~~
 283 ~~provides physician care. The test may be performed only during~~
 284 ~~the course of treatment for the medical emergency.~~

285 a. The occurrence of a significant exposure shall be
 286 documented by medical personnel under the supervision of a
 287 licensed physician and recorded only in the personal record of
 288 the nonmedical personnel ~~An individual who is capable of~~
 289 ~~providing consent shall be requested to consent to an HIV test~~
 290 ~~prior to the testing. If consent cannot be obtained within the~~

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291 ~~time necessary to perform the HIV test and begin prophylactic~~
 292 ~~treatment of the exposed medical personnel and nonmedical~~
 293 ~~personnel, all information concerning the performance of an HIV~~
 294 ~~test and its result, shall be documented only in the medical~~
 295 ~~personnel's or nonmedical personnel's record unless the~~
 296 ~~individual gives written consent to entering this information on~~
 297 ~~the individual's medical record.~~

298 ~~b. HIV testing shall be conducted only after appropriate~~
 299 ~~medical personnel under the supervision of a licensed physician~~
 300 ~~documents, in the medical record of the medical personnel or~~
 301 ~~nonmedical personnel, that there has been a significant exposure~~
 302 ~~and that, in accordance with the written protocols based on the~~
 303 ~~National Centers for Disease Control and Prevention guidelines~~
 304 ~~on HIV postexposure prophylaxis and in the physician's medical~~
 305 ~~judgment, the information is medically necessary to determine~~
 306 ~~the course of treatment for the medical personnel or nonmedical~~
 307 ~~personnel.~~

308 ~~b.e. Costs of any HIV test performed with or without the~~
 309 ~~consent of the individual, as provided in this subparagraph,~~
 310 ~~shall be borne by the nonmedical ~~medical~~ personnel or the~~
 311 ~~employer of the ~~medical personnel or~~ nonmedical personnel.~~
 312 ~~However, costs of testing or treatment not directly related to~~
 313 ~~the initial HIV tests or costs of subsequent testing or~~
 314 ~~treatment may not be borne by the nonmedical ~~medical~~ personnel~~
 315 ~~or the employer of the ~~medical personnel or~~ nonmedical~~
 316 ~~personnel.~~

317 ~~c.d. For In order to utilize the provisions of this~~
 318 ~~subparagraph to be applicable, the ~~medical personnel or~~~~
 319 ~~nonmedical personnel must shall be tested for HIV under pursuant~~

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320 ~~to~~ this section or must shall provide the results of an HIV test
 321 taken within 6 months before ~~prior to~~ the significant exposure
 322 if such test results are negative.

323 d. If the source of the exposure is not available and will
 324 not voluntarily present to a health facility to be tested for
 325 HIV, the nonmedical personnel or the employer of the nonmedical
 326 personnel acting on behalf of the employee may seek a court
 327 order directing the source of the exposure to submit to HIV
 328 testing. A sworn statement by a physician licensed under chapter
 329 458 or chapter 459 that a significant exposure has occurred and
 330 that, in the physician's medical judgment, HIV testing is
 331 medically necessary to determine the course of treatment
 332 constitutes probable cause for the issuance of an order by the
 333 court. The results of the HIV test shall be released to the
 334 source of the exposure and to the person who experienced the
 335 exposure.

336 e. A person who receives the results of an HIV test
 337 pursuant to this subparagraph shall maintain the confidentiality
 338 of the information received and of the persons tested. Such
 339 confidential information is exempt from s. 119.07(1).

340 f. If the source of the exposure will not voluntarily
 341 submit to HIV testing and a blood sample was not obtained during
 342 treatment for the medical emergency, the medical personnel, the
 343 employer of the medical personnel acting on behalf of the
 344 employee, or the nonmedical personnel may seek a court order
 345 directing the source of the exposure to submit to HIV testing. A
 346 sworn statement by a physician licensed under chapter 458 or
 347 chapter 459 that a significant exposure has occurred and that,
 348 in the physician's medical judgment, testing is medically

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349 ~~necessary to determine the course of treatment constitutes~~
 350 ~~probable cause for the issuance of an order by the court. The~~
 351 ~~results of the test shall be released to the source of the~~
 352 ~~exposure and to the person who experienced the exposure.~~

353 12. For the performance of an HIV test by the medical
 354 examiner or attending physician upon an individual who expired
 355 or could not be resuscitated while receiving emergency medical
 356 assistance or care and who was the source of a significant
 357 exposure to medical or nonmedical personnel providing such
 358 assistance or care.

359 a. HIV testing may be conducted only after appropriate
 360 medical personnel under the supervision of a licensed physician
 361 documents in the medical record of the medical personnel or
 362 nonmedical personnel that there has been a significant exposure
 363 and that, in accordance with the written protocols based on the
 364 National Centers for Disease Control and Prevention guidelines
 365 on HIV postexposure prophylaxis and in the physician's medical
 366 judgment, the information is medically necessary to determine
 367 the course of treatment for the medical personnel or nonmedical
 368 personnel.

369 b. Costs of an ~~any~~ HIV test performed under this
 370 subparagraph may not be charged to the deceased or to the family
 371 of the deceased person.

372 c. For ~~the provisions of~~ this subparagraph to be
 373 applicable, the medical personnel or nonmedical personnel must
 374 be tested for HIV under this section or must provide the results
 375 of an HIV test taken within 6 months before the significant
 376 exposure if such test results are negative.

377 d. A person who receives the results of an HIV test

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378 pursuant to this subparagraph shall comply with paragraph (e).

379 13. For the performance of an HIV-related test medically
 380 indicated by licensed medical personnel for medical diagnosis of
 381 a hospitalized infant as necessary to provide appropriate care
 382 and treatment of the infant if when, after a reasonable attempt,
 383 a parent cannot be contacted to provide consent. The medical
 384 records of the infant must shall reflect the reason consent of
 385 the parent was not initially obtained. Test results shall be
 386 provided to the parent when the parent is located.

387 14. For the performance of HIV testing conducted to monitor
 388 the clinical progress of a patient previously diagnosed to be
 389 HIV positive.

390 15. For the performance of repeated HIV testing conducted
 391 to monitor possible conversion from a significant exposure.

392 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
 393 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
 394 REGISTRATION.—A ~~No~~ county health department and any ~~no~~ other
 395 person in this state offering HIV tests in a nonhealth care
 396 setting may not shall conduct or hold themselves out to the
 397 public as conducting a testing program for acquired immune
 398 deficiency syndrome or human immunodeficiency virus status
 399 without first registering with the Department of Health,
 400 reregistering each year, complying with all other applicable
 401 provisions of state law, and meeting the following requirements:

402 (d) A program in a nonhealth care setting must meet all
 403 informed consent criteria provided in subparagraph (2)(a)2 ~~The~~
 404 ~~program must meet all the informed consent criteria contained in~~
 405 ~~subsection (2).~~

406 Section 2. Subsection (2) of section 456.032, Florida

Page 14 of 15

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

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407 Statutes, is amended to read:

408 456.032 Hepatitis B or HIV carriers.—

409 (2) Any person licensed by the department and any other
410 person employed by a health care facility who contracts a blood-
411 borne infection shall have a rebuttable presumption that the
412 illness was contracted in the course and scope of his or her
413 employment, provided that the person, as soon as practicable,
414 reports to the person's supervisor or the facility's risk
415 manager any significant exposure, as that term is defined in s.
416 381.004(1)(f) ~~381.004(1)(e)~~, to blood or body fluids. The
417 employer may test the blood or body fluid to determine if it is
418 infected with the same disease contracted by the employee. The
419 employer may rebut the presumption by the preponderance of the
420 evidence. Except as expressly provided in this subsection, there
421 shall be no presumption that a blood-borne infection is a job-
422 related injury or illness.

423 Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/2015

Meeting Date

Topic _____

Bill Number 512

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-15

Meeting Date

CS/SB 512

Bill Number (if applicable)

Topic HIV Testing

Amendment Barcode (if applicable)

Name David Poole

Job Title Dir. Leg. Affairs

Address 1825 Country Club Dr

Phone 850-766-3323

Tallahassee FL 32301

Email david.poole@aidshhealth.org

Speaking: For Against Information

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

Representing AHF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

412-K
9:60

4-15-2015

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

SB 512

Meeting Date

Bill Number (if applicable)

Topic HIV TESTING

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLURSTONE PINES DR

Phone 878-7364

JALAHASSEE FL 32301

Email _____

City State Zip

Speaking: For Against Information

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

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-15
Meeting Date

512
Bill Number (if applicable)

Topic HIV Testing

Amendment Barcode (if applicable)

Name MARHTHA DeCASTRO

Job Title VP for Nursing

Address 306 E College Ave
Street

Phone 850 222 7800

TLH FL 32301
City State Zip

Email martha@fho.org

Speaking: For Against Information

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

Representing Florida Hospital Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

SB 512

Bill Number (if applicable)

Topic HIV Testing

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title _____

Address 215 South Monroe Street #505
Street

Phone 850-205-9000

Tallahassee, FL 32301
City State Zip

Email aimee.diazlyon@netlaw.com

Speaking: For Against Information

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

Representing The AIDS 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

9/15

Meeting Date

512

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave

Phone 904.233-3051

Street

Jacksonville, FL 32204

Email nulandlaw@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Health Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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



The Florida Senate

Committee Agenda Request

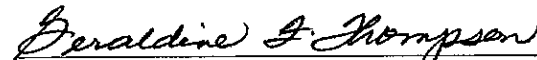
To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 8, 2015

I respectfully request that **Senate Bill # 512**, relating to HIV Testing, be placed on the:

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



Senator Geraldine F. Thompson
Florida Senate, District 12

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 Fiscal Policy

BILL: CS/SB 636

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Public Accountancy

DATE: April 14, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxemendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 636 revises provisions related to ch. 473, public accountancy. Specifically the bill:

- Revises provisions relating to the licensure of firms and public accounting firms;
- Revises practice requirements for partnerships, corporations, and limited liability companies;
- Revises the definition of the term “licensed audit firm”; and
- Revises the term “quality review” to include a peer review.

The bill has an indeterminate fiscal impact on government.

II. Present Situation:

The Florida Board of Accounting (board), within the Department of Business and Professional Regulation (department), is responsible for regulating and licensing more than 37,000 active and inactive Certified Public Accountants (CPAs) and more than 5,000 accounting firms in Florida.¹ The Division of Certified Public Accounting provides administrative support to the board, which consists of nine members: 7 CPAs and 2 laypersons. The mission of the board is to promote consumer protection by ensuring the CPAs and firms adhere to statutory requirements for licensure.² The board regulates the practice of public accountancy by qualifying applicants for

¹ Florida Department of Business and Professional Regulation, Fiscal Year 2013-2014 Annual Report, available at <http://www.myfloridalicense.com/dbpr/os/documents/FY2013-2014AnnualReportProRegCPARE.pdf> (last visited April 8, 2015).

² Sections 473.303, 473.3035, and 473.304, F.S.

the CPA exam, issuing licenses, and taking disciplinary action and is responsible for final decisions affecting the practice of public accounting.³

A certified public accountant is a person who holds a license to practice public accounting in this state under ch. 473, F.S.⁴ The practice of public accounting includes the offering to perform for the public services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.⁵ To engage in the practice of public accounting, as defined in s. 473.302(8)(a), F.S., an individual or firm must be licensed pursuant to ss. 473.308 or 473.3101, F.S.

Firm License Requirement

A firm is a legal entity that is engaged in the practice of public accounting.⁶ In Florida, a firm must hold a license if it uses the title CPA, CPA firm, or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting or does not have an office in this state but performs the services described in s. 473.3141(4), F.S., for a client having its home office in this state.⁷

A licensed audit firm or public accounting firm is a firm licensed under s. 473.3101, F.S.⁸

Each sole proprietor, partnership, corporation, or limited liability company must apply for licensure with the board. An application for a firm license must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a CPA.

The board licenses all CPA firms who practice public accountancy as defined in s. 473.302(8), F.S., without distinguishing between firms that perform services pursuant to:

- s. 473.302(8)(a), F.S., which includes audits, reviews, and compilations that involve the rendering of an opinion or attestation;
- s. 473.302(8)(b), F.S., which includes tax preparation, management advisory, or consulting services; and
- s. 473.302(8)(c), F.S., which includes one or more services involving the preparation of financial statements not included within s. 473.302(8)(a), F.S.⁹

The initial fee for a firm license fee for partnerships, corporations, and limited liability companies is \$145.00. The initial licensure fee for sole proprietor firms is \$45.00. Firms must also pay a special fee of \$5 per license to fund efforts to combat unlicensed activity.¹⁰ The same fees apply for each biennial renewal.¹¹

³ Id. See also s. 473.308(2), F.S.

⁴ Section 473.302(4), F.S.

⁵ Section 473.302(8), F.S.

⁶ Section 473.302(5), F.S.

⁷ Section 473.3101(1)(a), F.S.

⁸ Section 473.302(7), F.S.

⁹ Department of Business and Professional Regulation, *2015 Legislative Analysis for SB 636*, February 9, 2015 (on file with the Senate Fiscal Policy Committee).

¹⁰ Section 473.305, F.S., and Rule 61H1-31.010, F.A.C.

¹¹ Section 473.305, F.S., and Rule 61H1-31.009, F.A.C.

Practice Requirements

Currently all partnerships, corporations, and limited liability companies engaged in the practice of public accounting must comply with the following practice requirements:

- The entity is recognized by Florida law, or for corporations and limited liability companies, some other state;
- Persons owning at least 51 percent of the financial interest and voting rights of the entity hold an active CPA license in Florida;
- At least one partner, shareholder, or member must hold an active CPA license in Florida; or
- If the firm does not have an office in this state and is therefore required to have a license under s. 473.3101, F.S., at least one partner, shareholder, or member must have active CPA license in Florida;
- All partners, shareholders, or members that are not licensed in Florida are engaged in the business of the company as their principal occupation;
- The partnership must be in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance; and
- The entity is licensed as required by s. 473.3101, F.S.¹²

Peer and Quality Review

Firms have peer reviews to protect the quality and effectiveness of the accounting, auditing, and attestation services provided by public accounting firms.¹³ The board has adopted the American Institute of Certified Public Accountants minimum standards for administering, performing, and reporting on peer reviews.¹⁴

A quality review is a study, appraisal, or review of one or more aspects of the professional work of an accountant which is conducted by a professional organization for the purpose of evaluating quality assurance required by professional standards, including a quality assurance or peer review.¹⁵

Currently, all licensed public accounting firms must enroll in a peer review program.¹⁶ A peer review is the study, appraisal, or review by one or more independent certified public accountants of one or more aspects of the professional work of a licensee.¹⁷

¹² Section 473.309(1), F.S.

¹³ PRP Section 1000 AICPA Standards for Performance and Reporting on Peer Reviews (March 2013) p. 1005, available at <http://www.aicpa.org/Research/Standards/PeerReview/DownloadableDocuments/PeerReviewStandards.pdf> (last visited April 8, 2015).

¹⁴ Rule 61H1-39.002, F.A.C.

¹⁵ Section 473.316(1)(d), F.S.

¹⁶ Section 473.3125(4), F.S.

¹⁷ Section 473.3125(1)(b), F.S.

III. Effect of Proposed Changes:

Firm License Requirement (Section 3)

The bill revises provisions related to the licensure of firms or public accounting firms to clarify which firms require licensure under s. 473.3103, F.S. Specifically, the bill limits licensure requirements to firms:

- With an office in this state that performs the services defined in s. 473.302(8)(a), F.S.;
- That use the title “CPA,” “CPA firm,” or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm is a CPA firm; and
- Firms that do not have an office in Florida but perform the services described in s. 473.3141(4), F.S., for a client having its home office in Florida.

The bill authorizes the board to define by rule what constitutes a CPA firm.

Practice Requirements (Section 2)

The bill clarifies practice requirements for partnerships, corporations, and limited liability companies engaged in the practice of public accounting. The bill requires these entities that are engaged in the practice of public accounting to be licensed as a firm under s. 473.3101(1)(b), F.S. (section 3). Section 473.3101(1)(b), F.S., requires licensure to use the title CPA, CPA firm, or any other title or device tending to indicate that the firm practices public accounting.

The bill also corrects the cross-references to s. 473.3101(1)(c), F.S.

Definitions (Section 1)

The bill modifies the definition of a licensed firm or public accounting firm to mean a sole proprietorship, partnership, corporation, limited liability company, firm, or any other legal entity licensed under s. 473.3101, F.S.

Peer and Quality Review (Section 4)

The bill defines the term “quality review” to include a peer review as defined in s. 473.3125, F.S.

Sections 3 and 5 amend ss. 473.3101 and 473.3125, F.S., to reference the term “firm” or “public accounting firm” in place of the term “partnership, corporation, or limited liability company.” Section 6 amends s. 473.322, F.S., to replace the term “audit firm” with the term “firm.”

The bill is effective on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Accounting firms that do not perform audits, reviews, and compilations services that involve the rendering of an attestation or opinion under s. 473.302(8)(a), F.S., would not incur the costs of a firm license.

C. Government Sector Impact:

According to the department, the bill will decrease the number of accountancy firms subject to the licensing fee and those subject to fines imposed by the Board of Accountancy. Because the department does not track firms practicing public accounting as defined by s. 473.302(8)(a), F.S., versus those firms that practice public accounting as defined in s. 473.302(8)(b) and (c), F.S., the department is unable to determine the actual number of firm licenses that will no longer be issued, and the related impact on revenue if the bill becomes law. However, the department estimated the impact using historical data and applying the historical percentage split of licensees to the current number of licensees.

The department estimates a negative fiscal impact between \$36,130 and \$61,935.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 473.302, 473.309, 473.3101, 473.316, 473.3125, and 473.322.

¹⁸ Department of Business and Professional Regulation, *2015 Legislative Analysis for HB 373*, March 30, 2015 (on file with the Senate Fiscal Policy Committee).

IX. Additional Information:

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

CS by Regulated Industries on March 31, 2015:

The committee substitute:

- Amends s. 473.302(7), F.S., to define a licensed audit or public accounting firm as a sole proprietorship, partnership, corporation, limited liability company, firm, or any other legal entity licensed under s. 473.3101, F.S. It does not amend the term to mean a firm licensed under s. 473.3101, F.S., that performs the services described in s. 473.302(8)(a), F.S.
- Amends s. 473.309, F.S., to require that partnerships, corporations, and limited liability companies engaged in the practice of public accounting must be licensed as a firm under s. 47.3101(1)(b), F.S.
- Amends ss. 473.309, F.S., to correct the cross-reference to s. 473.3101(1)(c), F.S.;
- Amends s. 473.3101(2), F.S., to require that applicants for licensure as a firm must file an application with the department and supply the information that the board requires, and to require that the application must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a CPA.

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senator Latvala

580-03240-15

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1 A bill to be entitled
 2 An act relating to public accountancy; amending s.
 3 473.302, F.S.; revising the definition of the term
 4 "licensed audit firm"; amending s. 473.309, F.S.;
 5 revising practice requirements for partnerships,
 6 corporations, and limited liability companies;
 7 amending s. 473.3101, F.S.; revising provisions
 8 relating to the licensure of firms and public
 9 accounting firms; amending s. 473.316, F.S.; revising
 10 the definition of the term "quality review" to include
 11 a peer review; amending ss. 473.3125 and 473.322,
 12 F.S.; conforming provisions to changes made by the
 13 act; providing an effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Subsection (7) of section 473.302, Florida
 18 Statutes, is amended to read:
 19 473.302 Definitions.—As used in this chapter, the term:
 20 (7) "Licensed ~~audit~~ firm" or "public accounting firm" means
 21 a sole proprietorship, partnership, corporation, limited
 22 liability company, firm, or any other legal entity ~~a firm~~
 23 licensed under s. 473.3101.
 24
 25 However, these terms shall not include services provided by the
 26 American Institute of Certified Public Accountants or the
 27 Florida Institute of Certified Public Accountants, or any full
 28 service association of certified public accounting firms whose
 29 plans of administration have been approved by the board, to

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30 their members or services performed by these entities in
 31 reviewing the services provided to the public by members of
 32 these entities.
 33 Section 2. Section 473.309, Florida Statutes, is amended to
 34 read:
 35 473.309 Practice requirements for partnerships,
 36 corporations, and limited liability companies; business entities
 37 practicing public accounting.—
 38 (1) A partnership may not engage in the practice of public
 39 accounting, as defined in s. 473.302(8) (a), or meet the
 40 requirements of s. 473.3101(1) (b), unless:
 41 (a) It is a form of partnership recognized by Florida law.
 42 (b) Partners owning at least 51 percent of the financial
 43 interest and voting rights of the partnership are certified
 44 public accountants in some state. However, each partner who is a
 45 certified public accountant in another state and is domiciled in
 46 this state must be a certified public accountant of this state
 47 and hold an active license.
 48 (c) At least one general partner is a certified public
 49 accountant of this state and holds an active license or, in the
 50 case of a firm that must have a license pursuant to s.
 51 473.3101(1) (c) ~~s. 473.3101(1) (a)2-~~, at least one general partner
 52 is a certified public accountant in some state and meets the
 53 requirements of s. 473.3141(1) (a) or (b).
 54 (d) All partners who are not certified public accountants
 55 in any state are engaged in the business of the partnership as
 56 their principal occupation.
 57 (e) It is in compliance with rules adopted by the board
 58 pertaining to minimum capitalization, letters of credit, and

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59 adequate public liability insurance.

60 (f) It is currently licensed as required by s. 473.3101.

61 (2) A corporation may not engage in the practice of public
62 accounting, as defined in s. 473.302(8)(a), or meet the
63 requirements of s. 473.3101(1)(b), unless:

64 (a) It is a corporation duly organized in this or some
65 other state.

66 (b) Shareholders of the corporation owning at least 51
67 percent of the financial interest and voting rights of the
68 corporation are certified public accountants in some state and
69 are principally engaged in the business of the corporation.
70 However, each shareholder who is a certified public accountant
71 in another state and is domiciled in this state must be a
72 certified public accountant of this state and hold an active
73 license.

74 (c) The principal officer of the corporation is a certified
75 public accountant in some state.

76 (d) At least one shareholder of the corporation is a
77 certified public accountant and holds an active license in this
78 state or, in the case of a firm that must have a license
79 pursuant to s. 473.3101(1)(c) ~~s. 473.3101(1)(a)2-~~, at least one
80 shareholder is a certified public accountant in some state and
81 meets the requirements of s. 473.3141(1)(a) or (b).

82 (e) All shareholders who are not certified public
83 accountants in any state are engaged in the business of the
84 corporation as their principal occupation.

85 (f) It is in compliance with rules adopted by the board
86 pertaining to minimum capitalization, letters of credit, and
87 adequate public liability insurance.

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88 (g) It is currently licensed as required by s. 473.3101.

89 (3) A limited liability company may not engage in the
90 practice of public accounting, as defined in s. 473.302(8)(a),
91 or meet the requirements of s. 473.3101(1)(b), unless:

92 (a) It is a limited liability company duly organized in
93 this or some other state.

94 (b) Members of the limited liability company owning at
95 least 51 percent of the financial interest and voting rights of
96 the company are certified public accountants in some state.
97 However, each member who is a certified public accountant in
98 some state and is domiciled in this state must be a certified
99 public accountant of this state and hold an active license.

100 (c) At least one member of the limited liability company is
101 a certified public accountant and holds an active license in
102 this state or, in the case of a firm that must have a license
103 pursuant to s. 473.3101(1)(c) ~~s. 473.3101(1)(a)2-~~, at least one
104 member is a certified public accountant in some state and meets
105 the requirements of s. 473.3141(1)(a) or (b).

106 (d) All members who are not certified public accountants in
107 any state are engaged in the business of the company as their
108 principal occupation.

109 (e) It is in compliance with rules adopted by the board
110 pertaining to minimum capitalization, letters of credit, and
111 adequate public liability insurance.

112 (f) It is currently licensed as required by s. 473.3101.

113 (4) A partnership, corporation, limited liability company,
114 or any other firm is engaged in the practice of public
115 accounting if its employees are engaged in the practice of
116 public accounting. Notwithstanding any other provision of law, a

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117 licensed ~~audit~~ firm may own all or part of another licensed
118 ~~audit~~ firm.

119 Section 3. Section 473.3101, Florida Statutes, is amended
120 to read:

121 473.3101 Licensure of firms or public accounting firms ~~sole~~
122 ~~proprietors, partnerships, corporations, limited liability~~
123 ~~companies, and other legal entities.~~

124 (1) The following must hold a license issued under this
125 section: Each sole proprietor, partnership, corporation, limited
126 liability company, or any other firm seeking to engage in the
127 practice of public accounting, as defined in s. 473.302(8)(a),
128 in this state must file an application for licensure with the
129 department and supply the information the board requires. An
130 application must be made upon the affidavit of a sole
131 proprietor, general partner, shareholder, or member who is a
132 certified public accountant.

133 (a) Any firm with an office in this state which performs
134 services as defined in s. 473.302(8)(a); The following must hold
135 a license issued under this section.

136 (b) ~~1-~~ Any firm with an office in this state which uses the
137 title "CPA," "CPA firm," or any other title, designation, words,
138 letters, abbreviations, or device tending to indicate that it is
139 a CPA firm. The board shall define by rule what constitutes a
140 CPA firm; or the firm practices public accounting.

141 (c) ~~2-~~ Any firm that does not have an office in this state
142 but performs the services described in s. 473.3141(4) for a
143 client having its home office in this state. The board shall
144 define by rule what constitutes an office.

145 (2) An applicant for licensure under this section must file

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146 an application for licensure with the department and supply the
147 information that the board requires. An application must be made
148 upon the affidavit of a sole proprietor, general partner,
149 shareholder, or member who is a certified public accountant.

150 (3) ~~(b)~~ A firm that is not subject to the requirements of
151 paragraph (1)(c) subparagraph (a)2- may perform other
152 professional services while using the title "CPA," "CPA firm,"
153 or any other title, designation, words, letters, abbreviations,
154 or device tending to indicate that the firm practices public
155 accounting in this state without a license issued under this
156 section only if:

157 (a) ~~1-~~ It performs such services through an individual with
158 practice privileges granted under s. 473.3141; and

159 (b) ~~2-~~ It can lawfully do so in the state where the
160 individual with practice privileges has his or her principal
161 place of business.

162 (4) ~~(2)~~ The board shall determine whether the firm or public
163 accounting ~~sole proprietor, partnership, corporation, limited~~
164 liability company, or any other firm meets the requirements for
165 practice and, pending that determination, may certify to the
166 department the firm or public accounting firm ~~partnership,~~
167 ~~corporation, or limited liability company~~ for provisional
168 licensure.

169 (5) ~~(3)~~ Each license must be renewed every 2 years. Each
170 firm or public accounting ~~sole proprietor, partnership,~~
171 ~~corporation, limited liability company, or any other~~ firm
172 licensed under this section must notify the department within 1
173 month after any change in the information contained in the
174 application on which its license is based.

580-03240-15

2015636c1

175 Section 4. Paragraph (d) of subsection (1) of section
 176 473.316, Florida Statutes, is amended to read:
 177 473.316 Communications between the accountant and client
 178 privileged.—
 179 (1) For purposes of this section:
 180 (d) A "quality review" is a study, appraisal, or review of
 181 one or more aspects of the professional work of an accountant in
 182 the practice of public accountancy which is conducted by a
 183 professional organization for the purpose of evaluating quality
 184 assurance required by professional standards, including a
 185 quality assurance ~~or peer~~ review. The term includes a peer
 186 review as defined in s. 473.3125.

187 Section 5. Paragraph (a) of subsection (1) and subsection
 188 (4) of section 473.3125, Florida Statutes, are amended to read:
 189 473.3125 Peer review.—
 190 (1) As used in this section, the term:
 191 (a) "Licensee" means a licensed firm or public accounting
 192 ~~sole proprietor, partnership, corporation, limited liability~~
 193 ~~company, or any other~~ firm as defined in s. 473.302(7) and
 194 engaged in the practice of public accounting as defined in s.
 195 473.302(8) (a) that is required to be licensed under s. 473.3101.
 196 (4) Effective January 1, 2015, a licensed firm or public
 197 ~~accounting sole proprietor, partnership, corporation, limited~~
 198 ~~liability company, or other~~ firm as defined in s. 473.302(7) and
 199 licensed under s. 473.3101 and engaged in the practice of public
 200 accounting as defined in s. 473.302(8) (a), except for the
 201 performance of compilations and reviews as those terms are
 202 defined by the board, must be enrolled in a peer review program.
 203 Section 6. Paragraph (c) of subsection (1) of section

Page 7 of 9

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

580-03240-15

2015636c1

204 473.322, Florida Statutes, is amended to read:
 205 473.322 Prohibitions; penalties.—
 206 (1) A person may not knowingly:
 207 (a) Practice public accounting unless the person is a
 208 certified public accountant or a public accountant;
 209 (b) Assume or use the titles or designations "certified
 210 public accountant" or "public accountant" or the abbreviation
 211 "C.P.A." or any other title, designation, words, letters,
 212 abbreviations, sign, card, or device tending to indicate that
 213 the person holds a license to practice public accounting under
 214 this chapter or the laws of any other state, territory, or
 215 foreign jurisdiction, unless the person holds an active license
 216 under this chapter or has the practice privileges pursuant to s.
 217 473.3141;
 218 (c) Perform or offer to perform any services described in
 219 s. 473.302(8) (a) unless such person holds an active license
 220 under this chapter and is a licensed ~~audit~~ firm, provides such
 221 services through a licensed ~~audit~~ firm, or complies with ss.
 222 473.3101 and 473.3141. This paragraph does not prohibit the
 223 performance by persons other than certified public accountants
 224 of other services involving the use of accounting skills,
 225 including the preparation of tax returns and the preparation of
 226 financial statements without expression of opinion thereon;
 227 (d) Present as her or his own the license of another;
 228 (e) Give false or forged evidence to the board or a member
 229 thereof;
 230 (f) Use or attempt to use a public accounting license that
 231 has been suspended, revoked, or placed on inactive or delinquent
 232 status;

Page 8 of 9

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

580-03240-15

2015636c1

233 (g) Employ unlicensed persons to practice public
234 accounting; or

235 (h) Conceal information relative to violations of this
236 chapter.

237 Section 7. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

4-15-15

Meeting Date

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

SB 636

Bill Number (if applicable)

Topic Public Accountancy

Name Deborah Curry

Job Title President/CEO

Address 325 W. College Ave

Street

Tallahassee FL

City

State

32301

Zip

Phone 850-224-2727 ext. 240

Email curryd@ficpa.org

Speaking: For Against Information

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

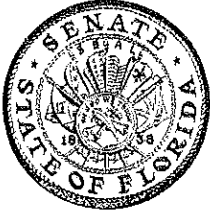
Representing Florida Institute of CPA's

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

March 31, 2015

The Honorable Anitere Flores, Chair
Senate Committee on Fiscal Policy
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores:

I respectfully request consideration of Senate Bill 636/Public Accountancy by the Senate Committee on Fiscal Policy at your earliest convenience. The bill was favorably referred by the Committee on Regulated Industries on March 31.

This bill modifies statutes regarding the public accounting industry by clarifying the terms "licensed audit firm" and "quality review".

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack".

Jack Latvala
State Senator
District 20

Cc: Jennifer Hrdlicka, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

April 14, 2015

The Honorable Anitere Flores, Chair
Senate Fiscal Policy Committee
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores:

On Wednesday, April 14, three of my bills are on the agenda in Fiscal Policy while I am in the Rules Committee. I will not be able to leave Rules because I have to present one of my bills and be present for important votes.

I would like to have my aide Tracy Caddell present SB1304/Inspectors General. Brenda Johnson, my other aide, will present SB922/Appointment of Guardian Ad Litem and SB636/Public Accountancy.

Thank you for your consideration.

Sincerely,



Jack Latvala
Senator, District 20

Cc: Jennifer Hrdlicka, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:

26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



308876

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment

Delete lines 77 - 275

and insert:

(e) ~~(e)~~ Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an ~~the~~ association or its ~~authorized~~ agent may charge a reasonable fee, which may not exceed its reasonable costs to prepare and deliver ~~for the preparation of the estoppel certificate. However, the fee for the estoppel certificate may not exceed \$250 if on the date the~~



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11 certificate is issued, no delinquent amounts are owed to the
12 association for the applicable unit. If an estoppel certificate
13 is requested on an expedited basis and delivered within 3
14 business days after the request, the association may charge
15 additional fee of \$100. If delinquent amounts are owed to the
16 association for the applicable unit, an additional fee for the
17 estoppel certificate may not exceed \$100. The association may
18 not charge a fee for an estoppel certificate that is issued more
19 than 10 business days after it receives the request for the
20 certificate. The amount of the fee must be included on the
21 certificate.

22 (f) ~~(d)~~ The authority to charge a fee for the estoppel
23 certificate ~~must shall~~ be established by a written resolution
24 adopted by the board or provided by a written management,
25 bookkeeping, or maintenance contract and is payable upon the
26 preparation of the certificate. If the certificate is requested
27 in conjunction with the sale or mortgage of a unit but the
28 closing does not occur and no later than 30 days after the
29 closing date for which the certificate was sought the preparer
30 receives a written request, accompanied by reasonable
31 documentation, that the sale did not occur from a payor that is
32 not the unit owner, the fee shall be refunded to that payor
33 within 30 days after receipt of the request. The refund is the
34 obligation of the unit owner, and the association may collect it
35 from that owner in the same manner as an assessment as provided
36 in this section.

37 Section 2. Subsection (6) of section 719.108, Florida
38 Statutes, is amended to read:

39 719.108 Rents and assessments; liability; lien and



308876

40 priority; interest; collection; cooperative ownership.-

41 (6) An association shall issue an estoppel certificate to a
42 unit owner or the unit owner's designee or a unit mortgagee or
43 the unit mortgagee's designee within 10 business ~~15~~ days after
44 receiving a written or electronic request for the certificate.
45 The estoppel certificate must be delivered by mail, by hand
46 delivery, or by electronic means to the requester on the date of
47 issuance.

48 (a) The estoppel certificate must contain all of the
49 following:

50 1. The date of issuance.

51 2. The amount of all assessments and other moneys owed to
52 the association by the unit owner for a specific unit on the
53 date of issuance. This amount is limited to the amounts
54 authorized to be recorded in the official records of the
55 association under s. 719.104(2).

56 3. The amount of any additional assessments and other
57 moneys that are scheduled to become due for each day after the
58 date of issuance for the 30-day or 35-day effective period of
59 the estoppel certificate. This amount is limited to the amounts
60 authorized to be recorded in the official records of the
61 association under s. 719.104(2). In calculating the amounts that
62 are scheduled to become due, the association may assume that any
63 delinquent amounts will remain delinquent during the effective
64 period of the estoppel certificate.

65 4. The amount of any fee charged by the association for
66 preparing and delivering the estoppel certificate. This fee is
67 in addition to any other amounts on the estoppel certificate.

68 5. The signature of an officer or agent of the association.



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69 (b) An estoppel certificate that is delivered on the date
70 of issuance has a 30-day effective period. An estoppel
71 certificate that is mailed to the requester has a 35-day
72 effective period.

73 (c) An association waives the right to collect any moneys
74 owed in excess of the amounts specified in the estoppel
75 certificate from any person who in good faith relies upon the
76 estoppel certificate and from that person's successors and
77 assigns.

78 (d) A summary proceeding pursuant to s. 51.011 may be
79 brought to compel compliance with this subsection, and in any
80 such action the prevailing party is entitled to recover
81 reasonable attorney fees. ~~by a unit owner or mortgagee, the~~
82 ~~association shall provide a certificate stating all assessments~~
83 ~~and other moneys owed to the association by the unit owner with~~
84 ~~respect to the cooperative parcel. Any person other than the~~
85 ~~unit owner who relies upon such certificate shall be protected~~
86 ~~thereby.~~

87 (e) Notwithstanding any limitation on transfer fees
88 contained in s. 719.106(1)(i), ~~an~~ the association or its
89 authorized agent may charge a ~~reasonable fee, which may not~~
90 ~~exceed its reasonable costs to prepare and deliver for the~~
91 ~~preparation of the estoppel certificate. However, the fee for~~
92 ~~the estoppel certificate may not exceed \$250 if on the date the~~
93 ~~certificate is issued, no delinquent amounts are owed to the~~
94 ~~association for the applicable unit. If an estoppel certificate~~
95 ~~is requested on an expedited basis and delivered within 3~~
96 ~~business days after the request, the association may charge an~~
97 ~~additional fee of \$100. If delinquent amounts are owed to the~~



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98 association for the applicable unit, an additional fee for the
99 estoppel certificate may not exceed \$100. The association may
100 not charge a fee for an estoppel certificate that is issued more
101 than 10 business days after it receives a request for the
102 certificate.

103 (f) The authority to charge a fee for the estoppel
104 certificate must be established by a written resolution adopted
105 by the board or provided by a written management, bookkeeping,
106 or maintenance contract.

107 Section 3. Section 720.30851, Florida Statutes, is amended
108 to read:

109 720.30851 Estoppel certificates.—An association shall issue
110 an estoppel certificate to a parcel owner or the parcel owner's
111 designee or a mortgagee or the mortgagee's designee within 10
112 business ~~15~~ days after receiving a written or electronic request
113 for the certificate. The estoppel certificate must be delivered
114 by mail, by hand delivery, or by electronic means to the
115 requester on the date of issuance.

116 (1) The estoppel certificate must contain all of the
117 following:

118 (a) The date of issuance.

119 (b) The amount of all assessments and other moneys owed to
120 the association by the parcel owner for a specific parcel as
121 recorded on the date of issuance. This amount is limited to
122 amounts authorized by statute to be recorded in the official
123 records of the association under s. 720.303(4).

124 (c) The amount of any additional assessments and other
125 moneys that are scheduled to become due for each day after the
126 date of issuance for the 30-day or 35-day effective period of



127 the estoppel certificate. This amount is limited to amounts
128 authorized by statute to be recorded in the official records of
129 the association under s. 720.303(4). In calculating the amounts
130 that are scheduled to become due, the association may assume
131 that any delinquent amounts will remain delinquent during the
132 effective period of the estoppel certificate.

133 (d) The amount of any fee charged by the association for
134 preparing and delivering the estoppel certificate. This fee is
135 in addition to any other amounts on the certificate.

136 (e) The signature of an officer or agent of the
137 association.

138 (2) An estoppel certificate that is delivered on the date
139 of issuance has a 30-day effective period. An estoppel
140 certificate that is mailed to the requester has a 35-day
141 effective period.

142 (3) An association waives the right to collect any moneys
143 owed in excess of the amounts specified in the estoppel
144 certificate from any person who in good faith relies upon the
145 estoppel certificate and from that person's successors and
146 assigns. ~~the date on which a request for an estoppel certificate~~
147 ~~is received from a parcel owner or mortgagee, or his or her~~
148 ~~designee, the association shall provide a certificate signed by~~
149 ~~an officer or authorized agent of the association stating all~~
150 ~~assessments and other moneys owed to the association by the~~
151 ~~parcel owner or mortgagee with respect to the parcel. An~~
152 ~~association may charge a fee for the preparation of such~~
153 ~~certificate, and the amount of such fee must be stated on the~~
154 ~~certificate.~~

155 ~~(1) Any person other than a parcel owner who relies upon a~~



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156 ~~certificate receives the benefits and protection thereof.~~

157 (4)~~(2)~~ A summary proceeding pursuant to s. 51.011 may be
158 brought to compel compliance with this section, and the
159 prevailing party is entitled to recover reasonable attorney
160 attorney's fees.

161 (5) An association or its agent may charge a fee, which may
162 not exceed its reasonable costs to prepare and deliver the
163 estoppel certificate. However, the fee for the estoppel
164 certificate may not exceed \$250 if on the date the certificate
165 is issued, no delinquent amounts are owed to the association for
166 the applicable parcel. If an estoppel certificate is requested
167 on an expedited basis and delivered within 3 business days after
168 the request, the association may charge an additional fee of
169 \$100. If delinquent amounts are owed to the association for the
170 applicable parcel, and additional fee for the certificate may
171 not exceed \$100. The association may not charge a fee for an
172 estoppel certificate that is issued more than 10 business days
173 after it receives the request for the certificate.



318184

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
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	.	

The Committee on Fiscal Policy (Stargel) recommended the following:

Senate Substitute for Amendment (308876)

Delete lines 92 - 270
and insert:
certificate. The maximum allowable fees charged in accordance
with this section shall be adjusted every 3 years in an amount
equal to the annual increases for that 3-year period in the
Consumer Price Index for All Urban Consumers, U.S. City Average,
all items ~~The amount of the fee must be included on the~~
certificate.



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11 2. If the estoppel certificate is requested in conjunction
12 with the sale or refinancing of a unit, the fee for the
13 certificate shall be paid to the association from the closing or
14 settlement proceeds. If the closing does not occur, the fee for
15 the certificate is the obligation of the unit owner, and the
16 association may collect the fee in the same manner as an
17 assessment against the unit. An association may not require the
18 payment of any other fees as a condition for the preparation or
19 delivery of an estoppel certificate.

20 ~~(f)(d) The authority to charge a fee for the estoppel~~
21 ~~certificate must ~~shall~~ be established by a written resolution~~
22 ~~adopted by the board or provided by a written management,~~
23 ~~bookkeeping, or maintenance contract and is payable upon the~~
24 ~~preparation of the certificate. If the certificate is requested~~
25 ~~in conjunction with the sale or mortgage of a unit but the~~
26 ~~closing does not occur and no later than 30 days after the~~
27 ~~closing date for which the certificate was sought the preparer~~
28 ~~receives a written request, accompanied by reasonable~~
29 ~~documentation, that the sale did not occur from a payor that is~~
30 ~~not the unit owner, the fee shall be refunded to that payor~~
31 ~~within 30 days after receipt of the request. The refund is the~~
32 ~~obligation of the unit owner, and the association may collect it~~
33 ~~from that owner in the same manner as an assessment as provided~~
34 ~~in this section.~~

35 Section 2. Subsection (6) of section 719.108, Florida
36 Statutes, is amended to read:

37 719.108 Rents and assessments; liability; lien and
38 priority; interest; collection; cooperative ownership.—

39 (6) An association shall issue an estoppel certificate to a



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40 unit owner or the unit owner's designee or a unit mortgagee or
41 the unit mortgagee's designee within 10 business ~~15~~ days after
42 receiving a written or electronic request for the certificate.
43 The estoppel certificate must be delivered by mail, by hand
44 delivery, or by electronic means to the requester on the date of
45 issuance.

46 (a) The estoppel certificate must contain all of the
47 following:

48 1. The date of issuance.

49 2. The amount of all assessments and other moneys owed to
50 the association by the unit owner for a specific unit on the
51 date of issuance. This amount is limited to the amounts
52 authorized to be recorded in the official records of the
53 association under s. 719.104(2).

54 3. The amount of any additional assessments and other
55 moneys that are scheduled to become due for each day after the
56 date of issuance for the 30-day or 35-day effective period of
57 the estoppel certificate. This amount is limited to the amounts
58 authorized to be recorded in the official records of the
59 association under s. 719.104(2). In calculating the amounts that
60 are scheduled to become due, the association may assume that any
61 delinquent amounts will remain delinquent during the effective
62 period of the estoppel certificate.

63 4. The amount of any fee charged by the association for
64 preparing and delivering the estoppel certificate. This fee is
65 in addition to any other amounts on the estoppel certificate.

66 5. The signature of an officer or agent of the association.

67 (b) An estoppel certificate that is delivered on the date
68 of issuance has a 30-day effective period. An estoppel



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69 certificate that is mailed to the requester has a 35-day
70 effective period.

71 (c) An association waives the right to collect any moneys
72 owed in excess of the amounts specified in the estoppel
73 certificate from any person who in good faith relies upon the
74 estoppel certificate and from that person's successors and
75 assigns.

76 (d) A summary proceeding pursuant to s. 51.011 may be
77 brought to compel compliance with this subsection, and in any
78 such action the prevailing party is entitled to recover
79 reasonable attorney fees. ~~by a unit owner or mortgagee, the~~
80 ~~association shall provide a certificate stating all assessments~~
81 ~~and other moneys owed to the association by the unit owner with~~
82 ~~respect to the cooperative parcel. Any person other than the~~
83 ~~unit owner who relies upon such certificate shall be protected~~
84 ~~thereby.~~

85 (e)1. Notwithstanding any limitation on transfer fees
86 contained in s. 719.106(1)(i), ~~an the~~ association or its
87 authorized agent may charge a ~~reasonable~~ fee, which may not
88 exceed its reasonable costs to prepare and deliver ~~for the~~
89 ~~preparation of the estoppel~~ certificate. However, the fee for
90 the estoppel certificate may not exceed \$250 if on the date the
91 certificate is issued, no delinquent amounts are owed to the
92 association for the applicable unit. If an estoppel certificate
93 is requested on an expedited basis and delivered within 3
94 business days after the request, the association may charge an
95 additional fee of \$100. If delinquent amounts are owed to the
96 association for the applicable unit, an additional fee for the
97 estoppel certificate may not exceed \$100. The association may



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98 not charge a fee for an estoppel certificate that is issued more
99 than 10 business days after it receives a request for the
100 certificate. The maximum allowable fees charged in accordance
101 with this section shall be adjusted every 3 years in an amount
102 equal to the annual increases for that 3-year period in the
103 Consumer Price Index for All Urban Consumers, U.S. City Average,
104 all items.

105 2. If the estoppel certificate is requested in conjunction
106 with the sale or refinancing of a unit, the fee for the
107 certificate shall be paid to the association from the closing or
108 settlement proceeds. If the closing does not occur, the fee for
109 the certificate is the obligation of the unit owner, and the
110 association may collect the fee in the same manner as an
111 assessment against the unit. An association may not require the
112 payment of any other fees as a condition for the preparation or
113 delivery of an estoppel certificate.

114 (f) The authority to charge a fee for the estoppel
115 certificate must be established by a written resolution adopted
116 by the board or provided by a written management, bookkeeping,
117 or maintenance contract.

118 Section 3. Section 720.30851, Florida Statutes, is amended
119 to read:

120 720.30851 Estoppel certificates.—An association shall issue
121 an estoppel certificate to a parcel owner or the parcel owner's
122 designee or a mortgagee or the mortgagee's designee within 10
123 business ~~15~~ days after receiving a written or electronic request
124 for the certificate. The estoppel certificate must be delivered
125 by mail, by hand delivery, or by electronic means to the
126 requester on the date of issuance.



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127 (1) The estoppel certificate must contain all of the
128 following:

129 (a) The date of issuance.

130 (b) The amount of all assessments and other moneys owed to
131 the association by the parcel owner for a specific parcel as
132 recorded on the date of issuance. This amount is limited to
133 amounts authorized by statute to be recorded in the official
134 records of the association under s. 720.303(4).

135 (c) The amount of any additional assessments and other
136 moneys that are scheduled to become due for each day after the
137 date of issuance for the 30-day or 35-day effective period of
138 the estoppel certificate. This amount is limited to amounts
139 authorized by statute to be recorded in the official records of
140 the association under s. 720.303(4). In calculating the amounts
141 that are scheduled to become due, the association may assume
142 that any delinquent amounts will remain delinquent during the
143 effective period of the estoppel certificate.

144 (d) The amount of any fee charged by the association for
145 preparing and delivering the estoppel certificate. This fee is
146 in addition to any other amounts on the certificate.

147 (e) The signature of an officer or agent of the
148 association.

149 (2) An estoppel certificate that is delivered on the date
150 of issuance has a 30-day effective period. An estoppel
151 certificate that is mailed to the requester has a 35-day
152 effective period.

153 (3) An association waives the right to collect any moneys
154 owed in excess of the amounts specified in the estoppel
155 certificate from any person who in good faith relies upon the



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156 estoppel certificate and from that person's successors and
157 assigns. the date on which a request for an estoppel certificate
158 is received from a parcel owner or mortgagee, or his or her
159 designee, the association shall provide a certificate signed by
160 an officer or authorized agent of the association stating all
161 assessments and other moneys owed to the association by the
162 parcel owner or mortgagee with respect to the parcel. An
163 association may charge a fee for the preparation of such
164 certificate, and the amount of such fee must be stated on the
165 certificate.

166 ~~(1) Any person other than a parcel owner who relies upon a~~
167 ~~certificate receives the benefits and protection thereof.~~

168 (4)~~(2)~~ A summary proceeding pursuant to s. 51.011 may be
169 brought to compel compliance with this section, and the
170 prevailing party is entitled to recover reasonable attorney
171 attorney's fees.

172 (5) (a) An association or its agent may charge a fee, which
173 may not exceed its reasonable costs to prepare and deliver the
174 estoppel certificate. However, the fee for the estoppel
175 certificate may not exceed \$250 if on the date the certificate
176 is issued, no delinquent amounts are owed to the association for
177 the applicable parcel. If an estoppel certificate is requested
178 on an expedited basis and delivered within 3 business days after
179 the request, the association may charge an additional fee of
180 \$100. If delinquent amounts are owed to the association for the
181 applicable parcel, and additional fee for the certificate may
182 not exceed \$100. The association may not charge a fee for an
183 estoppel certificate that is issued more than 10 business days
184 after it receives the request for the certificate. The maximum



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185 allowable fees charged in accordance with this section shall be
186 adjusted every 3 years in an amount equal to the annual
187 increases for that 3-year period in the Consumer Price Index for
188 All Urban Consumers, U.S. City Average, all items.

189 (b) If the estoppel certificate is requested in conjunction
190 with the sale or refinancing of a parcel, the fee for the
191 certificate shall be paid to the association from the closing or
192 settlement proceeds. If the closing does not occur, the fee for

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 Fiscal Policy

BILL: CS/CS/CS/SB 736

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; Regulated Industries Committee; and Senators Stargel and Detert

SUBJECT: Residential Properties

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 736 revises requirements for estoppel certificates for condominium, cooperative, and homeowners' associations. When an ownership interest in a condominium unit, cooperative unit, or home is transferred, the new owner is jointly and severally liable with the previous owner for unpaid assessments owed to a condominium or homeowners' association. Unpaid assessments may also become a lien on the property. To protect against undisclosed financial obligations and to transfer title that is free of any lien or encumbrance, buyers may request that the seller provide an estoppel certificate from the condominium, cooperative, or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.

The bill:

- Reduces the period of time in which an association must respond to a request for an estoppel certificate from 15 days to 10 business days;
- Requires that estoppel certificates be delivered by mail, hand, or electronic means, be dated as of the date it is issued, and be valid for 30 days or 35 days if mailed;
- Requires that estoppel certificates contain the date of issuance, and the amount of all assessments and other moneys owed to the association by the unit owner, as reflected in the official records of the association, through at least 30 days after the date the estoppel certificate is issued or 35 days if mailed;

- Requires that estoppel certificates contain the amount of any fee charged for preparing and delivering the certificate as well as the signature of an officer or agent of the association;
- Provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person and his or her successors and assigns who in good faith rely upon the certificate;
- Establishes fee caps for the preparation of estoppel certificates which range from \$250 to \$450; and
- Provides that the fee for an estoppel certificate is the obligation of the unit owner.

The bill requires the fee a cooperative association is allowed to charge for estoppel certificate be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. This provision is comparable to authority provided to condominium and homeowners' associations.

II. Present Situation:

Condominium

A condominium is a form of ownership of real property comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration governs the relationships of the condominium units' owners and the condominium association.³ Condominium associations are administered by a board of administration and can assess costs for common expenses.⁴

Cooperative Associations

A cooperative is a form of ownership of real property wherein legal title is vested in a corporation or other entity.⁵ A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁶

Homeowners' Associations

A homeowners' association is a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof. The membership is a mandatory condition of

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Woodside Village Condominium Assoc. Inc. v. Jahren*, 806 So. 2d 452, 456 (Fla. 2002).

⁴ Section 718.103(1) and (4), F.S.

⁵ Section 719.103(12), F.S.

⁶ See ss. 719.106(1)(g) and 719.107, F.S.

parcel ownership.⁷ Homeowners' associations are administered by a board of directors who are elected and are authorized to impose assessments.⁸

Assessments

An assessment is a share of the funds which are required for the payment of common expenses, and can be assessed against the unit owner.⁹ A special assessment is any assessment levied against a unit owner other than the assessment adopted the annual budget.¹⁰

Assessments that go unpaid may become a lien on the parcel.¹¹ An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.¹² This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.¹³

Estoppel Certificates

To protect against undisclosed financial obligations and to transfer title that is free of any lien or encumbrance, buyers may request that the seller provide an estoppel certificate from the condominium, cooperative, or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.¹⁴

Within 15 days after receiving a written request for an estoppel certificate the association is required to provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel.¹⁵

A homeowners' or condominium association may charge a fee for the preparation of the certificate.¹⁶ The authority to charge a fee must be established by a written resolution that is adopted by the board or by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate.¹⁷ A cooperative association may charge a fee for the preparation of the certificate and does not require the fee to be adopted or part of a contract.¹⁸

⁷ Section 720.301(9), F.S.

⁸ Section 720.303(2)(c)2., F.S.

⁹ Sections 718.103(1), 719.103(1), and 720.301(1), F.S.

¹⁰ Sections 718.103(24) and 719.103(23), F.S.

¹¹ Sections 718.116(5), 719.108(4), and 720.3085(1), F.S.

¹² Sections 718.116(1)(a), 719.108(1), and 720.3085(2)(b), F.S.

¹³ *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 10th ed. 2014.

¹⁴ Sections 718.116(8), 719.108(6), and 720.30851, F.S.

¹⁵ *Id.*

¹⁶ Sections 718.116(8)(c) and 720.30851, F.S.

¹⁷ Sections 718.116(8)(d) and 720.30851(3), F.S.

¹⁸ Section 719.108(6), F.S.

Current law also provides no limitation on the amount of the fee that may be charged by an association other than that such amount must be “reasonable.”¹⁹ Neither the Legislature nor the courts have provided guidance on what constitutes a reasonable fee for an estoppel certificate. This has caused variations in the amount of the fee charged by associations for the preparation of an estoppel certificate.

In a condominium or homeowners’ association, if the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur, the preparer of the certificate must refund the fee to a payor that is not a unit-owner within 30 days after receipt of the request for refund. A written request for a refund must be made no later than 30 days after the closing date for which the certificate was sought and include reasonable documentation that the sale did not occur. The refund is the obligation of the owner, and the association may collect it from that owner in the same manner as an assessment.²⁰

After a series of public meetings in 2014, the Community Association Living Study Council,²¹ by unanimous vote, made the following recommendations to the Legislature:

- That a reasonable cap be established for estoppel certificate fees and that such fees be tiered;
- The amount of the fee should depend on whether or not the owner is current in fees, delinquent in fees, or if it is a bulk purchase.²²

III. Effect of Proposed Changes:

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to revise the requirements for estoppel certificates issued by condominium, cooperative, and homeowners’ associations, respectively.

Form and Delivery of Estoppel Certificates

The bill:

- Reduces the period of time in which an association must respond to a request for an estoppel certificate from 15 days to 10 *business* days;
- Requires that estoppel certificates be delivered by mail, hand, or electronic means to the requestor on the date of issuance and be valid for 30 days or 35 days if mailed;
- Requires that estoppel certificates contain the date of issuance, an amount of all assessments and other moneys owed to the association by the unit owner, as reflected in the official

¹⁹ Sections 718.116(8)(c) and 719.108(6), F.S. There is no corresponding requirement in ch. 720, F.S., that the fee charged by a homeowners’ association be reasonable.

²⁰ Sections 718.116(8)(d) and 720.30851(3), F.S. There is no corresponding requirement in ch. 719, F.S., that the fee is refunded.

²¹ The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of 7 members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. An ex officio nonvoting member was appointed by the Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes. The Council was abolished by the Legislature in 2014. Chapter 2014-133 L.O.F.

²² Final Report Community Association Living Study Council, *Final Report*, March 31, 2014, p. 6, available at <http://www.myfloridalicense.com/dbpr/lsc/documents/2014CALSCReport.pdf> (last visited on April 12, 2015).

records of the association, through at least 30 days after the date the estoppel certificate is issued or 35 days if mailed;

- Requires that estoppel certificates contain the amount of any fee charged for preparing and delivering the certificate as well as the signature of an officer or agent of the association;
- Provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person and his or her successors and assigns who in good faith rely upon the certificate; and
- Provides that payment of the fee for an estoppel certificate is the obligation of the unit owner.

Fee Caps

An association is authorized to charge a fee for preparing an estoppel certificate, but the fee may not exceed its reasonable costs to prepare and deliver the certificate. The fee may not exceed \$250 if no delinquent amounts are owed to the association for the applicable unit on the date the certificate is issued. If delinquent amounts are owed, an additional fee for the certificate may not exceed \$100.

When an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional \$100 fee.

If an estoppel certificate is issued more than 10 business days after an association receives the request for the certificate, the association may not charge a fee for the certificate. The association may not require the payment of any other fees as a condition for preparing or delivering the estoppel certificate.

The bill requires that the maximum allowable fees charged must be adjusted every 3 years an amount equal to the annual increases for that 3-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items.

Allocation of Fees

The bill provides that when an estoppel certificate is requested in conjunction with the sale or refinancing of a unit or parcel, the certificate fee will be paid to the association from the closing or settlement proceeds. However, if the closing does not occur the fee for the certificate is the obligation of the unit owner. The bill repeals the existing 30-day closing period requirement. The association is then authorized to collect the fee in the same manner that it would collect an assessment against the unit.

The bill repeals the requirement that condominium or homeowners' associations refund the fee to a payor who is not a unit-owner if closing did not occur.

The bill creates s. 719.108(6)(f), F.S., to require the fee a cooperative association is allowed to charge for estoppel certificate be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. This provision is comparable to current authority provided to condominium and homeowners' associations in ss. 718.116(8)(d) and 720.30851(3), F.S., respectively. The bill adds the ability to pursue summary proceeding under s. 51.011, F.S., and attorney fees.

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires the fee a cooperative association is allowed to charge for estoppel certificate be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. The bill also provides more certainty of the fees that can be charged and repeals the requirement for condominium or homeowners' associations refund the fee to a payor if closing does not occur.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.116, 719.108 and 720.30851.

IX. Additional Information:

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

CS/CS/CS by Fiscal Policy on April 15, 2015:

The committee substitute (CS):

- Requires that the maximum allowable fees charged must be adjusted every 3 years an amount equal to the annual increases for that 3-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items.
- Repeals the 30-day closing period that required a unit owner to pay the estoppel certificate fee. The CS requires the unit owner to pay the fee if closing does not occur.

CS/CS by Judiciary on April 7, 2015:

The committee substitute differs from the previous committee substitute by:

- Permitting an electronic request, in addition to a written request, for an estoppel certificate;
- Reducing the time in which an association must respond to a request for an estoppel certificate from 15 days to 10 business days;
- Requiring that the estoppel certificate be dated as of the date it is issued, not delivered;
- Requiring an estoppel certificate to be effective for an additional 5 days if it is mailed;
- Specifying the criteria that must be contained in an estoppel certificate;
- Deleting a provision that would have required an association to waive a claim for a lien or amounts owed to the association by someone who would have relied on the certificate if, upon receiving a written request for an estoppel certificate, the association failed to deliver the certificate; and
- Specifying fee caps that may be charged by an association.

CS by Regulated Industries on March 24, 2015:

The committee substitute (CS):

- Amends s. 719.108(6), F.S., to provide for the issuance of estoppel certificates by cooperative associations in the same manner as provided in the bill for condominium and homeowners' associations;
- Amends ss. 718.116(8) and 720.30851, F.S., to provide that the moneys owed are as reflected in the records maintained pursuant to ss. 718.111(12) and 720.303 (4), F.S., respectively;
- Amends s. 718.116(8)(a) and (b), F.S., and s. 720.30851(1), F.S., to provide that any waiver of claim extends to the successor and assigns of any person who in good faith relied on an estoppel certificate;
- Does not amend ss. 718.116(8)(b) and 720.30851(2), F.S., to provide that the waiver includes any claim for its lien against the unit or parcel, and any moneys owed to the association by the unit owner or parcel owner with respect to the unit or parcel for 40 days after the date of receipt of the request;

- Amends ss. 718.116(8)(c) and 720.30851(3), F.S., to decrease the time from 120 days to 60 days after the delivery of the estoppel certificate for the sale to occur in order for the unit or parcel owner not to be obligated to pay the fee for the estoppel certificate if the sale does not occur;
- Does not amend ss. 718.116(8)(c) and 720.30851(3), F.S., to provide a maximum fee of \$100 for the preparation and delivery of an estoppel certificate, and maximum fees of up to \$50 for specified events;
- Does not create ss. 718.116(8)(d) and 720.30851(4), F.S., to provide maximum fee amounts for simultaneous requests for the estoppel certificate for multiple units owned by the unit or parcel owner when there are no past due monetary obligations; and
- Creates s. 718.108(6)(d), F.S., to authorize the cooperative association to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.

B. Amendments:

None.

By the Committees on Judiciary; and Regulated Industries; and
Senators Stargel and Detert

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1 A bill to be entitled
2 An act relating to residential properties; amending
3 ss. 718.116, 719.108, and 720.30851, F.S.; revising
4 requirements relating to the issuance of an estoppel
5 certificate to specified persons; requiring that an
6 estoppel certificate contain certain information;
7 providing an effective period for a certificate based
8 upon the date of issuance and form of delivery;
9 providing that the association waives a specified
10 claim against a person or such person's successors or
11 assigns who rely on the certificate in good faith;
12 authorizing a summary proceeding to be brought to
13 compel an association to prepare or deliver an
14 estoppel certificate; specifying the maximum amounts
15 an association may charge for an estoppel certificate;
16 providing that the authority to charge a fee for the
17 estoppel certificate must be established by a
18 specified written resolution or provided by a written
19 management, bookkeeping, or maintenance contract;
20 deleting obsolete provisions; conforming provisions to
21 changes made by the act; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (8) of section 718.116, Florida
26 Statutes, is amended to read:

27 718.116 Assessments; liability; lien and priority;
28 interest; collection.—

29 (8) An association shall issue an estoppel certificate to a

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30 unit owner or the unit owner's designee or a unit mortgagee or
31 the unit mortgagee's designee within 10 business ~~15~~ days after
32 receiving a written or electronic request for the certificate.
33 The estoppel certificate must be delivered by mail, by hand
34 delivery, or by electronic means to the requester on the date of
35 issuance.

36 (a) The estoppel certificate must contain all of the
37 following:

38 1. The date of issuance.

39 2. The amount of all assessments and other moneys owed to
40 the association by the unit owner for a specific unit on the
41 date of issuance. This amount is limited to amounts authorized
42 by statute to be recorded in the official records of the
43 association under s. 718.111(12).

44 3. The amount of any additional assessments and other
45 moneys that are scheduled to become due for each day after the
46 date of issuance for the 30-day or 35-day effective period of
47 the estoppel certificate. This amount is limited to amounts
48 authorized by statute to be recorded in the official records of
49 the association under s. 718.111(12). In calculating the amounts
50 that are scheduled to become due, the association may assume
51 that any delinquent amounts will remain delinquent during the
52 effective period of the estoppel certificate.

53 4. The amount of any fee charged by the association for
54 preparing and delivering the estoppel certificate. This fee is
55 in addition to any other amounts on the estoppel certificate.

56 5. The signature of an officer or agent of the association.

57 (b) An estoppel certificate that is delivered on the date
58 of issuance has a 30-day effective period. An estoppel

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59 certificate that is mailed to the requester has a 35-day
 60 effective period.

61 (c) An association waives the right to collect any moneys
 62 owed in excess of the amounts specified in the estoppel
 63 certificate from any person who in good faith relies upon the
 64 estoppel certificate and from the person's successors and
 65 assigns, therefor from a unit owner or his or her designee, or a
 66 unit mortgagee or his or her designee, the association shall
 67 provide a certificate signed by an officer or agent of the
 68 association stating all assessments and other moneys owed to the
 69 association by the unit owner with respect to the condominium
 70 parcel.

71 (a) Any person other than the owner who relies upon such
 72 certificate shall be protected thereby.

73 (d) (b) A summary proceeding pursuant to s. 51.011 may be
 74 brought to compel compliance with this subsection, and in any
 75 such action the prevailing party is entitled to recover
 76 reasonable attorney attorney's fees.

77 (e) 1. (e) Notwithstanding any limitation on transfer fees
 78 contained in s. 718.112(2) (i), an the association or its
 79 authorized agent may charge a reasonable fee, which may not
 80 exceed its reasonable costs to prepare and deliver for the
 81 preparation of the estoppel certificate. However, the fee for
 82 the estoppel certificate may not exceed \$250 if on the date the
 83 certificate is issued, no delinquent amounts are owed to the
 84 association for the applicable unit. If an estoppel certificate
 85 is requested on an expedited basis and delivered within 3
 86 business days after the request, the association may charge
 87 additional fee of \$100. If delinquent amounts are owed to the

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88 association for the applicable unit, an additional fee for the
 89 estoppel certificate may not exceed \$100. The association may
 90 not charge a fee for an estoppel certificate that is issued more
 91 than 10 business days after it receives the request for the
 92 certificate. The amount of the fee must be included on the
 93 certificate.

94 2. If the estoppel certificate is requested in conjunction
 95 with the sale or refinancing of a unit, the fee for the
 96 certificate shall be paid to the association from the closing or
 97 settlement proceeds. If the closing does not occur within 60
 98 days after the issuance of the estoppel certificate, the fee for
 99 the certificate is the obligation of the unit owner, and the
 100 association may collect the fee in the same manner as an
 101 assessment against the unit. An association may not require the
 102 payment of any other fees as a condition for the preparation or
 103 delivery of an estoppel certificate.

104 (f) (d) The authority to charge a fee for the estoppel
 105 certificate must shall be established by a written resolution
 106 adopted by the board or provided by a written management,
 107 bookkeeping, or maintenance contract and is payable upon the
 108 preparation of the certificate. If the certificate is requested
 109 in conjunction with the sale or mortgage of a unit but the
 110 closing does not occur and no later than 30 days after the
 111 closing date for which the certificate was sought the preparer
 112 receives a written request, accompanied by reasonable
 113 documentation, that the sale did not occur from a payor that is
 114 not the unit owner, the fee shall be refunded to that payor
 115 within 30 days after receipt of the request. The refund is the
 116 obligation of the unit owner, and the association may collect it

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117 ~~from that owner in the same manner as an assessment as provided~~
 118 ~~in this section.~~

119 Section 2. Subsection (6) of section 719.108, Florida
 120 Statutes, is amended to read:

121 719.108 Rents and assessments; liability; lien and
 122 priority; interest; collection; cooperative ownership.—

123 (6) An association shall issue an estoppel certificate to a
 124 unit owner or the unit owner's designee or a unit mortgagee or
 125 the unit mortgagee's designee within 10 business 15 days after
 126 receiving a written or electronic request for the certificate.
 127 The estoppel certificate must be delivered by mail, by hand
 128 delivery, or by electronic means to the requester on the date of
 129 issuance.

130 (a) The estoppel certificate must contain all of the
 131 following:

132 1. The date of issuance.

133 2. The amount of all assessments and other moneys owed to
 134 the association by the unit owner for a specific unit on the
 135 date of issuance. This amount is limited to the amounts
 136 authorized to be recorded in the official records of the
 137 association under s. 719.104(2).

138 3. The amount of any additional assessments and other
 139 moneys that are scheduled to become due for each day after the
 140 date of issuance for the 30-day or 35-day effective period of
 141 the estoppel certificate. This amount is limited to the amounts
 142 authorized to be recorded in the official records of the
 143 association under s. 719.104(2). In calculating the amounts that
 144 are scheduled to become due, the association may assume that any
 145 delinquent amounts will remain delinquent during the effective

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146 period of the estoppel certificate.

147 4. The amount of any fee charged by the association for
 148 preparing and delivering the estoppel certificate. This fee is
 149 in addition to any other amounts on the estoppel certificate.

150 5. The signature of an officer or agent of the association.

151 (b) An estoppel certificate that is delivered on the date
 152 of issuance has a 30-day effective period. An estoppel
 153 certificate that is mailed to the requester has a 35-day
 154 effective period.

155 (c) An association waives the right to collect any moneys
 156 owed in excess of the amounts specified in the estoppel
 157 certificate from any person who in good faith relies upon the
 158 estoppel certificate and from that person's successors and
 159 assigns.

160 (d) A summary proceeding pursuant to s. 51.011 may be
 161 brought to compel compliance with this subsection, and in any
 162 such action the prevailing party is entitled to recover
 163 reasonable attorney fees. ~~by a unit owner or mortgagee, the~~
 164 association shall provide a certificate stating all assessments
 165 and other moneys owed to the association by the unit owner with
 166 respect to the cooperative parcel. Any person other than the
 167 unit owner who relies upon such certificate shall be protected
 168 thereby.

169 (e)1. Notwithstanding any limitation on transfer fees
 170 contained in s. 719.106(1)(i), ~~an~~ the association or its
 171 authorized agent may charge a ~~reasonable~~ fee, which may not
 172 exceed its reasonable costs to prepare and deliver ~~for the~~
 173 preparation of the estoppel certificate. However, the fee for
 174 the estoppel certificate may not exceed \$250 if on the date the

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175 certificate is issued, no delinquent amounts are owed to the
 176 association for the applicable unit. If an estoppel certificate
 177 is requested on an expedited basis and delivered within 3
 178 business days after the request, the association may charge an
 179 additional fee of \$100. If delinquent amounts are owed to the
 180 association for the applicable unit, an additional fee for the
 181 estoppel certificate may not exceed \$100. The association may
 182 not charge a fee for an estoppel certificate that is issued more
 183 than 10 business days after it receives a request for the
 184 certificate.

185 2. If the estoppel certificate is requested in conjunction
 186 with the sale or refinancing of a unit, the fee for the
 187 certificate shall be paid to the association from the closing or
 188 settlement proceeds. If the closing does not occur within 60
 189 days after the issuance of the estoppel certificate, the fee for
 190 the certificate is the obligation of the unit owner, and the
 191 association may collect the fee in the same manner as an
 192 assessment against the unit. An association may not require the
 193 payment of any other fees as a condition for the preparation or
 194 delivery of an estoppel certificate.

195 (f) The authority to charge a fee for the estoppel
 196 certificate must be established by a written resolution adopted
 197 by the board or provided by a written management, bookkeeping,
 198 or maintenance contract.

199 Section 3. Section 720.30851, Florida Statutes, is amended
 200 to read:

201 720.30851 Estoppel certificates.—An association shall issue
 202 an estoppel certificate to a parcel owner or the parcel owner's
 203 designee or a mortgagee or the mortgagee's designee within 10

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204 business ~~15~~ days after receiving a written or electronic request
 205 for the certificate. The estoppel certificate must be delivered
 206 by mail, by hand delivery, or by electronic means to the
 207 requester on the date of issuance.

208 (1) The estoppel certificate must contain all of the
 209 following:

210 (a) The date of issuance.

211 (b) The amount of all assessments and other moneys owed to
 212 the association by the parcel owner for a specific parcel as
 213 recorded on the date of issuance. This amount is limited to
 214 amounts authorized by statute to be recorded in the official
 215 records of the association under s. 720.303(4).

216 (c) The amount of any additional assessments and other
 217 moneys that are scheduled to become due for each day after the
 218 date of issuance for the 30-day or 35-day effective period of
 219 the estoppel certificate. This amount is limited to amounts
 220 authorized by statute to be recorded in the official records of
 221 the association under s. 720.303(4). In calculating the amounts
 222 that are scheduled to become due, the association may assume
 223 that any delinquent amounts will remain delinquent during the
 224 effective period of the estoppel certificate.

225 (d) The amount of any fee charged by the association for
 226 preparing and delivering the estoppel certificate. This fee is
 227 in addition to any other amounts on the certificate.

228 (e) The signature of an officer or agent of the
 229 association.

230 (2) An estoppel certificate that is delivered on the date
 231 of issuance has a 30-day effective period. An estoppel
 232 certificate that is mailed to the requester has a 35-day

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233 effective period.

234 (3) An association waives the right to collect any moneys
 235 owed in excess of the amounts specified in the estoppel
 236 certificate from any person who in good faith relies upon the
 237 estoppel certificate and from that person's successors and
 238 assigns. the date on which a request for an estoppel certificate
 239 is received from a parcel owner or mortgagee, or his or her
 240 designee, the association shall provide a certificate signed by
 241 an officer or authorized agent of the association stating all
 242 assessments and other moneys owed to the association by the
 243 parcel owner or mortgagee with respect to the parcel. An
 244 association may charge a fee for the preparation of such
 245 certificate, and the amount of such fee must be stated on the
 246 certificate.

247 ~~(1) Any person other than a parcel owner who relies upon a~~
 248 ~~certificate receives the benefits and protection thereof.~~

249 (4)(2) A summary proceeding pursuant to s. 51.011 may be
 250 brought to compel compliance with this section, and the
 251 prevailing party is entitled to recover reasonable attorney
 252 attorney's fees.

253 (5) (a) An association or its agent may charge a fee, which
 254 may not exceed its reasonable costs to prepare and deliver the
 255 estoppel certificate. However, the fee for the estoppel
 256 certificate may not exceed \$250 if on the date the certificate
 257 is issued, no delinquent amounts are owed to the association for
 258 the applicable parcel. If an estoppel certificate is requested
 259 on an expedited basis and delivered within 3 business days after
 260 the request, the association may charge an additional fee of
 261 \$100. If delinquent amounts are owed to the association for the

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262 applicable parcel, and additional fee for the certificate may
 263 not exceed \$100. The association may not charge a fee for an
 264 estoppel certificate that is issued more than 10 business days
 265 after it receives the request for the certificate.

266 (b) If the estoppel certificate is requested in conjunction
 267 with the sale or refinancing of a parcel, the fee for the
 268 certificate shall be paid to the association from the closing or
 269 settlement proceeds. If the closing does not occur within 60
 270 days after the issuance of the estoppel certificate, the fee for
 271 the certificate is the obligation of the parcel owner, and the
 272 association may collect the fee in the same manner as an
 273 assessment against the parcel. An association may not require
 274 the payment of any other fees as a condition for the preparation
 275 or delivery of an estoppel certificate.

276 (6)(3) The authority to charge a fee for the estoppel
 277 certificate ~~must~~ shall be established by a written resolution
 278 adopted by the board or provided by a written management,
 279 bookkeeping, or maintenance contract and is payable upon the
 280 preparation of the certificate. If the certificate is requested
 281 in conjunction with the sale or mortgage of a parcel but the
 282 closing does not occur and no later than 30 days after the
 283 closing date for which the certificate was sought the preparer
 284 receives a written request, accompanied by reasonable
 285 documentation, that the sale did not occur from a payor that is
 286 not the parcel owner, the fee shall be refunded to that payor
 287 within 30 days after receipt of the request. The refund is the
 288 obligation of the parcel owner, and the association may collect
 289 it from that owner in the same manner as an assessment as
 290 provided in this section.

590-03668-15

2015736c2

291

Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 15 2015
Meeting Date

CS/CS/SB 736
Bill Number (if applicable)

308876
Amendment Barcode (if applicable)

Topic Estoppel Letters

Name Mr Maynard

Job Title Atty PANZA, MYRER & MAYNARD

Address 213 S MONROE St
Street

Phone 6810980

TALL
City State FL

Email

Speaking: For Against Information

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

Representing NORTH AMERICAN TITLE INS.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

Meeting Date _____

Topic Estoppel Legislation

Name Sean Stafford

Job Title _____

Address 115 E Park Street

City _____ State _____ Zip _____

Phone 727-5000

Email _____

736
Bill Number (if applicable)

305876
Amendment Barcode (if applicable)

Stargel Amendment

and
BY ←

Speaking: For Against Information

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

Representing Assova, Community Archives

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/15
Meeting Date

SB736
Bill Number (if applicable)

308876
Amendment Barcode (if applicable)

Topic Estoppel Certificates

Name John Krueger

Job Title VP

Address 5401 N. Central Expwy Suite 260

Street

Dallas

City

TX

State

75205

Zip

Phone 770-570-7871

Email john.krueger@associaonline.com

Speaking: For Against Information

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

Representing Associa

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/15

Meeting Date

736

~~309876~~

Bill Number (if applicable)

309876

Amendment Barcode (if applicable)

Topic Estoppels

Name Anthony Kalliche

Job Title Exec VP/General Counsel

Address 2950 N 28th Terrace
Street

Hollywood FL 33020
City State Zip

Phone 954-378-2289

Email tony.kalliche@fsresidential.com

Speaking: For Against Information

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

Representing First Service Residential

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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4/15/15
Meeting Date

736
Bill Number (if applicable)

318184
Amendment Barcode (if applicable)

Topic Estuppels

Name Anthony Kalliche

Job Title Exec VP/General Counsel First Service Residential

Address 2950 N 29th Terrace
Street

Phone 954-378-2289

Hollywood FL 33020
City State Zip

Email tony.kalliche@fsresidential.com

Speaking: For Against Information.

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

Representing First Service Residential

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/15

Meeting Date

736

Bill Number (if applicable)

Topic Residential Properties

Amendment Barcode (if applicable)

Name Greg Black

Job Title Attorney

Address 215 S. Monroe Street

Phone 205-9000

Street

Tallahassee

FL

32301

Email greg.black@metzlaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Attorneys Title Fund Services, LLC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15
Meeting Date

736
Bill Number (if applicable)

Topic Estoppel

Name Rusty Payton

Job Title CEO

Address 2600 Centennial Place
Street

Phone 850-867-1073

Tally FL 32308
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Home Builders

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

SB 736
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____

Topic RESIDENTIAL PROPERTY

Name DOUGLAS MANE

Job Title _____

Address 2407 WINTHROP RD
Street
TALLAHASSEE FL 32308
City State Zip

Phone 509-2511
Email _____

Speaking: For Against Information

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

Representing FIRST AMERICAN TITLE INS. 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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4-15-15

Meeting Date

SB 736

Bill Number (if applicable)

Topic Residential Properties

Name Beth A. Vecchiodi

Amendment Barcode (if applicable)

Job Title Sr. Policy Advisor

Address 315 S. Calhoun St., Ste 600

Phone 850-425-5223

Tallahassee, FL 32301

Email beth.vecchiodi@kkrw.com

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

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

Representing Stewart Title Guaranty Co.

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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THE FLORIDA SENATE
APPEARANCE RECORD

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4-15-15

Meeting Date

736

Bill Number (if applicable)

Topic Relating to Residential Properties

Name Shelley Stewart *Estoppel*

Amendment Barcode (if applicable)

Job Title President - Southern Title

Address 2335 Beville Road

Street

Phone 386-760-9800

Daytona Beach FL 32119

City

State

Zip

Email SStewart@stitle.com

Speaking: For Against Information

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

Representing title agencies; FLTA, FHBA; Southern Title

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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4/15/15
Meeting Date

SB736
Bill Number (if applicable)

Topic ESTOPPEL BILL

Name BEVERLY M REYNOLDS

Job Title PRESIDENT

Address 700 NW 107 AVE STE 100
Street

Phone 305-588-5603

MIAMI FL 33158
City State Zip

Email bmcregnolds@NAT.com

Speaking: For Against Information

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

Representing NORTH AMERICAN TITLE / FUTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

9/15/15
Meeting Date

736
Bill Number (if applicable)

Topic ESTOPPEL PROCESS REFORM

Name DAVID DANIEL

Amendment Barcode (if applicable)

Job Title _____

Address 311 EAST PARK AVENUE
Street

Phone 224-5081

TALLAHASSEE FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing AGENTS SECTION - FLORIDA LAND TITLE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/15/15

Meeting Date

736

Bill Number (if applicable)

Topic

ESTOPPEL

Amendment Barcode (if applicable)

Name

Arnold (SKIP) STRAUS

Job Title

View President - FLTA

Address

10081 PINES BLVD

Phone

9544312000

Street

City

Pembroke Pines FL 33024

State

Zip

Email

Speaking:

For Against Information

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

Representing

Florida Land Title Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15
Meeting Date

736
Bill Number (if applicable)

Topic Estopped

Amendment Barcode (if applicable)

Name Alex Overhoff

Job Title Exec Dir

Address _____
Street

Phone 513-519-2121

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Florida Land Title Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4.16.15

Meeting Date

736

Bill Number (if applicable)

Topic Residential properties

Amendment Barcode (if applicable)

Name Ashley Mayer

Job Title lobayst - Cap City Answer

Address 101 E. Collyer Street 502

Phone 222-9075

Street

Tallahassee FL

City

State

Zip

Email akalifornia@capcityanswer.com

Speaking: For Against Information

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

Representing Old Republic Nat'l Title

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/15

Meeting Date

736

Bill Number (if applicable)

Topic Residential Properties

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 101 N. Monroe St

Phone 850 681-4072

Street

Tall

City

FL

State

Zip

Email douglas.bell@nipc.com

Speaking: For Against Information

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

Representing Westcor Land Title Ins. 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

S/B 736

Bill Number (if applicable)

Topic estopped cert fees

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 W. Jefferson

Phone 850-224-3427

Street TRH

City TRH State _____ Zip 32301

Email Ron W RC Book PA, LLC

Speaking: For Against Information

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

Representing First Residential

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

SENATOR KELLI STARGEL
15th District

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

April 10, 2015

The Honorable Anitere Flores
Senate Fiscal Policy Committee, Chair
413 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Flores:

I am respectfully requesting that SB 736, related to *Residential Properties*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Jennifer Hrdlicka/ Staff Director
Tamra Lyon/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 768

INTRODUCER: Health Policy Committee and Senator Gaetz

SUBJECT: Patient Observation Status Notification

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 768 amends s. 395.301, F.S., to require a hospital, if a patient is placed on observation status, to document the observation services in the patient's discharge papers. The bill requires that the patient or his or her proxy be notified of the observation services through the discharge papers. The bill also allows the facility to notify the patient through brochures, signage, or other forms of communication.

The bill is not expected to have a fiscal impact on the state.

II. Present Situation:

When a patient enters a hospital the physician or other practitioner responsible for a patient's care must decide whether the patient should be admitted for inpatient care. The factors considered include:

- The severity of signs and symptoms exhibited by the patient;
- The medical probability of something adverse happening to the patient;
- The need for diagnostic studies to assist in the admitting decision; and
- The availability of diagnostic procedures at the time when the patient presents.¹

¹ Medicare Benefit Policy Manual, ch. 1 at 10, (Rev.189, 06-27-14) available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS012673.html> (last visited Mar. 31, 2015).

Observation status is commonly ordered for a person who comes to the emergency department and requires treatment or monitoring to determine if he or she should be admitted or discharged.² A patient receives observation services when on observation status and can spend one or more nights in the hospital. These services can occur in the hospital's emergency department or in another area of the hospital.³

Observation services are covered under Medicare Part B, rather than Part A, so some patients with Medicare will experience an increase in out-of-pocket costs for observation services versus being admitted to the hospital.⁴ For example, hospital inpatient services are covered under Medicare Part A and require the patient to pay a one-time deductible (\$1,260) for the first 60 days of his or her stay. Whereas, hospital outpatient services, including observation services, are covered under Medicare Part B and require the patient to pay a deductible (\$147) as well as 20 percent of the Medicare-approved amount for doctor services.⁵ A person who is treated for an extended period of time as a hospital outpatient receiving services may incur greater financial liability.⁶ However, it can be difficult for a person to determine his or her status based purely on the type of care provided at the hospital.⁷

Once a person is discharged, additional rehabilitation in a nursing home is often necessary. Hospital admission can also affect a person's eligibility for other services.⁸ When a person is admitted and has a three night stay in a hospital and needs rehabilitative care, Medicare will pay for up to 60 days in a skilled nursing home. However, if a person is not admitted to the hospital and subsequently goes into a nursing home, Medicare will not pay for the nursing home stay.⁹

Between 2001 and 2009, the rate of hospitals' use of observation services for Medicare patients doubled. In addition, the number of Medicare patients placed on observation status and then released without being admitted to the hospital has increased by 131 percent over the same time period.¹⁰

Due to these increases the Centers for Medicare & Medicaid Services adopted guidance and rules to try to address the issue. Adopted in 2013 and effective April 1, 2015, a new federal rule identifies a stay that spans two midnights as the minimum stay length that a person may be appropriately admitted as an inpatient; otherwise a person with a shorter stay should be treated as

² *Id.* at ch. 6 at 20.6 (Rev. 194, 09-03-14).

³ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Product No. 11435, *Are You a Hospital Inpatient or Outpatient? If You Have Medicare – Ask!* (May 2014) available at <https://www.medicare.gov/Pubs/pdf/11435.pdf> (last visited Mar. 31, 2015).

⁴ AARP Public Policy Institute, *Rapid Growth in Medicare Hospital Observation Services: What's Going On?*, p. 1 (September 2013), available at http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/2013/rapid-growth-in-medicare-hospital-observation-services-AARP-ppi-health.pdf (last visited Mar. 31, 2015).

⁵ Medicare.gov., *Medicare 2015 costs at a glance*, available at <http://www.medicare.gov/your-medicare-costs/costs-at-a-glance/costs-at-a-glance.html> (last visited Mar. 31, 2015) and 42 CFR s. 419.40.

⁶ Fed. Reg., Vol. 78, No. 160, pp. 50495-50907 (Aug. 19, 2013) <http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-18956.pdf> (last visited Mar. 31, 2015).

⁷ See Amanda Cassidy, *The Two-Midnight Rule*, Health Affairs, Health Policy Briefs (Jan. 22, 2015) available at http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=133 (last visited Mar. 31, 2015).

⁸ *Id.*

⁹ Medicare.gov., *Skilled nursing facility (SNF) care*, available at <http://www.medicare.gov/coverage/skilled-nursing-facility-care.html> (last visited Mar. 31, 2015).

¹⁰ *Supra* note 5, at 6-7.

an outpatient. While expected to be beneficial to patients, the rule has been highly debated, particularly by hospitals.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 395.301, F.S., to require a hospital,¹² if a patient is placed on observation status, to document the observation services in the patient's discharge papers. The bill requires that the patient or his or her proxy be notified of the observation services through the discharge papers. The bill also allows the facility to notify the patient through brochures, signage, or other forms of communication. A greater awareness among patients and their families will allow better planning for paying for the cost of any subsequent rehabilitative care in a nursing home.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide a positive fiscal impact for some patients who are placed on observation status in a hospital if such placement would require that they pay high out of pocket costs for observation services not covered by their insurance and if through receiving the notification the patient can avoid such costs.

The bill may have a negative fiscal impact for facilities that fail to document the observation status and services in a patient's discharge papers, which could be found as a

¹¹ *Supra* note 7.

¹² The bill refers to any licensed facility which also includes ambulatory surgical centers and mobile surgical facilities. However, patients are not permitted to stay overnight in either of those facility types and, therefore, it is unlikely the provisions in this bill would affect such facilities.

violation of the requirements of the bill and therefore subject the facility to an administrative fine as specified in s. 395.1065(2), F.S.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 395.301 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 Health Policy on March 10, 2015:

The CS removes the requirement that a hospital, ambulatory surgical center, or mobile surgical facility provide written and oral notification immediately to a patient when that patient is placed on observation status, as well as the details required to be in such a notification. The CS adds a requirement that a hospital, ambulatory surgical center, or mobile surgical facility document observation services in a patient's discharge papers and that the patient, or his or her proxy, must be notified of the observation services through such documentation. The CS also allows the facility to notify the patient through brochures, signage, or other forms of communication.

B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Gaetz

588-02133-15

2015768c1

1 A bill to be entitled
 2 An act relating to patient observation status
 3 notification; amending s. 395.301, F.S.; requiring a
 4 licensed facility to document observation services in
 5 a patient's discharge papers when the facility places
 6 the patient on observation status; requiring a
 7 licensed facility to notify a patient or patient's
 8 proxy of observation status through discharge papers;
 9 authorizing a licensed facility to notify a patient or
 10 patient's proxy of observation status through other
 11 forms of communication; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 395.301, Florida Statutes, is amended,
 16 to read:
 17 395.301 Itemized patient bill; form and content prescribed
 18 by the agency; patient observation status notification.—
 19 (1) A licensed facility not operated by the state shall
 20 notify each patient during admission and at discharge of his or
 21 her right to receive an itemized bill upon request. Within 7
 22 days following the patient's discharge or release from a
 23 licensed facility not operated by the state, the licensed
 24 facility providing the service shall, upon request, submit to
 25 the patient, or to the patient's survivor or legal guardian as
 26 may be appropriate, an itemized statement detailing in language
 27 comprehensible to an ordinary layperson the specific nature of
 28 charges or expenses incurred by the patient, which in the
 29 initial billing shall contain a statement of specific services

Page 1 of 5

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

588-02133-15

2015768c1

30 received and expenses incurred for such items of service,
 31 enumerating in detail the constituent components of the services
 32 received within each department of the licensed facility and
 33 including unit price data on rates charged by the licensed
 34 facility, as prescribed by the agency.
 35 (2) (a) Each such statement submitted pursuant to this
 36 section:
 37 1. May not include charges of hospital-based physicians if
 38 billed separately.
 39 2. May not include any generalized category of expenses
 40 such as "other" or "miscellaneous" or similar categories.
 41 3. Shall list drugs by brand or generic name and not refer
 42 to drug code numbers when referring to drugs of any sort.
 43 4. Shall specifically identify therapy treatment as to the
 44 date, type, and length of treatment when therapy treatment is a
 45 part of the statement.
 46 (b) Any person receiving a statement pursuant to this
 47 section shall be fully and accurately informed as to each charge
 48 and service provided by the institution preparing the statement.
 49 (3) On each itemized statement submitted pursuant to
 50 subsection (1) there shall appear the words "A FOR-PROFIT (or
 51 NOT-FOR-PROFIT or PUBLIC) HOSPITAL (or AMBULATORY SURGICAL
 52 CENTER) LICENSED BY THE STATE OF FLORIDA" or substantially
 53 similar words sufficient to identify clearly and plainly the
 54 ownership status of the licensed facility. Each itemized
 55 statement must prominently display the phone number of the
 56 medical facility's patient liaison who is responsible for
 57 expediting the resolution of any billing dispute between the
 58 patient, or his or her representative, and the billing

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59 department.

60 (4) An itemized bill shall be provided once to the
61 patient's physician at the physician's request, at no charge.

62 (5) In any billing for services subsequent to the initial
63 billing for such services, the patient, or the patient's
64 survivor or legal guardian, may elect, at his or her option, to
65 receive a copy of the detailed statement of specific services
66 received and expenses incurred for each such item of service as
67 provided in subsection (1).

68 (6) No physician, dentist, podiatric physician, or licensed
69 facility may add to the price charged by any third party except
70 for a service or handling charge representing a cost actually
71 incurred as an item of expense; however, the physician, dentist,
72 podiatric physician, or licensed facility is entitled to fair
73 compensation for all professional services rendered. The amount
74 of the service or handling charge, if any, shall be set forth
75 clearly in the bill to the patient.

76 (7) Each licensed facility not operated by the state shall
77 provide, prior to provision of any nonemergency medical
78 services, a written good faith estimate of reasonably
79 anticipated charges for the facility to treat the patient's
80 condition upon written request of a prospective patient. The
81 estimate shall be provided to the prospective patient within 7
82 business days after the receipt of the request. The estimate may
83 be the average charges for that diagnosis related group or the
84 average charges for that procedure. Upon request, the facility
85 shall notify the patient of any revision to the good faith
86 estimate. Such estimate shall not preclude the actual charges
87 from exceeding the estimate. The facility shall place a notice

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88 in the reception area that such information is available.

89 Failure to provide the estimate within the provisions
90 established pursuant to this section shall result in a fine of
91 \$500 for each instance of the facility's failure to provide the
92 requested information.

93 (8) Each licensed facility that is not operated by the
94 state shall provide any uninsured person seeking planned
95 nonemergency elective admission a written good faith estimate of
96 reasonably anticipated charges for the facility to treat such
97 person. The estimate must be provided to the uninsured person
98 within 7 business days after the person notifies the facility
99 and the facility confirms that the person is uninsured. The
100 estimate may be the average charges for that diagnosis-related
101 group or the average charges for that procedure. Upon request,
102 the facility shall notify the person of any revision to the good
103 faith estimate. Such estimate does not preclude the actual
104 charges from exceeding the estimate. The facility shall also
105 provide to the uninsured person a copy of any facility discount
106 and charity care discount policies for which the uninsured
107 person may be eligible. The facility shall place a notice in the
108 reception area where such information is available. Failure to
109 provide the estimate as required by this subsection shall result
110 in a fine of \$500 for each instance of the facility's failure to
111 provide the requested information.

112 (9) If a licensed facility places a patient on observation
113 rather than inpatient status, observation services shall be
114 documented in the patient's discharge papers. The patient or
115 patient's proxy shall be notified of observation services
116 through discharge papers and also may be notified through

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117 brochures, signage, or other forms of communication for this
118 purpose.

119 ~~(10)-(9)~~ A licensed facility shall make available to a
120 patient all records necessary for verification of the accuracy
121 of the patient's bill within 30 business days after the request
122 for such records. The verification information must be made
123 available in the facility's offices. Such records shall be
124 available to the patient prior to and after payment of the bill
125 or claim. The facility may not charge the patient for making
126 such verification records available; however, the facility may
127 charge its usual fee for providing copies of records as
128 specified in s. 395.3025.

129 ~~(11)-(10)~~ Each facility shall establish a method for
130 reviewing and responding to questions from patients concerning
131 the patient's itemized bill. Such response shall be provided
132 within 30 days after the date a question is received. If the
133 patient is not satisfied with the response, the facility must
134 provide the patient with the address of the agency to which the
135 issue may be sent for review.

136 ~~(12)-(11)~~ Each licensed facility shall make available on its
137 Internet website a link to the performance outcome and financial
138 data that is published by the Agency for Health Care
139 Administration pursuant to s. 408.05(3)(k). The facility shall
140 place a notice in the reception area that the information is
141 available electronically and the facility's Internet website
142 address.

143 Section 2. This act shall take effect July 1, 2015.

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 Fiscal Policy

BILL: SB 788

INTRODUCER: Senator Sobel

SUBJECT: Disabled Parking

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	Favorable
2.	<u>Wagoner</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Goedert</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 788 exempts vehicles displaying the disabled veteran license plate issued under s. 320.084, F.S., from any parking fees charged by the city or county in a facility that provides timed parking spaces.

II. Present Situation:

Section 316.1964, F.S., prohibits any state agency, county, or municipality from charging a fee for parking on public streets, highways, or in *metered* parking spaces if the vehicle displays a disabled parking permit or a certain license plate, and the vehicle is transporting the person who has a disability and was issued the permit or plate. Generally, the prohibition applies if a vehicle displays one of the following:

- Out of state or country disabled license plate or disabled parking permit under certain conditions;¹
- A disabled parking permit;²
- A disabled veteran license plate;³
- A disabled veteran license plate stamped with the international wheelchair user symbol;⁴
- A license plate stamped with the international wheelchair user symbol;⁵ or
- A Paralyzed Veterans of America license plate.⁶

¹ Section 316.1958, F.S.

² Section 320.0848, F.S. The permit may be temporary or permanent.

³ Section 320.084, F.S.

⁴ Section 320.0842, F.S.

⁵ Section 320.0843, F.S.

⁶ Section 320.0845, F.S.

Notwithstanding the prohibition, a county or municipality may charge, for parking in a facility that provides *timed*⁷ parking spaces, any vehicle that displays a disabled parking permit, unless the vehicle has specialized equipment, such as ramps, lifts, or foot or hand controls, or displays the Florida Toll Exemption permit.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 316.1964(8), F.S., to exempt vehicles displaying a disabled veteran license plate issued under s. 320.084, F.S., from county or city charges for parking in a facility that provides timed parking spaces.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill reduces the authority of counties and municipalities to raise revenues because it would eliminate their ability to charge the operator of any vehicle displaying a certain disabled veteran license plate for parking in a facility that provides timed parking spaces. Article VII, s. 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law that reduces the authority of municipalities and counties to raise revenues in the aggregate. Article VII, s. 18(d) of the Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact. The fiscal impact of this bill is indeterminate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁷ But, presumably, not *metered*. A distinction appears to exist between a *metered* parking space, which is obviously timed, and a *timed* parking space, which is also timed but not necessarily metered. See s. 316.1964(8), F.S. See also Bill Analysis for CS/SB 1498 by the Senate Committee on Transportation (March 26, 1998), available at <http://archive.flsenate.gov/data/session/1998/Senate/bills/analysis/pdf/SB1498.tr.pdf> (last visited April 8, 2015).

⁸ Section 316.1964(8), F.S.; see also s. 338.155(3), F.S., authorizing exemption from toll payment for any handicapped person with a valid driver license operating a vehicle specially equipped for use by a handicapped person who is certified as being severely physically disabled and having permanent upper limb mobility or dexterity impairments which substantially impair the person's ability to deposit coins in toll baskets.

B. Private Sector Impact:

Individuals qualifying for the exemption from parking fees will experience an indeterminate positive fiscal impact.

C. Government Sector Impact:

Cities and counties prohibited from charging the parking fees will experience an indeterminate negative fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.1964 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Sobel

33-00768A-15

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1 A bill to be entitled
 2 An act relating to disabled parking; amending s.
 3 316.1964, F.S.; revising provisions that allow
 4 counties and municipalities to charge fees for
 5 vehicles displaying a disabled parking permit at
 6 certain timed parking facilities; excluding vehicles
 7 displaying a DV license plate from payment of such
 8 fees; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (1) of section 316.1964, Florida
 13 Statutes, is republished, and subsection (8) of that section is
 14 amended, to read:

15 316.1964 Exemption of vehicles transporting certain persons
 16 who have disabilities from payment of parking fees and
 17 penalties.—

18 (1) A state agency, county, municipality, or any agency
 19 thereof, may not exact any fee for parking on the public streets
 20 or highways or in any metered parking space from the driver of a
 21 vehicle that displays a disabled parking permit or a license
 22 plate issued under s. 316.1958 or s. 320.0848 or a license plate
 23 issued under s. 320.084, s. 320.0842, s. 320.0843, or s.
 24 320.0845 if the vehicle is transporting the person who has a
 25 disability and to whom the disabled parking permit or license
 26 plate was issued.

27 (8) Notwithstanding subsection (1), a county, municipality,
 28 or any agency thereof may charge for parking in a facility or
 29 lot that provides timed parking spaces any vehicle that displays

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30 a disabled parking permit, except that any vehicle with
 31 specialized equipment, such as ramps, lifts, or foot or hand
 32 controls, for use by a person who has a disability, or any
 33 vehicle that is displaying the "DV" license plate issued under
 34 s. 320.084 or the Florida Toll Exemption permit, is exempt from
 35 any parking fees.

36 Section 2. This act shall take effect July 1, 2015.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Health Policy, *Vice Chair*
Agriculture
Education Pre-K-12
Appropriations Subcommittee on Health
and Human Services

SENATOR ELEANOR SOBEL

33rd District

Senator Anitere Flores, Chair
Senate Committee on Fiscal Policy
225 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Flores,

I respectfully request that Senate Bill 788, Disabled Parking for Veterans, be considered for placement on the Fiscal Policy committee agenda. This bill allows disabled veterans, certified as 100 % disabled by a licensed physician, and displaying a disabled veteran's license, to park free of charge in government facility lots. Veterans who return home deserve our respect and this bill makes their lives a little bit easier.

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Eleanor Sobel
State Senator, 33rd District

Cc: Jennifer Hrdlicka, Tamra Lyon

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 792

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Pharmacy

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Fav/CS
2.	Brown	Pigott	AHS	Recommend: Favorable
3.	Jones	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 792 authorizes a registered pharmacy intern, who is certified, to administer certain immunizations or vaccines to adults under the supervision of a certified pharmacist. The bill requires a ratio of one pharmacist to one intern when a registered intern is administering vaccines. The certification program for a registered pharmacy intern to administer vaccines must consist of at least 20 hours of course work.

The bill also expands the specified list of vaccines that a certified pharmacist or registered intern may administer, to include:

- Immunizations or vaccines listed in schedules established by the Centers for Disease Control and Prevention; and
- Immunizations or vaccines approved by the board in response to a state of emergency declared by the Governor.

The Board of Pharmacy is authorized to update the immunizations or vaccines by rule.

The Medical Quality Assurance Trust Fund within the Department of Health will receive estimated revenues of approximately \$259,820 and will incur estimated costs of approximately \$36,328 over the first two years of the bill's implementation.

II. Present Situation:

Pharmacists and Pharmacy Interns

Pharmacists and pharmacy interns are regulated under ch. 465, F.S., the Florida Pharmacy Act (act), by the Board of Pharmacy (board) within the Department of Health (DOH). A “pharmacist” is a person licensed under the act to practice the profession of pharmacy.¹ A “pharmacy intern” is a person who is currently registered in and attending an accredited college or school of pharmacy, or who is a graduate of such a school or college of pharmacy, and who is registered as a pharmacy intern with the DOH.²

The practice of the profession of pharmacy includes:

- Compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug;
- Consulting concerning therapeutic values and interactions of patent or proprietary preparations;
- Monitoring a patient’s drug therapy, assisting the patient in managing his or her drug therapy, and reviewing the patient’s drug therapy and communicating with the patient’s prescribing health care provider or the provider’s agent or other persons as specifically authorized by the patient, regarding the drug therapy;
- Transmitting information from persons authorized to prescribe medicinal drugs to their patients; and
- Administering vaccines to adults.³

To be licensed as a pharmacist in Florida, a person must:

- Complete an application and remit an examination fee;
- Be at least 18 years of age;
- Have received a degree from an accredited and approved school or college of pharmacy; or be a graduate of a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, demonstrate proficiency in English, pass the board-approved Foreign Pharmacy Graduate Equivalency Examination, and complete a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a DOH-licensed pharmacist;
- Have completed an internship program of 2,080 hours; and
- Successfully completed the board-approved examination.⁴

The internship experience for the purposes of qualifying for the examination must be obtained in a community pharmacy, institutional pharmacy, or any board-approved pharmacy practice which includes significant aspects of the practice of pharmacy.⁵ One of many requirements for a pharmacy in which an approved internship may occur is that the pharmacy establish that it fills, compounds, and dispenses a sufficient number, kind, and variety of prescriptions during the

¹ Section 465.003(10), F.S.

² Section 465.003(12), F.S.

³ Section 465.003(13), F.S.

⁴ Section 465.007, F.S. The department may also issue a license by endorsement to a pharmacist who is licensed in another state upon meeting the applicable requirements that are set forth in law and rule. *See s. 465.0075, F.S.*

⁵ Rule 64B16-26.2032(5), F.A.C.

course of a year so as to afford an intern with a broad experience in the filling, compounding, and dispensing of prescription drugs.⁶

An intern may not perform any acts relating to filing, compounding, or dispensing of medicinal drugs unless it is done under the direct and immediate personal supervision of a person actively licensed to practice pharmacy in Florida.⁷ Neither the act nor the board's rules limit the number of interns a pharmacist may supervise. A pharmacy student or graduate is required to be registered by the DOH before being employed as an intern in a pharmacy in Florida. In FY 2013-14, there were 10,914 registered pharmacy interns actively practicing in the state.⁸

Vaccines and Immunizations

A vaccine is a product that stimulates a person's immune system to produce immunity to a specific disease, protecting the person from that disease. Immunization is a process by which a person becomes protected against a disease through vaccination. This term is often used interchangeably with vaccination or inoculation. Vaccines are usually administered through needle injections, but some can be administered by mouth or sprayed into the nose.⁹

Authorization in Florida

Currently, a licensed pharmacist may administer vaccines for influenza, pneumococcal, meningococcal, and shingles to an adult in accordance with a protocol under a supervising physician and guidelines of the Centers for Disease Control and Prevention (CDC).¹⁰ A pharmacist may also administer epinephrine using an auto-injector delivery system to address any unforeseen allergic reaction to an administered vaccine.¹¹

Prior to administering vaccines, a pharmacist must complete a 20-hour board approved certification program and maintain at least \$200,000 of professional liability insurance. A pharmacist who administers vaccines must also maintain applicable patient records. Approximately 11,323 or 37 percent of the actively licensed pharmacists are certified to administer vaccines.¹²

The Legislature has acted three times since 2007 to address the authorization for pharmacists to administer vaccines. In 2007, the framework for pharmacists to administer vaccines was established. At that time, the only vaccination authorized was influenza.¹³ In 2012, the Legislature authorized the administration of the pneumococcal vaccine, the administration of the shingles vaccine pursuant to a physician's prescription, and the use of epinephrine for an allergic reaction.¹⁴ In 2014, the Legislature added meningococcal to the list of vaccines and eliminated

⁶ Rule 64B16-26.2032(6)(c), F.A.C.

⁷ Rule 64B16-26.2032(4), F.A.C.

⁸ Department of Health, *Senate Bill 792 Analysis* (Feb. 11, 2015) (on file with the Senate Committee on Health Policy).

⁹ Centers for Disease Control and Prevention, *Immunizations: The Basics*, (updated Sept. 25, 2014) available at <http://www.cdc.gov/vaccines/vac-gen/imz-basics.htm> (last visited April 10, 2015)

¹⁰ Section 465.189(1), F.S.

¹¹ Section 468.189(2), F.S.

¹² *Supra* note 8.

¹³ Chapter 2007-152, L.O.F.

¹⁴ Chapter 2012-60, L.O.F.

the requirement for a physician's prescription as the basis for a pharmacist to administer the shingles vaccine.¹⁵

Authorizations in Other States

Forty-four states or territories currently authorize pharmacy interns to administer vaccines. Most commonly, the intern must be trained, such as having completed a certificate training program, and must operate under the supervision of a trained pharmacist.¹⁶ Florida is one of a handful of states that do not authorize pharmacists to administer a more expansive list of vaccines, including Td/Tdap and HPV.¹⁷

Recommended Adult Immunization Schedule

Annually, the CDC publishes a recommended schedule of immunizations for adults (anyone 19 years of age or older). The schedule includes the recommended age groups, number of doses, and medical indications for which administration of the currently licensed and listed vaccine is commonly indicated.¹⁸

The adult immunization schedule as of February 2015, lists the following vaccines:

- Influenza (flu);*
- Tetanus, diphtheria, pertussis (Td/Tdap);
- Varicella (chickenpox);
- Human papillomavirus (HPV) Female;
- Human papillomavirus (HPV) Male;
- Zoster (shingles);*
- Measles, mumps, rubella (MMR);
- Pneumococcal 13-valent conjugate (PCV13);*
- Pneumococcal polysaccharide (PPSV23);*
- Meningococcal;*
- Hepatitis A;
- Hepatitis B; and
- Haemophilus influenza type b (Hib).¹⁹

* Currently authorized for administration by certified pharmacists in Florida.

International Travel

Some types of international travel, especially to developing countries and rural areas, have higher health risks. Vaccine-preventable diseases that are rarely seen in the United States, like polio, can still be found in other parts of the world. The CDC recommends seeing one's healthcare professional or visiting a travel clinic at least four-to-six weeks prior to any

¹⁵ Chapter 2014-113, L.O.F.

¹⁶ American Pharmacists Association, *Pharmacist Administered Vaccines*, slide 6 (updated Jan. 31, 2015), available at http://www.pharmacist.com/sites/default/files/files/Pharmacist_IZ_Authority_1_31_15.pdf (last visited April 10, 2015).

¹⁷ *Id.* slides 1, 9, and 11.

¹⁸ Centers for Disease Control and Prevention, *Adult Immunization Schedules* (2015), (last updated April 6, 2015) available at <http://www.cdc.gov/vaccines/schedules/hcp/adult.html> (last visited April 10, 2015).

¹⁹ *Id.*

international travel, since not all primary care physicians stock travel vaccines. This allows time to complete any vaccine series and gives the body time to build up immunity.²⁰

Vaccine Information Statement and Adverse Incident Reporting

A Vaccine Information Statement (VIS) is a CDC produced document that informs vaccine recipients, or their parents or legal representatives, about the benefits and risks of a vaccine they are receiving.²¹ The National Vaccine Childhood Injury Act²² requires all vaccine providers to give the appropriate VIS to the patient, or parent or legal representative, prior to every dose of a vaccine.²³

In addition to distributing a VIS, providers are required to record specific information in the patient's medical record or in a permanent office log.²⁴

The Vaccine Adverse Event Reporting System (VAERS) accepts and monitors all of the reports concerning any significant adverse events after a vaccination. It is in the discretion of the healthcare professionals to decide whether to report a medical error. The VAERS accepts reports online, by facsimile, or by mail.²⁵

III. Effect of Proposed Changes:

The bill expands access and availability of certain immunizations for adults by expanding the list of vaccines a pharmacist may administer and authorizing a registered pharmacy intern, once certified, to administer vaccines under the supervision of a certified pharmacist.

Rather than specifying individual immunizations or vaccines that may be administered by a pharmacist or registered intern, the bill authorizes administration of the immunizations or vaccines that are listed in the CDC adult immunization schedule as of February 2015. Currently, the statute authorizes the administration of vaccines for influenza, pneumococcal, meningococcal and shingles to adults (19 years of age or older).²⁶ By referencing the CDC adult immunization schedule as of February 2015, this bill adds:

- Tetanus, diphtheria, pertussis (Td/Tdap);
- Varicella (chickenpox);
- Human papillomavirus (HPV) Female;
- Human papillomavirus (HPV) Male;
- Measles, mumps, rubella (MMR);
- Hepatitis A;

²⁰ Centers for Disease Control and Prevention, *Travel Smart: Get Vaccinated*, (last updated April 9, 2015) available at <http://www.cdc.gov/Features/vaccines-travel/index.html> (last visited April 10, 2015).

²¹ Centers for Disease Control and Prevention, *Vaccine Information Statements*, (updated June 18, 2013) available at <http://www.cdc.gov/vaccines/hcp/vis/about/facts-vis.html> (last visited April 10, 2015).

²² 42 U.S.C. s. 300aa-26

²³ *Supra* note 21.

²⁴ *Id.*

²⁵ Vaccine Adverse Events Reporting System, *Report an Adverse Event*, available at <http://vaers.hhs.gov/esub/index> (last visited April 10, 2015).

²⁶ Section 465.189, F.S., does not define an adult. However, this section of law authorizes administration in accordance with the guidelines of the CDC, which defines an adult as a person who is 19 years of age or older.

- Hepatitis B; and
- Haemophilus influenza type b (Hib).²⁷

The bill specifies that the administration of immunizations or vaccines that are recommended by the CDC for international travel as of July 1, 2015, as well as those approved by the board in response to a Governor-declared state of emergency, may be administered.

The bill requires a registered pharmacy intern to take a certification program consisting of at least 20 hours of course work to become certified to administer vaccines. Additionally, the bill requires a supervision ratio of one registered intern to one pharmacist when the intern is administering immunizations.

The bill is effective July 1, 2015.

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:

Under the bill, pharmacy interns seeking certification to administer vaccinations will incur a \$55 initial application fee. The public may be able to obtain applicable vaccinations at their local pharmacy, which may be more expedient and possibly less expensive than scheduling an appointment at a physician's office; however, any such savings are indeterminate.

²⁷ *Supra* note 18.

C. Government Sector Impact:

The DOH estimates potential increase of \$259,820 in certification fees.²⁸ The DOH estimates total expenditures of \$36,328 related to the costs for processing certification applications, based on the processing cost of \$7.69 per application.

The DOH indicates that the increase in workload associated with application and website modifications, updates to the Licensing and Enforcement Information Database System, and rulemaking can be absorbed within existing resources

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill grants rulemaking authority for the board to authorize additional immunizations or vaccines that the CDC adds to the adult immunization schedule or recommends additional immunizations or vaccines for international travel. The board must also adopt rules for a certification program for interns.

VIII. Statutes Affected:

This bill substantially amends section 465.189 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 Health Policy on March 10, 2015:

The CS requires the supervising pharmacist to be certified to administer vaccines, and references a more current recommended adult immunization list which is the one in effect as of February 2015. The CS also requires a one-to-one supervision ratio when the intern administers an immunization.

B. Amendments:

None.

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

²⁸ *Supra* note 8. The certification fee estimate of \$259,820 is based on 4,038 currently registered interns (calculated as 10,914 total registered interns X 37%, the number of certified pharmacists) + 686 newly registering interns (calculated as 1,855 new registered intern applications X 37%) for 4,724 applications for certification X \$55 application fee.

By the Committee on Health Policy; and Senator Bean

588-02138A-15

2015792c1

1 A bill to be entitled
 2 An act relating to pharmacy; amending s. 465.189,
 3 F.S.; authorizing a registered intern under the
 4 supervision of a pharmacist to administer specified
 5 vaccines to an adult; revising which vaccines may be
 6 administered by a pharmacist or a registered intern
 7 under the supervision of a pharmacist; requiring a
 8 one-to-one ratio for such supervision; requiring a
 9 registered intern seeking to administer vaccines to be
 10 certified to administer such vaccines and to complete
 11 a minimum amount of coursework; providing an effective
 12 date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Subsections (1) and (6) of section 465.189,
 17 Florida Statutes, are amended to read:

18 465.189 Administration of vaccines and epinephrine
 19 autoinjection.—

20 (1) In accordance with guidelines of the Centers for
 21 Disease Control and Prevention for each recommended immunization
 22 or vaccine, a pharmacist who is certified under subsection (6),
 23 or a registered intern who is under the supervision of a
 24 pharmacist, if both the pharmacist and the registered intern are
 25 certified under subsection (6), may administer the following
 26 vaccines to an adult within the framework of an established
 27 protocol under a supervising physician licensed under chapter
 28 458 or chapter 459:

29 (a) Immunizations or vaccines listed in the recommended

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

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30 adult immunization schedule as of February 2015 by the United
 31 States Centers for Disease Control and Prevention. The board may
 32 authorize, by rule, additional immunizations or vaccines as they
 33 are added to the adult immunization schedule ~~Influenza vaccine.~~

34 (b) Immunizations or vaccines recommended by the United
 35 States Centers for Disease Control and Prevention for
 36 international travel as of July 1, 2015. The board may
 37 authorize, by rule, additional immunizations or vaccines as they
 38 are recommended by the United States Centers for Disease Control
 39 and Prevention for international travel ~~Pneumococcal vaccine.~~

40 (c) Immunizations or vaccines approved by the board in
 41 response to a state of emergency declared by the Governor
 42 pursuant to s. 252.36 Meningococcal vaccine.

43 ~~(d) Shingles vaccine.~~

44 When a registered intern administers an immunization under this
 45 subsection, the registered intern must be supervised by a
 46 pharmacist at a ratio of one pharmacist to one registered
 47 intern.

48 (6) Any pharmacist or registered intern seeking to
 49 administer vaccines to adults under this section must be
 50 certified to administer such vaccines pursuant to a
 51 certification program approved by the Board of Pharmacy in
 52 consultation with the Board of Medicine and the Board of
 53 Osteopathic Medicine. The certification program shall, at a
 54 minimum, require that the pharmacist attend at least 20 hours of
 55 continuing education classes approved by the board and that the
 56 registered intern complete at least 20 hours of coursework
 57 approved by the board. The program shall have a curriculum of
 58 instruction concerning the safe and effective administration of

Page 2 of 3

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

588-02138A-15

2015792c1

59 such vaccines, including, but not limited to, potential allergic
60 reactions to such vaccines.

61 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 15, 2015

Meeting Date

CS/SB792

Bill Number (if applicable)

Topic Pharmacist Immunization

Amendment Barcode (if applicable)

Name Michael Jackson

Job Title Executive Vice President and CEO

Address 610 North Adams Street

Phone (850) 222-2400

Street

Tallahassee

Florida

32301

Email mjackson@pharmview.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Pharmacy Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/2015

Meeting Date

Topic _____

Bill Number 792

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

792

Bill Number (if applicable)

Meeting Date

Topic Pharmacy

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title Dir. Gov't Affairs

Address _____

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 Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

SB 792
Bill Number (if applicable)

Topic Vaccines

Amendment Barcode (if applicable)

Name Larry Gonzalez

Job Title General Counsel

Address 223 S. Goddard St
Street

Phone 570-6307

Tallahassee FL 32301
City State Zip

Email lawgonz@earthlink.net

Speaking: For Against Information

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

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/15
Meeting Date

SB 792
Bill Number (if applicable)

Topic Pharmacy

Amendment Barcode (if applicable)

Name Carlos Cruz

Job Title _____

Address 110 E Jefferson St

Phone 904-214-5724

Tallahassee, FL 32301
Street City State Zip

Email carlos@cruzco.com

Speaking: For Against Information

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

Representing Walgreens

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 2, 2015

I respectfully request that **Senate Bill # 792**, relating to Pharmacy, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4



572864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Stargel) recommended the following:

Senate Amendment (with title amendment)

Between lines 43 and 44

insert:

Section 2. Paragraph (t) is added to subsection (3) of section 408.036, Florida Statutes, to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(t) For the establishment of a health care facility or



572864

11 project that meets all of the following criteria:

12 1. The applicant was previously licensed within the past 21
13 days as a health care facility or provider that is subject to
14 subsection (1).

15 2. The applicant failed to submit a renewal application and
16 the license expired on or after January 1, 2015.

17 3. The applicant does not have a license denial or
18 revocation action pending with the agency at the time of the
19 request.

20 4. The applicant's request is for the same service type,
21 district, service area, and site for which the applicant was
22 previously licensed.

23 5. The applicant's request, if applicable, includes the
24 same number and type of beds as were previously licensed.

25 6. The applicant agrees to the same conditions that were
26 previously imposed on the certificate of need or on an exemption
27 related to the applicant's previously licensed health care
28 facility or project.

29 7. The applicant applies for initial licensure as required
30 under s. 408.806 within 21 days after the agency approves the
31 exemption request. If the applicant fails to apply in a timely
32 manner, the exemption expires on the 22nd day following the
33 agency's approval of the exemption.

34
35 Notwithstanding subparagraph 1., an applicant whose license
36 expired between January 1, 2015 and the effective date of this
37 act may apply for an exemption within 30 days of this act
38 becoming law.

39



572864

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

41 And the title is amended as follows:

42 Delete lines 2 - 7

43 and insert:

44 An act relating to the regulation of health care
45 facilities and services; amending s. 400.474, F.S.;
46 revising the information that a home health agency is
47 required to submit to the Agency for Health Care
48 Administration for license renewal; removing the
49 requirement that a home health agency submit quarterly
50 reports; amending s. 408.036, F.S.; providing an
51 exemption from a certificate-of-need review for
52 applicants that were previously licensed within a
53 specified period as a health care facility or provider
54 and that meet certain criteria; providing an exception
55 for an applicant whose license expired during a
56 specified time period to apply for an exemption from
57 the review; providing an effective date.

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 Fiscal Policy

BILL: SB 816

INTRODUCER: Senator Grimsley

SUBJECT: Home Health Agencies

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

I. Summary:

SB 816 repeals the requirement for a home health agency (HHA) to provide a quarterly report to the Agency for Health Care Administration (AHCA) and the requirement that the AHCA fine a HHA who fails to submit the report \$200 per day, up to a maximum of \$5,000 per quarter.

The bill requires an HHA when renewing a license to submit to the AHCA the number of patients who received home health services from the HHA on the day that that the licensure renewal application is filed.

This bill has an indeterminate negative fiscal impact on the AHCA.

II. Present Situation:

A home health agency (HHA) is an organization that provides home health services and staffing services.¹ Home health services provided by an HHA include health and medical services and medical equipment provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services.² Home health agencies are regulated by the Agency for Health Care Administration (AHCA) pursuant to ch. 400, part III, F.S.

In 2008, the Legislature passed ch. 2008-246, L.O.F., to reduce Medicaid fraud and improve quality and accountability of HHAs.³ The law provided HHA anti-fraud measures, including the requirement for an HHA quarterly report to be submitted to the AHCA within 15 days following the end of each quarter.⁴ In Fiscal Year 2004-2005, the AHCA's Bureau of Medicaid Program Integrity (MPI) opened 47 investigations of HHAs for Medicaid fraud, 72 in Fiscal Year 2005-

¹ Section 400.462(12), F.S.

² Section 400.462(14)(a)-(c), F.S.

³ House of Representatives Bill Analysis, *CS/HB 7083*, April 17, 2008.

⁴ Chapter 2008-246, L.O.F. See s. 400.474(7), F.S.

2006, and 144 in Fiscal Year 2006-2007.⁵ Between 2004 and 2007, 19 HHAs were terminated from the Medicaid program in Miami-Dade County.⁶

In 2013, the Legislature passed ch. 2013-133, L.O.F., which reduced the fine assessed against HHAs that violate the reporting requirements and exempted HHAs that are not, or do not share a controlling interest with a licensee that is, Medicaid or Medicare providers.

Currently, HHAs are required to report data as it existed on the last day of the quarter for four items that are markers for possible fraudulent activity. The quarterly report must detail:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and hospice services;
- The number of patients receiving HHA services; and
- The names and license numbers of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of \$25,000 during the quarter.⁷

The AHCA is required to impose a fine of \$200 per day up to a maximum of \$5,000 per quarter if the report is not submitted within the first 15 days following the close of the quarter.⁸ From July 1, 2008, to date, \$8,317,650 in fines have been assessed and \$5,635,108 in fines have been collected.⁹ The number of HHAs that fail to submit the reports each quarter has decreased since the passage of ch. 2013-133, L.O.F. For the quarter ending December 31, 2012, 42 of the 2,250 licensed HHAs failed to submit their reports.¹⁰

The AHCA uses the data on the number of patients on the last day of the quarter as an indicator of when an HHA is closing or that an HHA may not operational, along with other information.¹¹ Failing to provide at least one service for a period of 60 days is grounds to deny or revoke a license under s. 400.474(2)(e), F.S. The AHCA collects the number of patients admitted over a 12-month period, from each HHA on the biennial license renewal application as required by s. 400.471(2)(c), F.S.

III. Effect of Proposed Changes:

The bill repeals the requirement for an HHA to provide the quarterly report to the AHCA.

The bill also repeals the requirement that the AHCA fine HHAs who fail to submit the report \$200 per day, up to a maximum of \$5,000 per quarter.

⁵ Senate Bill Analysis, *CS/CS/CS/SB 1374*, March 7, 2008.

⁶ *Id.*

⁷ Section 400.474(7), F.S.

⁸ *Id.*

⁹ AHCA, *2015 Agency Bill Analysis SB 816* (Jan. 23, 2015) (on file with the Senate Committee on Health Policy).

¹⁰ AHCA, *Agency Bill Analysis HB 4031* (submitted for SB 1094) (Mar. 14, 2013) (on file with the Senate Committee on Health Policy).

¹¹ *Id.*

The bill requires HHAs, when renewing their license, to submit to the AHCA the number of patients who received home health services from the HHA on the day that the licensure renewal application is filed.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

HHAs may see an indeterminate positive fiscal impact by not having to prepare and file the quarterly report. Additionally, HHAs who would have failed to provide the quarterly report to the AHCA will see an indeterminate positive fiscal impact due to the elimination of the fine currently assessed.

C. Government Sector Impact:

The AHCA will see an indeterminate negative fiscal impact due to the loss of revenue from the elimination of the fine assessed on HHAs who fail to submit their quarterly report.¹²

VI. Technical Deficiencies:

None.

¹² *Supra* note 9.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 400.474 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 Grimsley

21-00820-15

2015816__

1 A bill to be entitled
 2 An act relating to home health agencies; amending s.
 3 400.474, F.S.; revising the information that a home
 4 health agency is required to submit to the Agency for
 5 Health Care Administration for license renewal;
 6 removing the requirement that a home health agency
 7 submit quarterly reports; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Subsection (7) of section 400.474, Florida
 12 Statutes, is amended to read:
 13 400.474 Administrative penalties.—
 14 (7) A home health agency shall submit to the agency, with
 15 each license renewal application, the number of patients who
 16 receive home health services from the home health agency on the
 17 day that the license renewal application is filed, ~~within 15~~
 18 ~~days after the end of each calendar quarter, a written report~~
 19 ~~that includes the following data as they existed on the last day~~
 20 ~~of the quarter:~~
 21 ~~(a) The number of insulin-dependent diabetic patients who~~
 22 ~~receive insulin-injection services from the home health agency.~~
 23 ~~(b) The number of patients who receive both home health~~
 24 ~~services from the home health agency and hospice services.~~
 25 ~~(c) The number of patients who receive home health services~~
 26 ~~from the home health agency.~~
 27 ~~(d) The name and license number of each nurse whose primary~~
 28 ~~job responsibility is to provide home health services to~~
 29 ~~patients and who received remuneration from the home health~~

Page 1 of 2

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

21-00820-15

2015816__

30 ~~agency in excess of \$25,000 during the calendar quarter.~~
 31
 32 ~~If the home health agency fails to submit the written quarterly~~
 33 ~~report within 15 days after the end of each calendar quarter,~~
 34 ~~the Agency for Health Care Administration shall impose a fine~~
 35 ~~against the home health agency in the amount of \$200 per day~~
 36 ~~until the Agency for Health Care Administration receives the~~
 37 ~~report, except that the total fine imposed pursuant to this~~
 38 ~~subsection may not exceed \$5,000 per quarter. A home health~~
 39 ~~agency is exempt from submission of the report and the~~
 40 ~~imposition of the fine if it is not a Medicaid or Medicare~~
 41 ~~provider or if it does not share a controlling interest with a~~
 42 ~~licensee, as defined in s. 408.803, which bills the Florida~~
 43 ~~Medicaid program or the Medicare program.~~
 44 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/2015

Meeting Date

Topic _____

Bill Number 816

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

816
Bill Number (if applicable)

Topic Home Health Agencies Bill

Amendment Barcode (if applicable)

Name Bobby Lolley

Job Title Executive Director

Address 1363 E. Lafayette St.
Street

Phone 850-567-1951

Tallahassee FL 32301
City State Zip

Email BLOLLEY@HomeCareFLa.ORG

Speaking: For Against Information
error.

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

Representing Home Care Association of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

4/15/15
Meeting Date

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

816
Bill Number (if applicable)

Topic Home Health Agencies

Amendment Barcode (if applicable)

Name Drew Smith

Job Title Governmental Consultant

Address 1907 Brown St
Street

Phone 850-222-2595

Tallahassee FL
City State Zip

Email Drew@smithsmith.net

Speaking: For Against Information

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

Representing Home Care Association of America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 8, 2015

I respectfully request that **Senate Bill #816**, relating to Home Health Agencies, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Health Policy
Transportation

JOINT COMMITTEES:
Joint Administrative Procedures Committee
Joint Legislative Budget Commission

SENATOR DENISE GRIMSLEY

Deputy Majority Leader
21st District

March 14, 2015

The Honorable Anitere Flores, Chair
Senate Committee on Fiscal Policy
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores:

I have a bill on your agenda tomorrow, Senate Bill 816, relating to Home Health Agencies. I've asked a member of my staff to present this bill due to the Transportation Committee meeting. Staff presenting will be Anne Bell.

I am respectfully requesting permission for Ms. Bell to present SB 816 on my behalf.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley
Senator, District 21

DG/ab

REPLY TO:

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 908

INTRODUCER: Criminal Justice Committee; Transportation Committee; and Senator Altman and others

SUBJECT: Traffic Safety

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Dugger	Cannon	CJ	Fav/CS
3.	Pace	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 908 seeks to increase the safety of “vulnerable users of a public roadway.” The bill:

- Revises and creates various statutory provisions and penalties relating to traffic control laws and vulnerable users, such as pedestrians and bicyclists;
- Clarifies provisions relating to overtaking and passing vulnerable users, particularly with respect to maintaining required distance between a passing vehicle and a vulnerable user;
- Sets requirements for making turns at certain locations when passing a vulnerable user;
- Allows drivers to cross the centerline in an identified no-passing zone when passing a vulnerable user;
- Requires appearance at a mandatory hearing for certain infractions contributing to the bodily injury of a vulnerable user;
- Provides a mandatory fine of \$2,000 for certain infractions contributing to the bodily injury of a vulnerable user;
- Requires law enforcement officers issuing certain citations to note if the violation contributed to the bodily injury of a vulnerable user; and
- Revises cross-references to conform definitions.

The bill has an indeterminate impact on state and local government (see Section V.)

II. Present Situation:

Definitions

Current law defines certain relevant terms for purposes of ch. 316, F.S., relating to traffic control laws, as follows:

- “Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.¹
- “Bicycle” means every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device.²
- “Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.³

The term “bodily injury,” is defined identically in various sections of Florida Statutes to mean:

- A cut, abrasion, bruise, burn, or disfigurement;
- Physical pain;
- Illness;
- Impairment of the function of a bodily member, organ, or mental faculty; or
- Any other injury to the body, no matter how temporary.⁴

The term “vulnerable road user,” as used in provisions relating to crashes involving death or personal injuries, is defined to mean:

- A pedestrian, including a person actually engaged in work upon a highway, upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
- A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal;
- A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway;
- A farm tractor or similar vehicle designed primarily for farm use;
- A skateboard, roller skates, or in-line skates;

¹ Section 316.003(75), F.S.

² Section 316.003(2), F.S.

³ Section 316.003(42), F.S.

⁴ See ss. 501.001(1)(c), F.S., 831.03(1), F.S., and 914.21(1), F.S.

- A horse-drawn carriage;
- An electric personal assistive mobility device; or
- A wheelchair.⁵

Driving on Right Side of Roadway

Vehicles must generally be driven up the right half of the roadway, with certain exceptions, such as when overtaking and passing another vehicle proceeding in the same direction and when an obstruction exists making it necessary to drive to the left of the center of the highway.⁶ Additionally, any vehicle traveling at less than the normal speed of traffic under existing conditions must be driven in the right-hand lane or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.⁷ A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.^{8, 9}

Similarly, any person operating a bicycle upon a roadway at less than normal speed of traffic under existing conditions must be ridden in the lane marked for bicycle use or, if no marked lane exists, as close as practicable to the right-hand curb or edge of the roadway except when:

- Overtaking and passing another bicycle or vehicle traveling in the same direction;
- Preparing for a left turn at an intersection or into a private road or driveway; or
- Reasonably necessary to avoid any condition or potential conflict, including a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.¹⁰

Overtaking and Passing

Section 316.083, F.S., requires the driver of a vehicle overtaking another proceeding in the same direction to appropriately signal,¹¹ pass to the left at a safe distance, and not again drive to the right side of the roadway until safely clear of the overtaken vehicle.¹² When overtaking a bicycle or other nonmotorized vehicle, the driver of the overtaking vehicle must pass at a safe distance of not less than three feet between the vehicle and the bicycle or nonmotorized vehicle.¹³

⁵ Section 316.027(1), F.S.

⁶ Section 316.081(1), F.S.

⁷ Section 316.081(2), F.S.

⁸ Sections 316.081(5) and 318.18(3), F.S.

⁹ A person convicted of a noncriminal violation may not be sentenced to a term of imprisonment or to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in ch. 316, F.S., or by ordinance of any city or county. Section 775.082(5), F.S.

¹⁰ Section 316.2065(5)(a), F.S.

¹¹ Generally, by means of the hand and arm or by signal lamps. See ss. 316.155, 316.156, and 316.157, F.S.

¹² Section 316.083(1), F.S.

¹³ Id.

Right Turns on Red

Generally, a vehicle facing a red signal must stop before entering a crosswalk on the near side of an intersection or, if none, then before entering the intersection, and remain stopped until a green indication is shown. Right turns on red are authorized, but a driver must yield the right-of-way to pedestrians and other traffic. Cities and counties may prohibit right-turns-on-red at any intersection with notice of the prohibition erected in a location visible to traffic approaching the intersection.¹⁴

No-Passing Zones

A driver is prohibited from driving on the left side of a roadway if signs or markings are in place to define a no-passing zone, or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.¹⁵ The prohibition does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, or to the driver of a vehicle turning left into or from an alley, private road, or driveway.¹⁶ A no-passing zone violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.¹⁷

Infractions Requiring Mandatory Hearing

Current law requires appearance at a mandatory hearing for any person cited for the following:

- Any infraction resulting in a crash that causes the death of another;
- Any infraction resulting in a crash that causes “serious bodily injury” of another as defined in s. 316.1933(1), F.S.;
- Any infraction for passing a school bus displaying a stop signal, when passing on the side that children enter or exit;
- Any infraction for failure to secure the load being hauled on a vehicle; or
- Any infraction for exceeding certain speed limits by 30 miles per hour or more.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 316.003, F.S., to define the term “bodily injury” identically as that term is already defined in existing law.¹⁹ The bill re-defines the term “vulnerable user of a public roadway” or “vulnerable user” as:

- A pedestrian, including a person actually engaged in work upon a highway, work upon utility facilities along a highway, or the provision of emergency services within the right-of-way;

¹⁴ Section 316.074(1), F.S., and s. 316.075(1)(c), F.S.

¹⁵ Section 316.0875(2), F.S. Section 316.0875(1), F.S., authorizes the Florida Department of Transportation and local authorities to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be hazardous and, by appropriate signs or markings on the roadway, to indicate the beginning and end of such zones.

¹⁶ Section 316.0875(3), F.S.

¹⁷ Sections 316.0875(4) and 318.18(3), F.S.

¹⁸ Section 318.19, F.S. Section 316.1933(1)(b), F.S., defines “serious bodily injury” to mean an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

¹⁹ Supra note 4.

- A person operating, or who is a passenger on, a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal;
- A person lawfully operating on a public roadway, crosswalk, or shoulder of the roadway;
- A farm tractor or similar vehicle designed primarily for farm use;
- A horse-drawn carriage;
- An electric personal assistive mobility device; or
- A wheelchair.

Section 2 amends s. 316.027(1)(b), F.S., to repeal the current definition of “vulnerable road user,” strike “road” from the term, and redefine “vulnerable user” by cross-referencing to the broader definition created in s. 316.003, F.S.

Section 3 amends s. 316.083, F.S., to require the driver of *a motor vehicle* overtaking *a person operating* a bicycle or other *vulnerable user of a public roadway* a safe distance of no less than three feet *as measured from anything extending from the motor vehicle or trailer or other item towed by the motor vehicle*. A law enforcement officer issuing a citation for a violation must note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public roadway.

Section 4 creates s. 316.0833, F.S., to prohibit a person operating a vehicle while overtaking and passing a vulnerable user of a public roadway traveling in the same direction from making a right or left turn at an intersection or into a private road or driveway unless the turn can be made at a safe distance from the vulnerable user and will not impede the travel of the vulnerable user. A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60. A law enforcement officer issuing a citation for a violation must note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public roadway.

Section 5 amends s. 316.0875(3), F.S., to add an additional exclusion from the provisions relating to no-passing zones. If the driver of a motor vehicle is required to cross pavement striping indicating a no-passing zone when passing a vulnerable user of a public roadway, the driver can cross the centerline or drive on the left side of a roadway in order to provide at least three feet between the motor vehicle and the vulnerable user.

Section 6 amends s. 316.1925, F.S., relating to careless driving, to require a law enforcement officer issuing a citation for a violation to note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public roadway.

Section 7 creates s. 318.142, F.S., to require the designated official to impose a fine of not more than \$2,000 for any violation that contributes to the bodily injury of a vulnerable user of a public roadway, in addition to any other penalties imposed under s. 316.083 (overtaking and passing), s. 316.0833 (right or left turns at intersections or into private driveways), or s. 316.1925 (careless driving), F.S.

Section 8 amends s. 318.19, F.S., to require appearance at a mandatory hearing for any infraction of s. 316.083, s. 316.0833, or s. 316.1925, F.S., that contributes to the bodily injury of a vulnerable user of a public roadway.

Section 9 amends s. 322.0261(2), F.S., to revise a cross-reference to the relocated and revised definition of “vulnerable user.”

Section 10 provides the bill takes effect on October 1, 2015.

A number of editorial and grammatical revisions are also made in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Offenders of the revised statutes will be subject to penalties including a fine of \$60 up to \$2,000 per violation. A decrease in personal injury and death for vulnerable users may be experienced, as well as a reduction in costs associated with litigating claims for such injury or death.

C. Government Sector Impact:

According to the DHSMV, the bill’s revisions to penalties associated with the rights and safety of vulnerable users of public roadways and for violations contributing to bodily injuries may result in positive fiscal impacts to local government. The amount of additional fines and resulting positive fiscal impact, as well as any negative fiscal impact due to the need for reprogramming local e-citation systems, is indeterminate at this time.

Similarly, the DHSMV suggests that the bill’s revisions to penalties associated with the rights and safety of vulnerable users of public roadways and for violations contributing to bodily injuries may result in positive fiscal impacts to state government. The amount of

additional fines and resulting revenues is indeterminate at this time. The DHSMV estimates that the bill will require program and software updates, costing \$41,400.²⁰ The DHSMV has indicated that these costs can be absorbed within existing agency resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.027, 316.083, 316.0875, 316.1925, 318.19, and 322.0261.

This bill creates the following sections of the Florida Statutes: 316.0833 and 318.142

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Criminal Justice on April 7, 2015:

- Deletes Section 3 of the bill which makes the second noncriminal infraction causing serious injury or death a first degree misdemeanor.
- Deletes Section 7 of the bill which makes harassing, taunting, or throwing an object at a bicyclist a first degree misdemeanor.
- Deletes Section 12 of the bill which requires mandatory license revocation for the newly created misdemeanor offense involving a second noncriminal infraction causing serious injury or death.

CS by Transportation on March 26, 2015:

The CS modifies the bill by:

- Revising the term, “vulnerable user of a public right-of-way,” to “vulnerable user of a public roadway,” but keeping the same definition with a few exceptions.
- Revising the term, “vulnerable road user” to “vulnerable user” in s. 316.027, F.S., and referencing the broader definition inserted into s. 316.003, F.S.
- Requiring reclassification of a second noncriminal traffic infraction causing serious bodily injury or death to another person within five years of the first such violation a first degree misdemeanor; subjecting an offender to certain penalties and driver license revocation; and defining “serious bodily injury.”
- Applying the requirements for making a right turn, when overtaking and passing a vulnerable user at certain locations, to left turns.

²⁰ See the DHSMV’s 2015 Agency Legislative Bill Analysis for companion HB 231, (Feb. 19, 2015) (on file in the Senate Transportation Committee).

- Removing from the bill revisions to the definition of “substandard-width lane.”
- Revising the penalty provisions that may be imposed in addition to any others for violations related to overtaking and passing a vulnerable user, making turns at intersections or into private driveways when passing a vulnerable user, and careless driving.
- Removing provisions requiring the curriculum for certain driver education and examinations to provide instruction on traffic laws and test the applicant’s knowledge of such laws relating to the rights and safety of vulnerable users of public rights-of-way.

B. Amendments:

None.

By the Committees on Criminal Justice; and Transportation; and
Senators Altman and Gibson

591-03618-15

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1 A bill to be entitled
2 An act relating to traffic safety; amending s.
3 316.003, F.S.; providing definitions; amending s.
4 316.027, F.S.; redefining the term "vulnerable user";
5 deleting obsolete provisions; amending s. 316.083,
6 F.S.; revising provisions relating to the passing of a
7 vehicle; creating s. 316.0833, F.S.; prohibiting
8 passing and turning in front of a vulnerable user in
9 an unsafe manner; providing penalties; amending s.
10 316.0875, F.S.; revising exceptions to provisions for
11 designated no-passing zones; amending s. 316.1925,
12 F.S.; revising provisions relating to careless
13 driving; creating s. 318.142, F.S.; providing fines
14 and penalties for specified infractions contributing
15 to bodily injury of a vulnerable user; amending s.
16 318.19, F.S.; requiring a hearing for specified
17 offenses; amending s. 322.0261, F.S.; conforming a
18 cross-reference; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsections (94) and (95) are added to section
23 316.003, Florida Statutes, to read:

24 316.003 Definitions.—The following words and phrases, when
25 used in this chapter, shall have the meanings respectively
26 ascribed to them in this section, except where the context
27 otherwise requires:

28 (94) BODILY INJURY.—

29 (a) A cut, abrasion, bruise, burn, or disfigurement;

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

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30 (b) Physical pain;
31 (c) Illness;
32 (d) Impairment of the function of a bodily member, organ,
33 or mental faculty; or
34 (e) Any other injury to the body, no matter how temporary.
35 (95) VULNERABLE USER OF A PUBLIC ROADWAY OR VULNERABLE
36 USER.—
37 (a) A pedestrian, including a person actually engaged in
38 work upon a highway, work upon utility facilities along a
39 highway, or the provision of emergency services within the
40 right-of-way;
41 (b) A person operating, or who is a passenger on, a
42 bicycle, motorcycle, scooter, or moped lawfully on the roadway;
43 (c) A person riding an animal; or
44 (d) A person lawfully operating on a public roadway,
45 crosswalk, or shoulder of the roadway:
46 1. A farm tractor or similar vehicle designed primarily for
47 farm use;
48 2. A horse-drawn carriage;
49 3. An electric personal assistive mobility device; or
50 4. A wheelchair.
51 Section 2. Paragraph (b) of subsection (1) of section
52 316.027, Florida Statutes, is amended to read:
53 316.027 Crash involving death or personal injuries.—
54 (1) As used in this section, the term:
55 (b) "Vulnerable ~~road~~ user" has the same meaning as in s.
56 316.003 means:
57 1. A pedestrian, including a person actually engaged in
58 work upon a highway, or in work upon utility facilities along a

Page 2 of 7

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59 highway, or engaged in the provision of emergency services
60 within the right-of-way;

61 2. ~~A person operating a bicycle, motorcycle, scooter, or~~
62 ~~moped lawfully on the roadway;~~

63 3. ~~A person riding an animal; or~~

64 4. ~~A person lawfully operating on a public right-of-way,~~
65 ~~crosswalk, or shoulder of the roadway;~~

66 a. ~~A farm tractor or similar vehicle designed primarily for~~
67 ~~farm use;~~

68 b. ~~A skateboard, roller skates, or in-line skates;~~

69 c. ~~A horse-drawn carriage;~~

70 d. ~~An electric personal assistive mobility device; or~~

71 e. ~~A wheelchair.~~

72 Section 3. Section 316.083, Florida Statutes, is amended to
73 read:

74 316.083 Overtaking and passing a vehicle.—The following
75 provisions ~~rules shall~~ govern the overtaking and passing of
76 vehicles proceeding in the same direction, ~~subject to those~~
77 ~~limitations, exceptions, and special rules hereinafter stated:~~

78 (1) The driver of a vehicle overtaking another vehicle
79 proceeding in the same direction shall give an appropriate
80 signal as provided for in s. 316.156, shall pass to the left
81 thereof at a safe distance, and shall not again drive to the
82 right side of the roadway until safely clear of the overtaken
83 vehicle.

84 (2) The driver of a motor vehicle overtaking a person
85 operating a bicycle or other vulnerable user of a public roadway
86 ~~nonmotorized vehicle~~ must pass the person operating the bicycle
87 or other vulnerable user ~~nonmotorized vehicle~~ at a safe distance

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88 of not less than 3 feet between any part of or attachment to the
89 motor vehicle, any thing extending from the motor vehicle, any
90 trailer or other thing being towed by the motor vehicle and the
91 bicycle, the person operating the bicycle, or other vulnerable
92 user ~~nonmotorized vehicle~~.

93 (3) ~~(2)~~ Except when overtaking and passing on the right is
94 permitted, the driver of an overtaken vehicle shall give way to
95 the right in favor of the overtaking vehicle, on audible signal
96 or upon the visible blinking of the headlamps of the overtaking
97 vehicle if such overtaking is being attempted at nighttime, and
98 shall not increase the speed of his or her vehicle until
99 completely passed by the overtaking vehicle.

100 (4) ~~(3)~~ A violation of this section is a noncriminal traffic
101 infraction, punishable as a moving violation as provided in
102 chapter 318. If a violation of this section contributed to the
103 bodily injury of a vulnerable user of a public roadway, the law
104 enforcement officer issuing the citation for the violation shall
105 note such information on the citation.

106 Section 4. Section 316.0833, Florida Statutes, is created
107 to read:

108 316.0833 Turning when passing vulnerable user.—

109 (1) A person operating a vehicle who overtakes and passes a
110 vulnerable user of a public roadway proceeding in the same
111 direction may not make a right or left turn at an intersection
112 or into a private road or driveway unless the turn can be made
113 at a safe distance from the vulnerable user with reasonable
114 safety and will not impede the travel of the vulnerable user.

115 (2) A violation of subsection (1) is a noncriminal traffic
116 infraction, punishable as a moving violation as provided in

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117 chapter 318. If a violation of subsection (1) contributed to the
 118 bodily injury of a vulnerable user of a public roadway, the law
 119 enforcement officer issuing the citation for the violation shall
 120 note such information on the citation.

121 Section 5. Subsection (3) of section 316.0875, Florida
 122 Statutes, is amended to read:

123 316.0875 No-passing zones.—

124 (3) This section does not apply:

125 (a) When an obstruction exists making it necessary to drive
 126 to the left of the center of the highway; ~~or~~

127 (b) To the driver of a vehicle turning left into or from an
 128 alley, private road, or driveway; or

129 (c) When the driver of a motor vehicle is required to cross
 130 pavement striping indicating a no-passing zone when passing a
 131 vulnerable user of a public roadway in order to provide at least
 132 3 feet between the motor vehicle and the vulnerable user.

133 Section 6. Section 316.1925, Florida Statutes, is amended
 134 to read:

135 316.1925 Careless driving.—

136 (1) A ~~Any~~ person operating a vehicle upon the streets or
 137 highways within the state shall drive the same in a careful and
 138 prudent manner, having regard for the width, grade, curves,
 139 corners, traffic, and all other attendant circumstances, so as
 140 not to endanger the life, limb, or property of any person. A
 141 person who fails ~~Failure~~ to drive in such manner commits shall
 142 constitute ~~careless driving and a violation of this section.~~

143 ~~(2) Any person who violates this section shall be cited for~~
 144 ~~a moving violation, punishable as provided in chapter 318.~~

145 (2) If a violation under this section contributed to the

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146 bodily injury of a vulnerable user of a public roadway, the law
 147 enforcement officer issuing the citation for the violation shall
 148 note such information on the citation.

149 Section 7. Section 318.142, Florida Statutes, is created to
 150 read:

151 318.142 Infractions contributing to bodily injury of a
 152 vulnerable user of a public roadway.—In addition to any other
 153 penalty imposed for a violation under s. 316.083, s. 316.0833,
 154 or s. 316.1925, if the violation contributed to the bodily
 155 injury of a vulnerable user of a public roadway as defined in s.
 156 316.003, the designated official shall impose a fine of not more
 157 than \$2,000.

158 Section 8. Section 318.19, Florida Statutes, is amended to
 159 read:

160 318.19 Infractions requiring a mandatory hearing.—Any
 161 person cited for the infractions listed in this section shall
 162 not have the provisions of s. 318.14(2), (4), and (9) available
 163 to him or her but must appear before the designated official at
 164 the time and location of the scheduled hearing:

165 (1) Any infraction which results in a crash that causes the
 166 death of another;

167 (2) Any infraction which results in a crash that causes
 168 "serious bodily injury" of another as defined in s. 316.1933(1);

169 (3) Any infraction of s. 316.172(1)(b);

170 (4) Any infraction of s. 316.520(1) or (2); ~~or~~

171 (5) Any infraction of s. 316.183(2), s. 316.187, or s.
 172 316.189 of exceeding the speed limit by 30 m.p.h. or more; or

173 (6) Any infraction of s. 316.083, s. 316.0833, or s.
 174 316.1925 which contributes to bodily injury of a vulnerable user

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175 of a public roadway as defined in s. 316.003.

176 Section 9. Subsection (2) of section 322.0261, Florida
177 Statutes, is amended to read:

178 322.0261 Driver improvement course; requirement to maintain
179 driving privileges; failure to complete; department approval of
180 course.-

181 (2) With respect to an operator convicted of, or who
182 pleaded nolo contendere to, a traffic offense giving rise to a
183 crash identified in paragraph (1)(a) or paragraph (1)(b), the
184 department shall require that the operator, in addition to other
185 applicable penalties, attend a department-approved driver
186 improvement course in order to maintain his or her driving
187 privileges. The department shall include in the course
188 curriculum instruction specifically addressing the rights of
189 vulnerable ~~road~~ users as defined in s. 316.003 ~~s. 316.027~~
190 relative to vehicles on the roadway. If the operator fails to
191 complete the course within 90 days after receiving notice from
192 the department, the operator's driver license shall be canceled
193 by the department until the course is successfully completed.

194 Section 10. This act shall take effect October 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

4-15-15
Meeting Date

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

SB 908
Bill Number (if applicable)

Topic Traffic Safety

Amendment Barcode (if applicable)

Name James D. "Doc" Reichenbach II

Job Title State President / Lobbyist

Address PO Box 712
Street

Phone (352) 362-2150

Silver Springs FL 34489
City State Zip

Email abatefl@afl.net

Speaking: For Against Information

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

Representing ABATE of Florida, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

Apr 15 2015
Meeting Date

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

908
Bill Number (if applicable)

Topic Vulnerable Users of the Road

Amendment Barcode (if applicable)

Name Tish Kelly

Job Title _____

Address 73 Ridge dr
Street

Phone 239 860 1627

Naples FL
City State Zip

Email ~~SAUBONAS~~ saubonas@aol.com

Speaking: For Against Information

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

Representing Florida / ~~FL~~ Vulnerable users of rd.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

April 15, 2015

Meeting Date

908

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name BRYAN BARWANT

Job Title

Address 2617 Mahan Drive Street

Phone 850-877-2165

Tallahassee FL 32308 City State Zip

Email

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

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

Representing Florida Sheriffs Association

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/2015

Meeting Date

Topic _____

Bill Number 908
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

908

Bill Number (if applicable)

Meeting Date _____

Topic TRAFFIC SAFETY

Amendment Barcode (if applicable)

Name KEVIN SWEENEY

Job Title _____

Address _____

Phone _____

Street

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

8/15/15
Meeting Date

908
Bill Number (if applicable)

Topic TRAFFIC SAFETY

Amendment Barcode (if applicable)

Name JACK McRAY

Job Title _____

Address 200 W. COLLEGE ST. #304
Street

Phone 850-577-5127

TLH FL 32301
City State Zip

Email jmeray@aa-p.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

April 10, 2015

The Honorable Anitere Flores
Senate Committee on Fiscal Policy, Chair
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair Flores:

I respectfully request that CS/CS/SB 908, related to *Traffic Safety*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building
Tamra Lyon, Committee Administrative Assistant

TA/svb

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

April 14, 2015

The Honorable Anitere Flores
Senate Committee on Fiscal Policy, Chair
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair Flores,

Senate Bill 908, related to *Traffic Safety*, is on the Fiscal Policy Committee agenda tomorrow, April 15, 2015. Due to a scheduling conflict I will be unable to attend.

Please recognize my Legislative Assistant Rick Kendust to present SB 908 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building
Tamra Lyon, Committee Administrative Assistant

TA/dmw

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 912

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Bean

SUBJECT: Recycled and Recovered Materials

DATE: April 14, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	Fav/CS
2.	<u>Procaccini</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 provides relief from liability for a person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse of the materials. The bill defines “recycled and recovered materials” and provides the applicable dates for a cause of action.

II. Present Situation:

Economically recovering material and energy resources from solid waste can eliminate unnecessary waste and slow the depletion of natural resources.¹ The Legislature declared that the maximum recycling and reuse of resources are considered high-priority goals of the state.² In 2013, a little over a third of municipal solid waste was recycled in Florida.³ However, these activities may be discouraged and impeded as an unintended consequence of the hazardous substance liability provisions of Florida law.

A “hazardous substance” is a substance, element, compound, mixture, solution, hazardous waste, or toxic pollutant listed by the Environmental Protection Agency (EPA) which, when released

¹ Section 403.7032(1), F.S.

² *Id.*

³ Florida Department of Environmental Protection, *Florida Municipal Solid Waste Collected and Recycled (2013)*, available at http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/2013AnnualReport/MSW-Composition_2013.pdf (last visited April 10, 2015).

into the environment may present substantial danger to the public health or welfare or the environment.⁴

If a hazardous substance is released or there is a threat of its release, the following persons can be held liable for all of the costs of removal or remedial action incurred by the Department of Environmental Protection (DEP) and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release or threatened release of a hazardous substance:

- The owner and operator of a facility;
- Any persons who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substance was disposed of;
- Any person who by contract arranged for the disposal of a hazardous substance; and
- Any person who accepts or has accepted any hazardous substances for transport to disposal or treatment facilities or sites.⁵

Section 403.727, F.S., also provides defenses of liability which include an:

- Act of war;
- Act of government;
- Act of God;
- Act or omission by a third party.⁶

In addition, a generator or transporter of hazardous waste that complies with the law and contracts for disposal of hazardous wastes with a licensed facility is relieved from liability for the hazardous wastes upon receipt of a certificate of disposal from the facility.⁷ A generator of hazardous waste that complies with the law and contracts for the transport of the hazardous waste to a licensed facility is relieved of liability to the extent that the liability is covered by the insurance or bond of the transporter.⁸

The Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted by Congress on December 11, 1980.⁹ The law provides broad federal authority to respond to releases or the threatened release of hazardous substances that may endanger public health or the environment. CERCLA establishes prohibitions and requirements for closed and abandoned hazardous waste sites, makes responsible persons liable for the release of hazardous waste, and establishes a trust fund to provide for cleanup if a responsible party cannot be identified.¹⁰

⁴ Section 403.703(12), F.S., citing 42 U.S.C. 9601(14); 42 U.S.C. 9602(a).

⁵ Section 403.727(4), F.S. *See also* s. 376.308, F.S.

⁶ Section 403.727(5), F.S.

⁷ Section 403.727(6), F.S.

⁸ Section 403.727(7), F.S.

⁹ Pub. L. No. 96-510, (1980).

¹⁰ *Id.*

The Superfund Recycling Equity Act of 1999 generally exempts generators and transporters of recyclable materials from liability under CERCLA.¹¹ The law reduces waste and promotes natural resource conservation by promoting the reuse and recycling of scrap material.¹² However, the transporter may be liable under CERCLA if the transporter fails to use reasonable care with the management and handling of recycled and recovered material.¹³ Whether a transporter uses reasonable care is based upon the following criteria:

- The price paid in the recycling transaction;
- The ability of an individual to detect the nature of the consuming facility's operations; and
- The history and current compliance of the facility with state, federal, or local environmental laws in the handling, processing, reclamation, or other management activity associated with recyclable materials.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 403.727, F.S., to provide relief from liability to any person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse, and the hazardous substance is released or threatened to be released from the receiving facility.

The relief from liability does not apply if the person fails to exercise reasonable care in managing and handling the recycled and recovered material. It also does not apply if the arrangement for the reclamation, recycling, manufacturing, or reuse of the material was not expected to be legitimate based on the information available to the person at the time of the arrangement.

The bill defines "recycled and recovered material" as scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid or nickel-cadmium batteries or other spent batteries. The bill specifies the term includes minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use before becoming scrap. The term does not include hazardous waste.

The bill specifies that the relief from liability applies to causes of action accruing on or after July 1, 2015, and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ Pub. L. No. 106-113, (1999).

¹² U.S. Dept. of Energy, *Office of Health Safety, and Security, CERCLA*, available at <http://homer.ornl.gov/sesa/environment/policy/cercla.html> (last visited April 10, 2015).

¹³ 42 U.S.C. 9627(c)

¹⁴ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is an indeterminate positive fiscal impact to a person released from liability that may have been liable for cleanup costs.

C. Government Sector Impact:

The bill may have a potential negative fiscal impact, because if there is a release of hazardous substances and no liable party exists, the state may incur costs associated with the hazardous waste cleanup.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Part of the definition of “recycled and recovered materials” specifies it does not include hazardous waste. According to the DEP, it is unclear what this phrase adds to the meaning of recycled and recovered materials.¹⁶

In its bill analysis, the DEP states that the bill is similar in concept to the liability defense found in the Superfund Recycling Equity Act. The federal law is more specific on how the liability defense can be claimed and when an individual is excluded from relying on the defense. In order to qualify for the federal defense, persons who arrange for recycling are required to demonstrate they took reasonable care to determine the material was sent to a facility that was in compliance. The bill also requires reasonable care in the handling and management of recycled and recovered materials but is not as specific as federal law. It is not clear what a court may require to determine whether a person has failed to exercise reasonable care with respect to the

¹⁵ DEP, *Senate Bill 914 Agency Analysis*, 3 (Feb. 25, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁶ *Id.*

management and handling of the recycled materials, or whether the arrangement for recycling was not reasonably expected to be legitimate.¹⁷

VIII. Statutes Affected:

This bill substantially amends section 403.727 of the Florida Statutes.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on March 31, 2015:

The CS provides clarity by removing the conflicting “notwithstanding clause.” It makes a technical correction to change the term “solid waste” to “hazardous substances.”

- B. **Amendments:**

None.

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

¹⁷ *Id.*

By the Committee on Environmental Preservation and Conservation;
and Senator Bean

592-03277-15

2015912c1

1 A bill to be entitled
2 An act relating to recycled and recovered materials;
3 amending s. 403.727, F.S.; exempting a person who
4 sells, transfers, or arranges for the transfer of
5 recycled and recovered materials from liability for
6 hazardous substances released or threatened to be
7 released from the receiving facility or site under
8 certain circumstances; defining the term "recycled and
9 recovered materials"; providing retroactive
10 application under certain circumstances; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (4) of section 403.727, Florida
16 Statutes, is amended, present subsection (8) of that section is
17 redesignated as subsection (9), and a new subsection (8) is
18 added to that section, to read:

19 403.727 Violations; defenses, penalties, and remedies.—

20 (4) In addition to any other liability under this chapter,
21 and subject only to the defenses set forth in subsections (5),
22 (6), ~~and (7)~~, and (8):

23 (a) The owner and operator of a facility;

24 (b) Any person who at the time of disposal of any hazardous
25 substance owned or operated any facility at which such hazardous
26 substance was disposed of;

27 (c) Any person who, by contract, agreement, or otherwise,
28 arranged for disposal or treatment, or arranged with a
29 transporter for transport for disposal or treatment, of

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

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30 hazardous substances owned or possessed by such person or by any
31 other party or entity at any facility owned or operated by
32 another party or entity and containing such hazardous
33 substances; and

34 (d) Any person who accepts or has accepted any hazardous
35 substances for transport to disposal or treatment facilities or
36 sites selected by such person,

37
38 is liable for all costs of removal or remedial action incurred
39 by the department under this section and damages for injury to,
40 destruction of, or loss of natural resources, including the
41 reasonable costs of assessing such injury, destruction, or loss
42 resulting from the release or threatened release of a hazardous
43 substance as defined in the Comprehensive Environmental
44 Response, Compensation, and Liability Act of 1980, Pub. L. No.
45 96-510.

46 (8) In order to promote the reuse and recycling of
47 recovered materials and to remove potential impediments to
48 recycling, a person who sells, transfers, or arranges for the
49 transfer of recycled and recovered materials to a facility owned
50 or operated by another person for the purpose of reclamation,
51 recycling, manufacturing, or reuse of such materials is relieved
52 from liability for hazardous substances released or threatened
53 to be released from the receiving facility. This relief from
54 liability does not apply if the person fails to exercise
55 reasonable care with respect to the management and handling of
56 the recycled and recovered materials, or if the arrangement for
57 reclamation, recycling, manufacturing, or reuse of such
58 materials was not reasonably expected to be legitimate based on

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59 information generally available to the person at the time of the
60 arrangement. For the purpose of this subsection, the term
61 "recycled and recovered materials" means scrap paper; scrap
62 plastic; scrap glass; scrap textiles; scrap rubber, other than
63 whole tires; scrap metal; or spent lead-acid or nickel-cadmium
64 batteries or other spent batteries. The term includes minor
65 amounts of material incident to or adhering to the scrap
66 material as a result of its normal and customary use before
67 becoming scrap. The term does not include hazardous waste. This
68 subsection applies to causes of action accruing on or after July
69 1, 2015, and applies retroactively to causes of action accruing
70 before July 1, 2015, for which a lawsuit has not been filed.

71 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/2015

Meeting Date

Topic _____

Bill Number 912

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

912

Bill Number (if applicable)

Topic Recycling

Amendment Barcode (if applicable)

Name Jim Magill

Job Title Lobbyist

Address 181 N. Monroe St Suite 1090

Phone 575-9911

Street

RD E 32701

City

State

Zip

Email JAMES.MAGILL@BIPC.CO

Speaking: For Against Information

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

Representing FLA RECYCLERS ASSOC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores Chair
Committee On Fiscal Policy

Subject: Committee Agenda Request

Date: April 8, 2015

I respectfully request that **Senate Bill #912**, relating to Recycled and Recovered Materials, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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 Fiscal Policy

BILL: CS/SB 922

INTRODUCER: Judiciary Committee and Senator Latvala

SUBJECT: Appointment of an Ad Litem

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 922 authorizes a court to appoint an ad litem, which is an attorney, administrator, or guardian ad litem, for a person who is served by publication with notice of a lawsuit and fails to respond to the lawsuit. The purpose of the ad litem is to represent the interests of an absent party during a legal action if the party is not otherwise represented. An ad litem is not required to post bond. Additionally, the ad litem is entitled to reasonable fees and costs, assessed against the party requesting the appointment of the ad litem, or as otherwise ordered by the court. However, state funds may not be used to pay for services rendered by the ad litem, unless the state requested the ad litem.

The bill does not have a fiscal impact.

II. Present Situation:

Ad Litem

The term “ad litem” means “for the suit.”¹ An ad litem can take several forms, such as a guardian ad litem or an attorney ad litem. A guardian ad litem is typically an attorney, appointed by the court to appear in a lawsuit on behalf of an incompetent party or minor child.² An attorney ad

¹ BLACK’S LAW DICTIONARY (10th ed. 2014).

² *Id.*

litem is a court-appointed lawyer who represents a child during the course of a legal action, such as a divorce, termination of parental rights, or child abuse case.³

Service of Process

The sheriff of the county where the person is to be served is generally responsible for serving as process server. The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.⁴ The term “to serve” means to make legal delivery of a notice or a pleading.⁵ A summons is a writ or a process beginning a plaintiff’s legal action and requiring a defendant to appear in court to answer the summons.⁶ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁷ A subpoena can command a person to be present for a deposition or for a court appearance.

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person’s usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together; or
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge, if the person to be served is a sole proprietor and two attempts have been made to serve the owner.⁸

Constructive Service of Process

Constructive service of process is service accomplished by a method or circumstance that does not give actual notice.⁹ This method of providing notice is accomplished by publishing notice of a lawsuit in a newspaper in the county where the court is located or, in some circumstances, posting notice of a lawsuit in three different conspicuous places in the county.¹⁰ Constructive service is authorized only if personal service of process cannot be accomplished.¹¹

³ *Id.*

⁴ Sections 48.011 and 48.021, F.S.

⁵ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁶ *Id.*

⁷ *Id.*

⁸ Section 48.031(1) and (2), F.S.

⁹ BLACK’S LAW DICTIONARY (10th ed. 2014).

¹⁰ Sections 49.10 and 49.11, F.S.

¹¹ Section 49.021, F.S.

Florida law enumerates a number of legal actions for which constructive service of process is authorized:

- In real or personal property cases, to partition property within the jurisdiction of the court, enforce legal or equitable liens, enforce claims to title or interest, quiet title, or to remove an encumbrance, lien, or cloud on property;
- For the dissolution of marriage or in an annulment case;
- For the termination of parental rights, temporary custody of a minor child, adoption, and in certain paternity actions;
- For the construction of a will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien or interest; and
- For a case in which a writ of replevin, garnishment, or attachment has been issued and executed.¹²

Service of process by publication may be made to:

- Known or unknown persons, and in some instances, persons unknown to be dead or alive;
- Corporations or other legal entities, whether foreign, domestic, or unknown, and dissolved or existing; and
- Any group, firm, entity, or persons who operate or do business, or have operated or done business, in the state; and
- All claimants under any of the above intended recipients of process.¹³

Before effecting service on a person by publication, the plaintiff or the plaintiff's agent or attorney must file a sworn statement with the court specifying that:

- A diligent search and inquiry has been made to discover the name and residence of the person to be served;
- The person is either over or under the age of 18, if known, or that age is unknown; and
- The residence of the person is
 - Unknown;
 - In another state or country other than this state, stating the residence if known; or
 - In the state, but the person has been absent from the state for more than 60 days or concealed himself or herself in the state so as not to be found.¹⁴

Before effecting service on a corporation by publication, the plaintiff or the plaintiff's agent or attorney must address in the sworn statement:

- That a diligent search and inquiry has been made to discover the true name, domicile, principal place of business, and status (foreign, domestic, or dissolved) of the corporate defendant and others who would bind the corporation;
- Whether the corporation has ever qualified to do business in this state, unless the corporation is a Florida corporation; and
- That all officers, directors, managers, cashiers, and agents of the corporation are absent or cannot be found in the state, conceal themselves to avoid process, or that their whereabouts are unknown.¹⁵

¹² Section 49.011, F.S.

¹³ Section 49.021, F.S.

¹⁴ Section 49.041, F.S.

¹⁵ Section 49.051, F.S.

Within 60 days after filing the sworn statement, the clerk or judge must issue a notice of action providing:

- The names of the known defendants or a description of the unknown defendants;
- The nature of the action or the proceeding;
- The name of the court in which the plaintiff initiated the action; and
- If relevant, the description of real property.¹⁶

Most notices of action are published once a week for 4 consecutive weeks in a newspaper published in the county where the court is located.¹⁷ If the county does not have a newspaper, three copies of the notice must be posted in three different and conspicuous places in the county, including the front door of the courthouse.¹⁸ Proof of publication is made by affidavit of the owner, publisher, editor, business manager, or other officer or employee of the newspaper or of the person posting the notice.¹⁹

III. Effect of Proposed Changes:

The bill creates s. 49.31, F.S, which authorizes the appointment of an ad litem. An ad litem is an attorney, administrator, or guardian ad litem. An ad litem may represent a party in any case for which service of process by publication is authorized, such as cases relating to real property, probate, and certain kinds of family law issues.

A court may appoint an ad litem to represent the interest of a party who fails to respond to a lawsuit after service of process by publication has been made. However, a court may not appoint an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is already serving.

If an appointed ad litem discovers that a personal representative, guardian of property, or trustee is already serving, the ad litem must report the finding to the court and file a petition for discharge as to any interest which is already represented. If an appointed ad litem discovers that the person whose interest he or she is representing is deceased and there is not a personal representative, guardian of the property, or trustee to represent the interest, the ad litem must:

- Make a reasonable attempt to locate any spouse, heir, devisee, or beneficiary of the decedent
- Report to the court the name and address of all such persons who are located; and
- Petition for discharge as to any interest of a person that is located.

If a court appoints an ad litem, the court:

- May not require the ad litem to post a bond or designate a resident agent.
- Must discharge the ad litem when final judgment is entered or as otherwise ordered by the court.
- Must assess the reasonable fees and costs of the ad litem against the party requesting the appointment of an ad litem, typically the plaintiff, or as otherwise ordered by the court.

¹⁶ Section 49.08, F.S.

¹⁷ Section 49.10(1)(a), F.S.

¹⁸ Section 49.11, F.S.

¹⁹ Sections 49.10(2) and 49.11, F.S.

However, the bill prohibits the use of state funds for services rendered by the ad litem unless the state requested the ad litem.

The bill also expressly validates the adjudication of cases in which a court appointed an ad litem without statutory authority to make the appointment. Specifically, the bill states: “In all cases adjudicated in which the court appointed an ad litem, a proceeding may not be declared ineffective solely due to the lack of statutory authority to appoint an ad litem.”

The bill clarifies that it does not impede the common law authority of a court to appoint an ad litem.

This bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Real Property Probate, and Trust Law Section of the Florida Bar, the bill will help protect the property rights of individuals who cannot be notified of lawsuits. The bill also preserves the marketability of title to real estate, which might be questioned if a person is not represented in a quiet title action or foreclosure proceeding.²⁰

The bill also validates previous legal proceedings in which a court appointed an ad litem to represent an unknown or unavailable defendant without express statutory authority to do so. This retroactive validation of legal proceedings likely benefits foreclosing lenders and title insurance companies by eliminating a potential ground for setting aside a foreclosure or judgment in a quiet title action.

²⁰ Real Property Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to s. 49.021, Fla. Stats., Concerning Appointment of Ad Litem* (Nov. 23, 2013) (on file with the Senate Committee on Judiciary).

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the discretionary appointment of an ad litem will require the assessment of fees and costs, review of reports, and processing petitions for discharge, all of which would result in additional judicial time. While OSCA cannot accurately determine the bill's fiscal impact, if any, OSCA did not offer data to support the need for additional court resources to address the bill's workload requirements.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 49.31 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 24, 2015:**

The committee substitute:

- Removes the requirement that a personal representative must notify the court and petition for discharge where representation would overlap if the ad litem discovers that the person for whom the ad litem is serving is already represented;
- Removes the requirement that if an ad litem discovers that the person he or she represents is deceased, the ad litem must reasonably attempt to notify relatives and heirs, report to the court the contact of any persons located, and petition for discharge; and
- Prohibits the use of state funds for services rendered by the ad litem unless the state requested the ad litem.

B. Amendments:

None.

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

²¹ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Mar. 13, 2015).

By the Committee on Judiciary; and Senator Latvala

590-02843-15

2015922c1

A bill to be entitled

An act relating to the appointment of an ad litem; creating s. 49.31, F.S.; defining the term "ad litem"; authorizing a court to appoint an ad litem for certain parties upon whom service of process by publication is made; prohibiting a court from appointing an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving; requiring an ad litem, upon discovery that the party he or she represents is already represented by a personal representative, guardian of property, or trustee, or is deceased, to take certain actions; prohibiting a court from requiring an ad litem to post a bond or designate a resident agent; requiring a court to discharge an ad litem when the final judgment is entered or as otherwise ordered by the court; providing that an ad litem is entitled to an award of a reasonable fee for services and costs; providing for assessment; prohibiting the use of state funds to pay fees for services rendered by the ad litem except in certain circumstances; prohibiting declaring certain proceedings ineffective solely due to a lack of statutory authority to appoint an ad litem; providing construction; providing an effective date.

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

Section 1. Section 49.31, Florida Statutes, is created to read:

Page 1 of 3

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590-02843-15

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49.31 Appointment of ad litem.—

(1) As used in this section, the term "ad litem" means an attorney, administrator, or guardian ad litem.

(2) The court may appoint an ad litem for any party, whether known or unknown, upon whom service of process by publication under this chapter has been properly made and who has failed to file or serve any paper in the action within the time required by law. A court may not appoint an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving.

(a) If the court has appointed an ad litem and the ad litem discovers that a personal representative, guardian of property, or trustee is serving who represents the interest for which the ad litem was appointed, the ad litem must promptly report that finding to the court and must file a petition for discharge as to any interest for which the personal representative, guardian of property, or trustee is serving.

(b) If the court has appointed an ad litem to represent an interest and the ad litem discovers that the person whose interest he or she represents is deceased and there is no personal representative, guardian of property, or trustee to represent the decedent's interest, the ad litem must make a reasonable attempt to locate any spouse, heir, devisee, or beneficiary of the decedent, must report to the court the name and address of all such persons whom the ad litem locates, and must petition for discharge as to any interest of the person located.

(3) The court may not require an ad litem to post a bond or designate a resident agent in order to serve as an ad litem.

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59 (4) The court shall discharge the ad litem when the final
60 judgment is entered or as otherwise ordered by the court.

61 (5) The ad litem is entitled to an award of a reasonable
62 fee for services rendered and costs, which shall be assessed
63 against the party requesting the appointment of the ad litem, or
64 as otherwise ordered by the court. State funds may not be used
65 to pay fees for services rendered by the ad litem unless the ad
66 litem was requested by the state.

67 (6) In all cases adjudicated in which the court appointed
68 an ad litem, a proceeding may not be declared ineffective solely
69 due to lack of statutory authority to appoint an ad litem.

70 (7) This section does not abrogate a court's common law
71 authority to appoint an ad litem.

72 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-15

Meeting Date

922

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Peter Dunbar

Job Title _____

Address 215 S. Monroe

Street

Phone 999-4100

Tallahassee

City

State

Zip

Email pdunbar@deanmead.com

Speaking: For Against Information

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

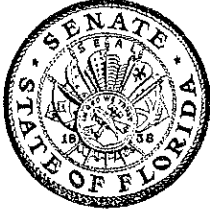
Representing Real Property Section - Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA

20th District

April 8, 2015

The Honorable Anitere Flores, Chair
Senate Fiscal Policy Committee
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores:

I respectfully request consideration of Senate Bill 922/Appointment of an Ad Litem by the Senate Fiscal Policy Committee at your earliest convenience. The bill was favorably referred by the Appropriations Subcommittee on Criminal & Civil Justice on April 8.

This bill will provide a specific authority for a judge to appoint a representative for an individual who is personally absent from the court's jurisdiction in order to protect their property rights. Examples would include deployed military personnel or an individual who could not be located by the process server.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

Cc: Jennifer Hrdlicka, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:

26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

April 14, 2015

The Honorable Anitere Flores, Chair
Senate Fiscal Policy Committee
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores:

On Wednesday, April 14, three of my bills are on the agenda in Fiscal Policy while I am in the Rules Committee. I will not be able to leave Rules because I have to present one of my bills and be present for important votes.

I would like to have my aide Tracy Caddell present SB1304/Inspectors General. Brenda Johnson, my other aide, will present SB922 Appointment of Guardian Ad Litem and SB636/Public Accountancy.

Thank you for your consideration.

Sincerely,



Jack Latvala
Senator, District 20

Cc: Jennifer Hrdlicka, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
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ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 950

INTRODUCER: Health Policy Committee and Senator Hukill

SUBJECT: Public Health Emergencies

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 950 amends provisions relating to the Department of Health’s (DOH) authority to initiate and enforce quarantine orders for persons, animals, and premises. The bill defines the terms “isolation” and “quarantine” and allows the State Surgeon General to issue an isolation order. The bill makes any order issued by the DOH immediately enforceable by law enforcement.

The bill includes a legislative finding that the act fulfills an important state interest by providing measures for the control of communicable diseases and the protection of public health.

The bill has no fiscal impact on state government and an indeterminate, but likely insignificant, impact on local governments.

II. Present Situation:

Public Health Emergencies in Florida

A public health emergency is any occurrence, or threat, whether natural or manmade, that results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.¹

¹ Section 381.00315(1)(b), F.S.

The State Surgeon General² can declare a public health emergency for a period of up to 60 days. The public health emergency can be renewed if the Surgeon General and the Governor agree it is necessary. During a public health emergency the Surgeon General can take the necessary actions to protect the public, including, but not limited to:

- Directing prescription drug manufacturers to give priority to the shipping of specified drugs to pharmacies and health care providers within specified geographic areas;
- Directing DOH-employed pharmacists to compound necessary bulk medications;
- Temporarily reactivating certain inactive health care practitioner licenses; and
- Ordering an individual to be examined, tested, vaccinated, treated, or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to the public health.³

Public health emergencies can be declared for various reasons. For example, Governor Charlie Crist directed Surgeon General Dr. Ana Viamonte Ros to declare a public health emergency for two cases of swine flu in Lee and Broward counties in 2009.⁴ Additionally, in 2011, the Florida Legislature passed a bill directing Surgeon General Frank Farmer to issue a statewide public health emergency in response to the ongoing problem of prescription drug abuse.⁵

Quarantine versus Isolation

Quarantine and isolation are two tools used by public health authorities to separate from the public people, animals, or premises that have a potential to threaten the public health. The Centers for Disease Control and Prevention (CDC) differentiates between isolation and quarantine in that isolation applies to persons who are known to be ill with a contagious disease whereas quarantine applies to those who have been exposed to a contagious disease but who may or may not become ill. In addition to people, the CDC applies the term quarantine to animals and premises who may have been exposed to a dangerous contagious disease agent and have been closed off or separated from the population.⁶

Isolation and quarantine orders can also differ in length. The length of an isolation order is typically determined by the length of the communicability of the illness for which the individual is being isolated. The scope of quarantine orders can vary, depending on their purpose, and can last as long as necessary to protect the public.⁷

² Section 20.43(2), F.S. The State Surgeon General is also to as the State Health Officer. *See s. 381.00315, F.S.*

³ Section 381.00315(1)(b), F.S.

⁴ Southwest Florida Online – Sunday Morning News, *Florida Declares Health Emergency*, available at <http://swflorida.blogspot.com/2009/05/florida-declares-health-emergency.html> (last visited April 10, 2015).

⁵ Online Newsroom, *Emergency Declaration*, (July 1, 2011) available at <http://newsroom.doh.state.fl.us/2011/07/01/emergency-declaration/> (last visited April 10, 2015). *See ch. 2011-141, L.O.F.*

⁶ Centers for Disease Control and Prevention, *Understand Quarantine and Isolation*, (last updated February 10, 2014) available at <http://emergency.cdc.gov/preparedness/quarantine/> (last visited April 10, 2015).

⁷ Centers for Disease Control and Prevention, *Understand Quarantine and Isolation: Questions & Answers*, (last updated February 10, 2014) available at <http://emergency.cdc.gov/preparedness/quarantine/qa.asp> (last visited April 10, 2015).

Quarantines in Florida

The DOH's rules detail how to initiate and lift a quarantine. Quarantine orders are issued by the Surgeon General or the county health department director or administrator or their designee. The quarantine order must be in writing and include:

- An expiration date or specific conditions for the end of the quarantine; and
- Restrict or compel the movement or actions, including isolation, closure of premises, testing, destruction, disinfection, treatment, and immunization of a person, animal, or a premises consistent with the protection of public health.⁸

The DOH must have access to the quarantined individual or premises and any transportation or removal of quarantined persons or animals must be in accordance with written orders issued by the Surgeon General or the county health department director.

The state has used its quarantine power on several occasions. In 2003, a six-year-old was placed in home isolation by the Okaloosa County health department under suspicion of having SARS.⁹ Additionally, a building in Boca Raton was quarantined after an anthrax attack killed a photojournalist in 2001.¹⁰ However, no formal involuntary orders were issued for any of these examples. The last involuntary order that was issued in Florida occurred in 1947.¹¹

The most recent example of a quarantine order is from October 2014 when Governor Rick Scott directed the DOH to monitor all people leaving an Ebola-affected country for 21 days after their departure and to quarantine any high-risk traveler from Ebola-affected countries in West Africa for 21 days. The order allowed the DOH to make its own determinations on quarantine and other necessary public health interventions.¹²

Law Enforcement

Section 381.0012, F.S., currently requires law enforcement officials and other city and county officials to enforce the state health laws and rules adopted by the DOH for the public health system. Orders are not included in this enforcement mandate. However, s. 381.00315(1), F.S., states that all orders by the Surgeon General are immediately enforceable by a law enforcement officer pursuant to s. 381.0012, F.S. The conflict in these sections may create some ambiguity for law enforcement officials who are tasked with enforcing quarantine orders.

III. Effect of Proposed Changes:

The bill amends s. 381.00315, F.S., to define:

⁸ Section 64D-3.038, F.A.C.

⁹ Florida Department of Health, *White Paper on the Law of Florida Human Quarantine*, p. 6 (January 2007), available at <http://biotech.lsu.edu/cph/articles/others/Florida-Quarantine-07.pdf> (last visited April 10, 2015).

¹⁰ Wm. Robert Johnston, *Review of Fall 2001 Anthrax Bioattacks*, (last modified March 17, 2005), available at <http://www.cdc.gov/niosh/nas/rdrp/appendices/chapter6/a6-45.pdf> (last visited on April 10, 2015).

¹¹ *Supra* note 9.

¹² E.O. No. 14-280, (October 25, 2014) available at http://www.flgov.com/wp-content/uploads/2014/10/SKMBT_C35314102515490.pdf (last visited April 10, 2015).

- “Isolation” as the separation of an individual who is reasonably believed to be infected with a communicable disease from those who are not infected with the disease to prevent the spread of the disease; and
- “Quarantine” as the separation of an asymptomatic individual or a premises reasonably believed to have been exposed to a communicable disease from individuals who have not been exposed to the disease to prevent its possible spread.

The bill amends the Surgeon General’s responsibilities to include ordering an isolation. The use of isolation as a preventative measure is also added to the authority the DOH has to order a quarantine. The bill also makes any isolation and quarantine order immediately enforceable by law enforcement. In addition, the bill amends s. 381.0012, F.S., to require law enforcement and other city and county officials to assist the DOH in enforcing state health orders.

The bill contains a legislative finding that the act fulfills an important state interest by providing measures for the control of communicable diseases and the protection of public health.

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution, provides that no county or municipality is bound by any general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds. To the extent the bill requires a local government to spend funds to comply with its terms, the mandate provisions may apply. To be binding on counties and municipalities the Legislature must find that the law fulfills an important state interest and one of the following must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law is approved by a two-thirds vote of each house of the Legislature.

The mandates provisions may apply because this bill requires local law enforcement and other appropriate city and county departments to use their own resources to assist the DOH or its agents in enforcing isolation and quarantine orders upon the request of the DOH or its agents.

Because the bill requires the assistance of both state and local law enforcement, and other officials, the bill appears to apply to all persons similarly situated. Additionally, the bill contains a finding of important state interest.

Under Art. VII, s. 18(d) of the Florida Constitution, bills having insignificant fiscal impact are exempt from the mandates provisions. The bill may be exempt because it is likely that the costs to the cities or counties of enforcing the isolation and quarantine orders would be insignificant due to the rarity of the DOH invoking its quarantine authority.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Local governments may incur expenditures related to assisting the DOH with enforcement of isolation and quarantine orders. There is no expected impact to the DOH. The impact is indeterminate due to the infrequent issuance of such orders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH is required to adopt rules regarding the imposition and lifting of isolation orders.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0012 and 381.00315.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Policy on March 10, 2015:

The CS amends the definition of “quarantine” to include premises and adds section 3 of the bill which provides a legislative finding that the bill fulfills an important state interest.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Hukill

588-02132-15

2015950c1

1 A bill to be entitled
 2 An act relating to public health emergencies; amending
 3 s. 381.0012, F.S.; requiring certain state and local
 4 officers to assist in enforcing rules and orders
 5 issued by the Department of Health under ch. 381,
 6 F.S.; amending s. 381.00315, F.S.; authorizing the
 7 State Health Officer to issue orders to isolate
 8 individuals; defining terms; clarifying the
 9 responsibilities of the department for isolation and
 10 quarantine; specifying that any order the department
 11 issues is immediately enforceable by a law enforcement
 12 officer; requiring the department to adopt rules for
 13 the imposing and lifting of isolation orders;
 14 providing a penalty for violating an isolation order;
 15 providing a legislative finding of important state
 16 interest; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Subsection (5) of section 381.0012, Florida
 21 Statutes, is amended to read:
 22 381.0012 Enforcement authority.—
 23 (5) It shall be the duty of every state and county
 24 attorney, sheriff, police officer, and other appropriate city
 25 and county officials upon request to assist the department or
 26 any of its agents in enforcing the state health laws, rules, and
 27 orders ~~the rules~~ adopted under this chapter.
 28 Section 2. Section 381.00315, Florida Statutes, is amended
 29 to read:

Page 1 of 7

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

588-02132-15

2015950c1

30 381.00315 Public health advisories; public health
 31 emergencies; isolation and quarantines.—The State Health Officer
 32 is responsible for declaring public health emergencies, issuing
 33 public health advisories, and ordering isolation or and
 34 quarantines ~~and issuing public health advisories~~.
 35 (1) As used in this section, the term:
 36 (a) “Isolation” means the separation of an individual who
 37 is reasonably believed to be infected with a communicable
 38 disease from those who are not infected with the disease to
 39 prevent the spread of the disease.
 40 (b) ~~(a)~~ “Public health advisory” means any warning or report
 41 giving information to the public about a potential public health
 42 threat. Prior to issuing any public health advisory, the State
 43 Health Officer must consult with any state or local agency
 44 regarding areas of responsibility which may be affected by such
 45 advisory. Upon determining that issuing a public health advisory
 46 is necessary to protect the public health and safety, and prior
 47 to issuing the advisory, the State Health Officer must notify
 48 each county health department within the area which is affected
 49 by the advisory of the State Health Officer’s intent to issue
 50 the advisory. The State Health Officer is authorized to take any
 51 action appropriate to enforce any public health advisory.
 52 (c) ~~(b)~~ “Public health emergency” means any occurrence, or
 53 threat thereof, whether natural or ~~manmade~~ ~~man-made~~, which
 54 results or may result in substantial injury or harm to the
 55 public health from infectious disease, chemical agents, nuclear
 56 agents, biological toxins, or situations involving mass
 57 casualties or natural disasters. Prior to declaring a public
 58 health emergency, the State Health Officer shall, to the extent

Page 2 of 7

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

588-02132-15

2015950c1

59 possible, consult with the Governor and shall notify the Chief
 60 of Domestic Security. The declaration of a public health
 61 emergency shall continue until the State Health Officer finds
 62 that the threat or danger has been dealt with to the extent that
 63 the emergency conditions no longer exist and he or she
 64 terminates the declaration. However, a declaration of a public
 65 health emergency may not continue for longer than 60 days unless
 66 the Governor concurs in the renewal of the declaration. The
 67 State Health Officer, upon declaration of a public health
 68 emergency, may take actions that are necessary to protect the
 69 public health. Such actions include, but are not limited to:

70 1. Directing manufacturers of prescription drugs or over-
 71 the-counter drugs who are permitted under chapter 499 and
 72 wholesalers of prescription drugs located in this state who are
 73 permitted under chapter 499 to give priority to the shipping of
 74 specified drugs to pharmacies and health care providers within
 75 geographic areas that have been identified by the State Health
 76 Officer. The State Health Officer must identify the drugs to be
 77 shipped. Manufacturers and wholesalers located in the state must
 78 respond to the State Health Officer's priority shipping
 79 directive before shipping the specified drugs.

80 2. Notwithstanding chapters 465 and 499 and rules adopted
 81 thereunder, directing pharmacists employed by the department to
 82 compound bulk prescription drugs and provide these bulk
 83 prescription drugs to physicians and nurses of county health
 84 departments or any qualified person authorized by the State
 85 Health Officer for administration to persons as part of a
 86 prophylactic or treatment regimen.

87 3. Notwithstanding s. 456.036, temporarily reactivating the

Page 3 of 7

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

588-02132-15

2015950c1

88 inactive license of the following health care practitioners,
 89 when such practitioners are needed to respond to the public
 90 health emergency: physicians licensed under chapter 458 or
 91 chapter 459; physician assistants licensed under chapter 458 or
 92 chapter 459; licensed practical nurses, registered nurses, and
 93 advanced registered nurse practitioners licensed under part I of
 94 chapter 464; respiratory therapists licensed under part V of
 95 chapter 468; and emergency medical technicians and paramedics
 96 certified under part III of chapter 401. Only those health care
 97 practitioners specified in this paragraph who possess an
 98 unencumbered inactive license and who request that such license
 99 be reactivated are eligible for reactivation. An inactive
 100 license that is reactivated under this paragraph shall return to
 101 inactive status when the public health emergency ends or prior
 102 to the end of the public health emergency if the State Health
 103 Officer determines that the health care practitioner is no
 104 longer needed to provide services during the public health
 105 emergency. Such licenses may only be reactivated for a period
 106 not to exceed 90 days without meeting the requirements of s.
 107 456.036 or chapter 401, as applicable.

108 4. Ordering an individual to be examined, tested,
 109 vaccinated, treated, isolated, or quarantined for communicable
 110 diseases that have significant morbidity or mortality and
 111 present a severe danger to public health. Individuals who are
 112 unable or unwilling to be examined, tested, vaccinated, or
 113 treated for reasons of health, religion, or conscience may be
 114 subjected to isolation or quarantine.

115 a. Examination, testing, vaccination, or treatment may be
 116 performed by any qualified person authorized by the State Health

Page 4 of 7

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

588-02132-15

2015950c1

117 Officer.

118 b. If the individual poses a danger to the public health,
119 the State Health Officer may subject the individual to isolation
120 or quarantine. If there is no practical method to isolate or
121 quarantine the individual, the State Health Officer may use any
122 means necessary to vaccinate or treat the individual.

123
124 Any order of the State Health Officer given to effectuate this
125 paragraph shall be immediately enforceable by a law enforcement
126 officer under s. 381.0012.

127 (d) "Quarantine" means the separation of an asymptomatic
128 individual or a premises reasonably believed to have been
129 exposed to a communicable disease from individuals who have not
130 been exposed to the disease to prevent its possible spread.

131 (2) Individuals who assist the State Health Officer at his
132 or her request on a volunteer basis during a public health
133 emergency are entitled to the benefits specified in s.
134 110.504(2), (3), (4), and (5).

135 (3) To facilitate effective emergency management, when the
136 United States Department of Health and Human Services contracts
137 for the manufacture and delivery of licensable products in
138 response to a public health emergency and the terms of those
139 contracts are made available to the states, the department shall
140 accept funds provided by counties, municipalities, and other
141 entities designated in the state emergency management plan
142 required under s. 252.35(2)(a) for the purpose of participation
143 in those contracts. The department shall deposit those funds in
144 the Grants and Donations Trust Fund and expend those funds on
145 behalf of the donor county, municipality, or other entity for

588-02132-15

2015950c1

146 the purchase of the licensable products made available under the
147 contract.

148 (4) The department has the duty and the authority to
149 declare, enforce, modify, and abolish the isolation or
150 quarantine ~~quarantines~~ of persons, animals, and premises as the
151 circumstances indicate for controlling communicable diseases or
152 providing protection from unsafe conditions that pose a threat
153 to public health, except as provided in ss. 384.28 and 392.545-
154 392.60. Any order the department issues pursuant to this
155 subsection is immediately enforceable by a law enforcement
156 officer under s. 381.0012.

157 (5) The department shall adopt rules to specify the
158 conditions and procedures for imposing and lifting an order for
159 isolation or ~~and releasing a~~ quarantine. The rules must include
160 provisions related to:

161 (a) The closure of premises.

162 (b) The movement of persons or animals exposed to or
163 infected with a communicable disease.

164 (c) The tests or treatment, including vaccination, for
165 communicable disease required prior to employment or admission
166 to the premises or to comply with an isolation or ~~a~~ quarantine
167 order.

168 (d) Testing or destruction of animals with or suspected of
169 having a disease transmissible to humans.

170 (e) Access by the department to persons in isolation or
171 quarantine or to premises housing persons in isolation or in
172 quarantine ~~quarantined premises~~.

173 (f) The disinfection of isolated or quarantined animals,
174 persons, or premises.

588-02132-15

2015950c1

175 (g) Methods of isolation or quarantine.
176 (6) The rules adopted under this section and actions taken
177 by the department pursuant to a declared public health
178 emergency, isolation, or quarantine shall supersede all rules
179 enacted by other state departments, boards or commissions, and
180 ordinances and regulations enacted by political subdivisions of
181 the state. Any person who violates any rule adopted under this
182 section, any order of isolation or quarantine, or any
183 requirement adopted by the department pursuant to a declared
184 public health emergency, commits a misdemeanor of the second
185 degree, punishable as provided in s. 775.082 or s. 775.083.

186 Section 3. The Legislature finds that this act fulfills an
187 important state interest by providing measures for the control
188 of communicable diseases and the protection of public health.

189 Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

9/15/15
Meeting Date

950
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nland

Job Title _____

Address 1000 Riverside Ave
Street
Jacksonville, FL 32204
City State Zip

Phone 904-233-3051

Email nlandlaw@aol.com

Speaking: For Against Information

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

Representing Florida Public Health Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 16 / 2015

Meeting Date

Topic _____

Bill Number 950

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

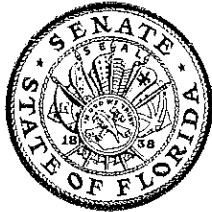
Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

April 8, 2015

The Honorable Anitere Flores
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 950 – Public Health Emergencies

Dear Chairwoman Flores:

Senate Bill 950, relating Public Health Emergencies has been referred to the Fiscal Policy Committee. I am requesting your consideration on placing SB 950 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: Jennifer Hrdlicka, Staff Director of the Fiscal Policy Committee
Tamra Lyon, Administrative Assistant of the Fiscal Policy Committee

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

April 14, 2015

The Honorable Anitere Flores
Senate Committee on Fiscal Policy, Chair
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 950 – Public Health Emergencies

Dear Chairwoman Flores:

Senate Bill 950, relating to Public Health Emergencies, is on the Fiscal Policy Committee agenda for April 15, 2015. I will need to be the Rules Committee in order to present two other bills.

Please recognize my Legislative Assistant, Elizabeth Fetterhoff, to present SB 950 on my behalf. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dorothy L. Hukill".

Dorothy L. Hukill
State Senator, District 08

cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 283-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: SB 1010

INTRODUCER: Senator Braynon

SUBJECT: False Personation

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 1010 revises the list of officials who are prohibited from being falsely personated to include firefighters and fire or arson investigators of the Department of Financial Services. The bill prohibits the use of badges or indicia of authority bearing in any manner or combination the words “fire department” and the ownership or operation of vehicles marked by the words “fire department”. Further, the bill amends criminal intent language relevant to those offenses to address a 2005 Florida Supreme Court decision that held that the intent language is unconstitutional.

This bill creates a fiscal impact to the General Revenue Fund of not more than \$180,000 annually.

II. Present Situation:

False Personation of Law Enforcement Officers and Other Specified Persons

Section 843.08, F.S., punishes false personation of a law enforcement officer or other specified person. A person commits a false personation offense if he or she falsely assumes or pretends to be a law enforcement officer or other person specified in the statute and takes upon himself or herself to act as such or to require any other person to aid or assist him or her in a matter pertaining to the duty of any specified person. The list of specified persons includes:

- Sheriff;
- Officer of the Florida Highway Patrol;
- Officer of the Fish and Wildlife Conservation Commission;
- Officer of the Department of Transportation;
- Officer of the Department of Financial Services;
- Officer of the Department of Corrections;
- Correctional probation officer;

- Deputy sheriff;
- State attorney or assistant state attorney;
- Statewide prosecutor or assistant statewide prosecutor;
- State attorney investigator;
- Coroner;
- Police officer;
- Lottery special agent or lottery investigator;
- Beverage enforcement agent;
- Watchman;
- Any member of the Parole Commission and any administrative aide or supervisor employed by the commission;
- Any personnel or representative of the Florida Department of Law Enforcement; and
- A federal law enforcement officer as defined in s. 901.1505, F.S.

It is a third degree felony¹ to commit falsely personating an officer. It is a second degree felony² to commit this false personation during the course of the commission of a felony. It is a first degree felony³ to commit this false personation during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

Unauthorized Wearing or Display of Indicia of Authority

Section 843.085(1) and (5), F.S., provides that it is a first degree misdemeanor⁴ to wear or display any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof, of any federal, state, county, or municipal law enforcement agency, or other criminal justice agency.⁵ The indicia of authority must:

- Be able to deceive a reasonable person into believing that such item is authorized by any of those agencies for use by the person displaying or wearing it; or
- Display in any manner or combination the word or words “police,” “patrolman,” “agent,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “state attorney,” “public defender,” “marshal,” “constable,” or “bailiff,” (law enforcement officer words) which could deceive a reasonable person into believing that such item is authorized by any of those agencies for use by the person displaying or wearing it.

¹ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

² A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

³ A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁴ A first degree misdemeanor is punishable by up to 1 year incarceration in county jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

⁵ Section 943.045(11), F.S., defines a criminal justice agency as a court, the Florida Department of Law Enforcement, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Families, or other governmental agency that administers criminal justice.

This offense does not apply to:

- A person appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers);
- A person authorized to wear or display the indicia of authority by the appropriate agency;
- A person who displays the indicia of authority in a closed or mounted case as a collection or exhibit; or
- A fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries that uses the law enforcement officer words in the official name of the organization or association.

Unauthorized Ownership or Operation of Motor Vehicles with Certain Markings

Section 843.085(2) and (5), F.S., provides that it is a first degree misdemeanor to own or operate a motor vehicle if:

- The vehicle is marked or identified in any manner or combination by the law enforcement officer words or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields;
- The wording is officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency; and
- The use of the wording on the vehicle could deceive a reasonable person into believing that the vehicle is authorized by the appropriate agency for use by the person operating the motor vehicle.

This offense does not apply if:

- The person owning or operating the marked vehicle is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers);
- The vehicle is owned or operated by the appropriate agency and its use is authorized by the agency;
- The local law enforcement agency authorizes the use of the vehicle; or
- The law enforcement officer words are used by a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, in the official name of the organization or association.

Unauthorized Sale or Transfer of a Badge

Section 843.085(3) and (5), F.S., provides that it is a first degree misdemeanor to sell, transfer, or give away the authorized badge, or a colorable imitation of the badge, including miniatures, of any criminal justice agency, or bearing in any manner or combination the law enforcement officer words that could deceive a reasonable person into believing that such item is authorized by any of those agencies.

This offense does not apply to:

- A person appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers);
- Agency purchases or upon the presentation and recordation of both a driver license and other identification showing any transferee to actually be a member of such criminal justice agency; or

- A fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, that uses the law enforcement officer words in the official name of the organization or association.

Sult v. State

In *Sult v. State*,⁶ the Florida Supreme Court held that s. 843.085, F.S. (2001), is unconstitutionally overbroad, vague, and violates substantive due process. The Court only discusses subsection (1) of this statute in its analysis but the intent language the Court found objectionable (“could deceive a reasonable person”) also appears in subsections (2) and (3) of the statute. Specifically, the Court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The “could deceive a reasonable person” element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of the words listed in the statute, results in a virtually boundless and uncertain restriction on expression.⁷

The Court also found that s. 843.085(1), F.S., “because of its imprecision, ... fails to give fair notice of what conduct is prohibited. The statute fails to delineate when the displaying or wearing of the prohibited words will subject the person to prosecution, thus inviting arbitrary and discriminatory enforcement and making entirely innocent activities subject to prosecution.”⁸

The Legislature has never amended the intent language to address the *Sult* decision.

III. Effect of Proposed Changes:

Section 1 amends s. 843.08, F.S., relating to false personation of law enforcement officers and other specified persons, to include firefighters⁹ and fire or arson investigators of the Department of Financial Services.¹⁰ False personation of a firefighter or fire or arson investigator of the Department of Financial Services would result in the following penalties:

- A third degree felony to falsely personate a firefighter or a fire or arson investigator of the Department of Financial Services;

⁶ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

⁷ *Sult*, 906 So.2d at 1021.

⁸ *Sult*, 906 So.2d at 1022 (citation omitted).

⁹ The bill does not define “firefighter” by reference to any specific definition of the term in the Florida Statutes. However, most of the descriptive terms for officers or persons listed in the statute are not defined by reference to a statutory definition (e.g., “police officer”). A person is certified as a “firefighter” pursuant to the requirements of Part IV of ch. 633, F.S.

¹⁰ The Division of State Fire Marshal is a division of the Department of Financial Services. Section 20.121(2)(b), F.S. The Chief Financial Officer is designated as the “State Fire Marshal.” Section 633.104(1), F.S. One of the duties of the State Fire Marshal is to enforce all laws and provisions of ch. 633, F.S. (fire prevention and control), and any rules adopted pursuant to that chapter, relating to the suppression of arson and the investigation of the cause, origin, and circumstances of fire. Section 633.104(2)(e), F.S.

- A second degree felony to commit this false personation during the course of the commission of a felony; and
- A first degree felony to commit this false personation during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

Currently, s. 843.08, F.S., prohibits false personation of a watchman, however, the term “watchman” is undefined. The bill defines a “watchman” as a security officer licensed under ch. 493, F.S.¹¹

Currently, s. 843.08, F.S., prohibits false personation of an officer of the Department of Transportation. In 2011, the Office of Motor Carrier Compliance was transferred from the Department of Transportation to the Department of Highway Safety and Motor Vehicles Division of the Florida Highway Patrol (FHP).¹² FHP “troopers” perform the commercial motor vehicles inspection functions that used to be performed by Motor Carrier Compliance officers.¹³ The bill repeals references to an officer of the Department of Transportation. FHP troopers are already covered under the statute as “officer of the Florida Highway Patrol”.

Section 2 amends various offenses in s. 843.085, F.S., relating to unlawful use of badges or other indicia of authority, to make those offenses applicable to unauthorized wearing, display, sale, etc., of fire department badges and unauthorized ownership or operation of a motor vehicle marked or identified as a fire department vehicle. The bill specifies that the statute does not prohibit a fraternal, benevolent, or labor organization or association, or their subsidiaries or chapters, from using the words “fire department,” in any manner or in any combination, if those words appear in the official name of the organization or association.

To address the Florida Supreme Court decision in *Sult v. State*, the bill replaces the current criminal intent language relevant to offenses in s. 843.085, F.S., of “could deceive a reasonable person,” with specific intent language of “intent to mislead or cause another person to believe”.

Section 3 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to update the chart with revisions made to s. 843.08, F.S., related to false personation. It does not change the current ranking of the offense.

Section 4 provides that the bill will take effect on October 1, 2015.

¹¹ Section 493.6101(19), F.S., defines a “security officer” as any individual who, for consideration: advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return of those items.

¹² Chapter 2011-66, L.O.F.

¹³ See Department of Highway Safety and Motor Vehicles, *News Release: Florida Highway Patrol Welcomes the Office of Motor Carrier Compliance*, (June 29, 2011) available at <http://www.flhsmv.gov/news/pdfs/PR062911.pdf> (last visited on April 1, 2015).

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation estimates the bill will have a positive insignificant prison bed impact because the bill is expected to increase the Department of Corrections' prison population by 10 or fewer inmates annually. Accordingly, the projected prison bed impact would create a fiscal impact to the General Revenue Fund of not more than \$180,000 annually as to operating costs. No additional fixed capital outlay costs are anticipated for these additional prison beds because the prison population is below the capacity of the correctional system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 843.08, 843.085, and 921.0022.

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 Braynon

36-01330-15

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A bill to be entitled

An act relating to false personation; amending s. 843.08, F.S.; revising the list of officials who are prohibited from being falsely personated; revising terminology; amending s. 843.085, F.S.; prohibiting the sale or transfer of specified badges bearing in any manner or combination the words "fire department" and the ownership or operation of vehicles marked or identified by the words "fire department"; requiring specified intent for certain offenses; providing an exception; amending s. 921.0022, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation ~~Falsely personating officer, etc.-~~
A person who falsely assumes or pretends to be a firefighter,
sheriff, officer of the Florida Highway Patrol, officer of the
Fish and Wildlife Conservation Commission, a fire or arson
investigator of the Department of Financial Services, ~~officer of~~
~~the Department of Transportation,~~ officer of the Department of
Financial Services, officer of the Department of Corrections,
correctional probation officer, deputy sheriff, state attorney
or assistant state attorney, statewide prosecutor or assistant
statewide prosecutor, state attorney investigator, coroner,
police officer, lottery special agent or lottery investigator,

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beverage enforcement agent, or watchman, or any member of the
Florida Commission on Offender Review and any administrative
aide or supervisor employed by the commission, or any personnel
or representative of the Department of Law Enforcement, or a
federal law enforcement officer as defined in s. 901.1505, and
takes upon himself or herself to act as such, or to require any
other person to aid or assist him or her in a matter pertaining
to the duty of any such officer, commits a felony of the third
degree, punishable as provided in s. 775.082, s. 775.083, or s.
775.084. However, a person who falsely personates any such
officer during the course of the commission of a felony commits
a felony of the second degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084. If the commission of the
felony results in the death or personal injury of another human
being, the person commits a felony of the first degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
The term "watchman" means a security officer licensed under
chapter 493.

Section 2. Section 843.085, Florida Statutes, is amended to read:

843.085 Unlawful use of ~~police~~ badges or other indicia of
authority. ~~It is unlawful for any person:~~

(1) It is unlawful for any person, unless appointed by the
Governor pursuant to chapter 354, authorized by the appropriate
agency, or displayed in a closed or mounted case as a collection
or exhibit, to wear or display any authorized indicia of
authority, including any badge, insignia, emblem, identification
card, or uniform, or any colorable imitation thereof, of any
federal, state, county, or municipal law enforcement agency, or

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59 other criminal justice agency as ~~now or hereafter~~ defined in s.
 60 943.045, with the intent to mislead or cause another person to
 61 believe that he or she is a member of that agency or is
 62 authorized to display or wear such item, or to wear or display
 63 any item that ~~which could deceive a reasonable person into~~
 64 believing that such item is authorized by any of the agencies
 65 described above for use by the person displaying or wearing it,
 66 or ~~which~~ displays in any manner or combination the word or words
 67 "police," "patrolman," "agent," "sheriff," "deputy," "trooper,"
 68 "highway patrol," "commission officer," "Wildlife Officer,"
 69 "Marine Patrol Officer," "state attorney," "public defender,"
 70 "marshal," "constable," ~~or~~ "bailiff," or "fire department," with
 71 the intent to mislead or cause another person to believe that he
 72 or she is a member of that agency or is authorized to wear or
 73 display such item ~~which could deceive a reasonable person into~~
 74 believing that such item is authorized by any of the agencies
 75 described above for use by the person displaying or wearing it.

76 (2) It is unlawful for a person to own or operate a motor
 77 vehicle marked or identified in any manner or combination by the
 78 word or words "police," "patrolman," "sheriff," "deputy,"
 79 "trooper," "highway patrol," "commission officer," "Wildlife
 80 Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~
 81 "bailiff," or "fire department," or by any lettering, marking,
 82 or insignia, or colorable imitation thereof, including, but not
 83 limited to, stars, badges, or shields, officially used to
 84 identify the vehicle as a federal, state, county, or municipal
 85 law enforcement vehicle or a vehicle used by a criminal justice
 86 agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
 87 used by a fire department with the intent to mislead or cause

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88 another person to believe that such vehicle is an official
 89 vehicle of that agency and is authorized to be used by that
 90 agency ~~which could deceive a reasonable person into believing~~
 91 that such vehicle is authorized by any of the agencies described
 92 above for use by the person operating the motor vehicle, unless
 93 such vehicle is owned or operated by the appropriate agency and
 94 its use is authorized by such agency, or the local law
 95 enforcement agency or fire department authorizes the use of such
 96 vehicle, ~~or unless~~ the person is appointed by the Governor
 97 pursuant to chapter 354.

98 (3) It is unlawful for a person to sell, transfer, or give
 99 away the authorized badge, or colorable imitation thereof,
 100 including miniatures, of any criminal justice agency as ~~now or~~
 101 ~~hereafter~~ defined in s. 943.045, or bearing in any manner or
 102 combination the word or words "police," "patrolman," "sheriff,"
 103 "deputy," "trooper," "highway patrol," "commission officer,"
 104 "Wildlife Officer," "Marine Patrol Officer," "marshal,"
 105 "constable," "agent," "state attorney," "public defender," ~~or~~
 106 "bailiff," or "fire department," with the intent to mislead or
 107 cause another person to believe that he or she is a member of
 108 that agency or is authorized to wear or display such item ~~which~~
 109 could deceive a reasonable person into believing that such item
 110 is authorized by any of the agencies described above, except for
 111 agency purchases or upon the presentation and recordation of
 112 both a driver license and other identification showing any
 113 transferee to actually be a member of such criminal justice
 114 agency or unless the person is appointed by the Governor
 115 pursuant to chapter 354. A transferor of an item covered by this
 116 subsection is required to maintain for 2 years a written record

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117 of such transaction, including records showing compliance with
 118 this subsection, and if such transferor is a business, it shall
 119 make such records available during normal business hours for
 120 inspection by any law enforcement agency having jurisdiction in
 121 the area where the business is located.

122 (4) ~~Nothing in~~ This section does not shall prohibit a
 123 fraternal, benevolent, or labor organization or association, or
 124 their chapters or subsidiaries, from using the following words,
 125 in any manner or in any combination, if those words appear in
 126 the official name of the organization or association: "police,"
 127 "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 128 "commission officer," "Wildlife Officer," "Marine Patrol
 129 Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 130 department."

131 (5) Violation of any provision of this section is a
 132 misdemeanor of the first degree, punishable as provided in s.
 133 775.082 or s. 775.083. This section is cumulative to any law now
 134 in force in the state.

135 Section 3. Paragraph (b) of subsection (3) of section
 136 921.0022, Florida Statutes, is amended to read:
 137 921.0022 Criminal Punishment Code; offense severity ranking
 138 chart.-

139 (3) OFFENSE SEVERITY RANKING CHART
 140 (b) LEVEL 2

Florida Statute	Felony Degree	Description
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144 379.2431 3rd Possession of 11 or fewer
 (1) (e) 3. marine turtle eggs in violation
 of the Marine Turtle Protection
 Act.

145 379.2431 3rd Possession of more than 11
 (1) (e) 4. marine turtle eggs in violation
 of the Marine Turtle Protection
 Act.

146 403.413(6) (c) 3rd Dumps waste litter exceeding
 500 lbs. in weight or 100 cubic
 feet in volume or any quantity
 for commercial purposes, or
 hazardous waste.

147 517.07(2) 3rd Failure to furnish a prospectus
 meeting requirements.

148 590.28(1) 3rd Intentional burning of lands.

149 784.05(3) 3rd Storing or leaving a loaded
 firearm within reach of minor
 who uses it to inflict injury
 or death.

787.04(1) 3rd In violation of court order,
 take, entice, etc., minor
 beyond state limits.

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150 806.13(1)(b)3. 3rd Criminal mischief; damage
\$1,000 or more to public
communication or any other
public service.

151 810.061(2) 3rd Impairing or impeding telephone
or power to a dwelling;
facilitating or furthering
burglary.

152 810.09(2)(e) 3rd Trespassing on posted
commercial horticulture
property.

153 812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$300
or more but less than \$5,000.

154 812.014(2)(d) 3rd Grand theft, 3rd degree; \$100
or more but less than \$300,
taken from unenclosed curtilage
of dwelling.

155 812.015(7) 3rd Possession, use, or attempted
use of an antishoplifting or
inventory control device
countermeasure.

156 817.234(1)(a)2. 3rd False statement in support of

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157 insurance claim.

817.481(3)(a) 3rd Obtain credit or purchase with
false, expired, counterfeit,
etc., credit card, value over
\$300.

158 817.52(3) 3rd Failure to redeliver hired
vehicle.

159 817.54 3rd With intent to defraud, obtain
mortgage note, etc., by false
representation.

160 817.60(5) 3rd Dealing in credit cards of
another.

161 817.60(6)(a) 3rd Forgery; purchase goods,
services with false card.

162 817.61 3rd Fraudulent use of credit cards
over \$100 or more within 6
months.

163 826.04 3rd Knowingly marries or has sexual
intercourse with person to whom
related.

164 831.01 3rd Forgery.

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165 831.02 3rd Uttering forged instrument;
utters or publishes alteration
with intent to defraud.

166 831.07 3rd Forging bank bills, checks,
drafts, or promissory notes.

167 831.08 3rd Possessing 10 or more forged
notes, bills, checks, or
drafts.

168 831.09 3rd Uttering forged notes, bills,
checks, drafts, or promissory
notes.

169 831.11 3rd Bringing into the state forged
bank bills, checks, drafts, or
notes.

170 832.05(3)(a) 3rd Cashing or depositing item with
intent to defraud.

171 843.08 3rd False personation ~~Falsely~~
~~impersonating an officer.~~

172 893.13(2)(a)2. 3rd Purchase of any s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,

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(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs
other than cannabis.

173 893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.

174 Section 4. This act shall take effect October 1, 2015.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

1010

Bill Number (if applicable)

Topic FALSE IMPERSONATION

Name KURT ROMAN

Job Title VICE PRESIDENT

Address Street

City State Zip

Phone 386-235-6762

Email KURTURO@YAHOO.COM

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

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

Representing DELTONA PROFESSIONAL FIREFIGHTERS

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

Lobbyist registered with Legislature: [] Yes [] No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/14

Meeting Date

1010
Bill Number (if applicable)

Topic False Personation

Amendment Barcode (if applicable)

Name DOUG WATLER

Job Title Florida Professional Firefighters V.P.

Address 345 W MADISON ST

Phone

Street

Tallahassee, FL

City

State

Zip

Email

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

BILL: CS/SB 1032

INTRODUCER: Regulated Industries Committee and Senator Richter and others

SUBJECT: Point-of-sale Terminals

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1032 allows limited use of point-of-sale terminals for the sale of lottery tickets or games. The bill authorizes the Department of the Lottery (department), approved vendors, and approved retailers to use point-of-sale terminals to facilitate sales of lottery tickets or games, provided that the purchaser is verified to be 18 years of age or older. A point-of-sale terminal does not reveal winning numbers or dispense lottery winnings and may not be used to redeem a winning ticket. Lottery ticket sales revenue generated from point-of-sale terminals must be used to enhance instructional technology resources for students and teachers in Florida.

Allowing the convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase ticket sales. An impact conference would be needed to estimate the lottery ticket sales revenue that could be generated from point-of-sale terminals.

II. Present Situation:

The Florida Lottery

Article X, s. 15 of the Florida Constitution allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations must be undertaken as an entrepreneurial business enterprise; and

- The department must be accountable through audits, financial disclosure, open meetings, and public records laws.

The department's purpose is to maximize revenues "consonant with the dignity of the state and the welfare of its citizens,"¹ for the benefit of public education.² The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.³ Retailers receive commissions of 5 percent of the ticket price, 1 percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments. Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.⁴

Lottery tickets can be purchased with a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods), provided that the lottery ticket purchase is in addition to the purchase of other goods and services costing not less than \$20.⁵

The department has the authority to adopt rules governing the types of lottery games to be conducted, including lottery terminals or devices that "may be operated solely by the player without the assistance of the retailer."⁶

The Seminole Gaming Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a compact governing gambling (Gaming Compact) at the Tribe's seven⁷ tribal facilities in Florida.⁸ The Gaming Compact has a 20-year term and was ratified by the Legislature, with an effective date of July 6, 2010.⁹

The Gaming Compact authorizes the Tribe to conduct Class III gaming¹⁰ which includes house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.¹¹ The Gaming Compact provides that in exchange for the exclusive right to offer slot machine gaming outside of Miami-

¹ Section 24.104, F.S.

² See s. 24.121(2), F.S.

³ See s. 24.105(17), F.S.

⁴ The Florida Legislature, Office of Program Policy Analysis and Gov't Accountability, *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Improve Efficiency*, p. 1 fn. 3, Report No. 15-03 (January 2015) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed April 10, 2015).

⁵ Section 24.118(1), F.S.

⁶ Section 24.105(9)(a), F.S.

⁷ The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), one in Collier County (Seminole Indian Casino-Immokalee), one in Glades County (Seminole Indian Casino-Brighton), one in Hendry County (Seminole Indian Casino-Big Cypress), and one in Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa).

⁸ *Gaming Compact between the Seminole Tribe of Florida and the State of Florida*, available at http://www.myfloridalicense.com/dbpr/pmwd/documents/2010_Compact-Signed1.pdf (last accessed April 11, 2015).

⁹ Chapter 2010-29, L.O.F.

¹⁰ The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2710.

¹¹ *Supra* note 9.

Dade and Broward counties and banked card games at five of its seven¹² casinos, the Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12 percent for the first \$2 billion in annual net win, to 25 percent for annual net win greater than \$4.5 billion.¹³ In FY 2013-14, the Tribe paid \$237 million.¹⁴

The Gaming Compact provides that any expanded gaming beyond what is specifically acknowledged in the compact relieves the Tribe of its obligations to make substantial revenue sharing payments to the state of Florida.¹⁵ The Gaming Compact allows for the types of lottery games authorized under ch. 24, F.S., on February 1, 2010.¹⁶ However, the Compact does not allow for any games that are "player-activated or operated machine or device other than a Lottery Vending Machine" or the use of a lottery vending machine to redeem winning tickets.¹⁷

Office of Program Policy Analysis and Government Accountability (OPPAGA) Recommendations to Enhance Lottery Earnings

The OPPAGA is required to conduct an annual financial audit of the department and provide recommendations to enhance the state lottery's earning capability and operational efficiency.¹⁸ The OPPAGA noted that expanding product distribution could increase revenues for education.¹⁹ A suggested option was Play at the Pump, which would allow for lottery purchases to be part of a transaction while buying gas or using an ATM. A benefit of the Play at the Pump option is the possible expansion of the retailer network to nontraditional locations.²⁰

The OPPAGA report considered whether the convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals might cause in-store sales to decline and found that states that have these types of games have not been negatively affected.²¹

III. Proposed Changes:

The bill authorizes the department to create a program and adopt rules for the purchase of lottery tickets at point-of-sale terminals by persons over 18 years of age. (**Section 2**)

The bill defines the term "point-of sale terminal" as an electronic device used to process credit card, debit card, or other similar charge card payments at retail locations which is supported by networks that enable verification, payment, transfer of funds, and logging of transactions.

(**Section 1**) A point-of-sale terminal allows the purchase of lottery tickets while purchasing of other retail goods or services. Current lottery vending machines dispense lottery tickets only.

¹² *Id.* Banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games.

¹³ *Id.*

¹⁴ Revenue Estimating Conference, *Indian Gaming Revenues Feb. 2015 Forecast*, available at <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf> (last accessed April 11, 2015).

¹⁵ *Supra* note 8 at 43.

¹⁶ *Id.* at 10 and 42.

¹⁷ *Id.* and s. 24.112(15)(c), F.S.

¹⁸ Section 24.123, F.S. The Joint Legislative Auditing Committee directed the OPPAGA to conduct the required examination.

¹⁹ *Supra* note 4 at 15.

²⁰ *Id.* at 16.

²¹ *Id.* See also at 17, fn. 3, for a discussion of Minnesota's implantation of such an option.

The bill allows the department, a retailer operating from one or more locations, or a vendor approved by the department to use point-of-sale terminals to sell lottery tickets or games.

(Section 3) The bill provides that a point-of-sale terminal must:

- Dispense a paper lottery ticket with numbers selected by the purchaser or selected randomly by the machine after the purchaser uses a credit, debit, or charge card, or other similar card issued by a bank, savings association, credit union, or a charge card company or retailer;
- Recognize a valid driver license or use another age verification process approved by the department to ensure that only persons at least 18 years of age may purchase a lottery ticket or game;
- Process a lottery transaction through a platform that is certified or otherwise approved by the department; and
- Be in compliance with all applicable department requirements related to the lottery ticket or game offered for sale.

A point-of-sale terminal may not:

- Reveal winning numbers, which are selected at a subsequent time and different location through a drawing by the Florida Lottery;
- Include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. This does not preclude the use of casino game themes or titles on a lottery ticket or game or on the signage or advertising displays on the terminal;
- Be used to redeem a winning ticket.

Revenue generated from point-of-sale terminals must be used to enhance instructional technology resources for students and teachers in Florida.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows for retailers and vendors approved by the department to use point-of-sale terminals for sales of lottery products. The convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase retailer commissions (5 percent of lottery ticket sales) by an indeterminate amount. The bill may also reduce in-store sales by an indeterminate amount.²²

C. Government Sector Impact:

The bill authorizes the department to establish, at its option, procedures for using point-of-sale terminals to sell lottery tickets. The convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase lottery ticket sales by an indeterminate amount. An impact conference would be needed to estimate the lottery ticket sales revenue that could be generated from point-of-sale terminals. The bills directs this revenue to be used for the enhancement of instructional technology resources for students and teachers in Florida.

It is estimated that the vendor will absorb the majority of the costs to establish the program with minimal costs to the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the Gaming Compact, the Florida Lottery may conduct lottery games through player-activated or operated machines that meet the definition of “Lottery Vending Machine” without violating the Gaming Compact.²³ The Gaming Compact requirements of a “Lottery Vending Machine” are identical to the requirements provided by the bill for point-of-sale terminals. However, the bill does allow for the use a credit, debit, or charge card, or other similar card issued by a bank, savings association, credit union, or a charge card company or retailer at point-of-sale terminals which is not included in the Gaming Compact’s definition of “Lottery Vending Machine.”

The bill provides authority for the department to adopt rules for the purchase of lottery tickets at point-of-sale terminals.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, and 24.112.

²² *Id.*

²³ *Supra* note 8 at 10.

IX. Additional Information:

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

CS by Regulated Industries Committee on March 24, 2015:

The committee substitute requires lottery ticket sales revenue generated from point-of-sale terminals to be used to enhance instructional technology resources for students and teachers in Florida.

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senators Richter,
Diaz de la Portilla, and Braynon

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A bill to be entitled

An act relating to point-of-sale terminals; amending s. 24.103, F.S.; defining the term "point-of-sale terminal"; amending s. 24.105, F.S.; authorizing the Department of the Lottery to create a program that authorizes certain persons to purchase a ticket or game at a point-of-sale terminal; authorizing the department to adopt rules; amending s. 24.112, F.S.; authorizing the department, a retailer operating from one or more locations, or a vendor approved by the department to use a point-of-sale terminal to sell a lottery ticket or game; requiring a point-of-sale terminal to perform certain functions; specifying that the point-of-sale terminal may not reveal winning numbers; prohibiting a point-of-sale terminal from including video depictions of slot machine or casino game themes or titles for game play; prohibiting a point-of-sale terminal from being used to redeem a winning ticket; providing that revenue generated by a point-of-sale-terminal shall be used to enhance instructional technology resources for students and teachers in this state; providing an effective date.

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

Section 1. Section 24.103, Florida Statutes, is reordered and amended to read:

24.103 Definitions.—As used in this act, the term:

(1) "Department" means the Department of the Lottery.

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~~(6)~~(2) "Secretary" means the secretary of the department.

(3) "Person" means any individual, firm, association, joint adventure, partnership, estate, trust, syndicate, fiduciary, corporation, or other group or combination and includes an ~~shall include any~~ agency or political subdivision of the state.

(4) "Point-of-sale terminal" means an electronic device used to process credit card, debit card, or other similar charge card payments at retail locations which is supported by networks that enable verification, payment, transfer of funds, and logging of transactions.

~~(2)~~(4) "Major procurement" means a procurement for a contract for the printing of tickets for use in any lottery game, consultation services for the startup of the lottery, any goods or services involving the official recording for lottery game play purposes of a player's selections in any lottery game involving player selections, any goods or services involving the receiving of a player's selection directly from a player in any lottery game involving player selections, any goods or services involving the drawing, determination, or generation of winners in any lottery game, the security report services provided for in this act, or any goods and services relating to marketing and promotion which exceed a value of \$25,000.

(5) "Retailer" means a person who sells lottery tickets on behalf of the department pursuant to a contract.

~~(7)~~(6) "Vendor" means a person who provides or proposes to provide goods or services to the department, but does not include an employee of the department, a retailer, or a state agency.

Section 2. Present subsections (19) and (20) of section

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59 24.105, Florida Statutes, are redesignated as subsections (20)
60 and (21), respectively, and a new subsection (19) is added to
61 that section, to read:

62 24.105 Powers and duties of department.—The department
63 shall:

64 (19) Have the authority to create a program that allows a
65 person who is 18 years of age or older to purchase a lottery
66 ticket or game at a point-of-sale terminal. The department may
67 adopt rules to administer the program.

68 Section 3. Section 24.112, Florida Statutes, is amended to
69 read:

70 24.112 Retailers of lottery tickets; ~~authorization of~~
71 ~~vending machines; point-of-sale terminals to dispense lottery~~
72 ~~tickets.—~~

73 (1) The department shall promulgate rules specifying the
74 terms and conditions for contracting with retailers who will
75 best serve the public interest and promote the sale of lottery
76 tickets.

77 (2) In the selection of retailers, the department shall
78 consider factors such as financial responsibility, integrity,
79 reputation, accessibility of the place of business or activity
80 to the public, security of the premises, the sufficiency of
81 existing retailers to serve the public convenience, and the
82 projected volume of the sales for the lottery game involved. In
83 the consideration of these factors, the department may require
84 the information it deems necessary of any person applying for
85 authority to act as a retailer. However, the department may not
86 establish a limitation upon the number of retailers and shall
87 make every effort to allow small business participation as

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88 retailers. It is the intent of the Legislature that retailer
89 selections be based on business considerations and the public
90 convenience and that retailers be selected without regard to
91 political affiliation.

92 (3) The department ~~may shall~~ not contract with any person
93 as a retailer who:

94 (a) Is less than 18 years of age.

95 (b) Is engaged exclusively in the business of selling
96 lottery tickets; however, this paragraph ~~may shall~~ not preclude
97 the department from selling lottery tickets.

98 (c) Has been convicted of, or entered a plea of guilty or
99 nolo contendere to, a felony committed in the preceding 10
100 years, regardless of adjudication, unless the department
101 determines that:

102 1. The person has been pardoned or the person's civil
103 rights have been restored;

104 2. Subsequent to such conviction or entry of plea the
105 person has engaged in the kind of law-abiding commerce and good
106 citizenship that would reflect well upon the integrity of the
107 lottery; or

108 3. If the person is a firm, association, partnership,
109 trust, corporation, or other entity, the person has terminated
110 its relationship with the individual whose actions directly
111 contributed to the person's conviction or entry of plea.

112 (4) The department shall issue a certificate of authority
113 to each person with whom it contracts as a retailer for purposes
114 of display pursuant to subsection (6). The issuance of the
115 certificate ~~may shall~~ not confer upon the retailer any right
116 apart from that specifically granted in the contract. The

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117 authority to act as a retailer ~~may shall~~ not be assignable or
118 transferable.

119 (5) A ~~Any~~ contract executed by the department pursuant to
120 this section shall specify the reasons for any suspension or
121 termination of the contract by the department, including, but
122 not limited to:

123 (a) Commission of a violation of this act or rule adopted
124 pursuant thereto.

125 (b) Failure to accurately account for lottery tickets,
126 revenues, or prizes as required by the department.

127 (c) Commission of any fraud, deceit, or misrepresentation.

128 (d) Insufficient sale of tickets.

129 (e) Conduct prejudicial to public confidence in the
130 lottery.

131 (f) Any material change in any matter considered by the
132 department in executing the contract with the retailer.

133 (6) Each ~~Every~~ retailer shall post and keep conspicuously
134 displayed in a location on the premises accessible to the public
135 its certificate of authority and, with respect to each game, a
136 statement supplied by the department of the estimated odds of
137 winning a ~~some~~ prize for the game.

138 (7) A ~~No~~ contract with a retailer ~~may not shall~~ authorize
139 the sale of lottery tickets at more than one location, and a
140 retailer may sell lottery tickets only at the location stated on
141 the certificate of authority.

142 (8) With respect to any retailer whose rental payments for
143 premises are contractually computed, in whole or in part, on the
144 basis of a percentage of retail sales, and where such
145 computation of retail sales is not explicitly defined to include

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146 sales of tickets in a state-operated lottery, the compensation
147 received by the retailer from the department shall be deemed to
148 be the amount of the retail sale for the purposes of such
149 contractual compensation.

150 (9) (a) The department may require each ~~every~~ retailer to
151 post an appropriate bond as determined by the department, using
152 an insurance company acceptable to the department, in an amount
153 not to exceed twice the average lottery ticket sales of the
154 retailer for the period within which the retailer is required to
155 remit lottery funds to the department. For the first 90 days of
156 sales of a new retailer, the amount of the bond may not exceed
157 twice the average estimated lottery ticket sales for the period
158 within which the retailer is required to remit lottery funds to
159 the department. This paragraph does ~~shall~~ not apply to lottery
160 tickets that ~~which~~ are prepaid by the retailer.

161 (b) In lieu of such bond, the department may purchase
162 blanket bonds covering all or selected retailers or may allow a
163 retailer to deposit and maintain with the Chief Financial
164 Officer securities that are interest bearing or accruing and
165 that, with the exception of those specified in subparagraphs 1.
166 and 2., are rated in one of the four highest classifications by
167 an established nationally recognized investment rating service.
168 Securities eligible under this paragraph shall be limited to:

169 1. Certificates of deposit issued by solvent banks or
170 savings associations organized and existing under the laws of
171 this state or under the laws of the United States and having
172 their principal place of business in this state.

173 2. United States bonds, notes, and bills for which the full
174 faith and credit of the government of the United States is

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175 pledged for the payment of principal and interest.

176 3. General obligation bonds and notes of any political
177 subdivision of the state.

178 4. Corporate bonds of any corporation that is not an
179 affiliate or subsidiary of the depositor.

180

181 Such securities shall be held in trust and shall have at all
182 times a market value at least equal to an amount required by the
183 department.

184 (10) Each ~~Every~~ contract entered into by the department
185 pursuant to this section shall contain a provision for payment
186 of liquidated damages to the department for any breach of
187 contract by the retailer.

188 (11) The department shall establish procedures by which
189 each retailer shall account for all tickets sold by the retailer
190 and account for all funds received by the retailer from such
191 sales. The contract with each retailer shall include provisions
192 relating to the sale of tickets, payment of moneys to the
193 department, reports, service charges, and interest and
194 penalties, if necessary, as the department shall deem
195 appropriate.

196 (12) ~~No~~ Payment by a retailer to the department for tickets
197 ~~may not shall~~ be in cash. All such payments shall be in the form
198 of a check, bank draft, electronic fund transfer, or other
199 financial instrument authorized by the secretary.

200 (13) Each retailer shall provide accessibility for disabled
201 persons on habitable grade levels. This subsection does not
202 apply to a retail location that ~~which~~ has an entrance door
203 threshold more than 12 inches above ground level. As used in

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204 ~~herein and for purposes of~~ this subsection only, the term
205 "accessibility for disabled persons on habitable grade levels"
206 means that retailers shall provide ramps, platforms, aisles and
207 pathway widths, turnaround areas, and parking spaces to the
208 extent these are required for the retailer's premises by the
209 particular jurisdiction where the retailer is located.
210 Accessibility shall be required to only one point of sale of
211 lottery tickets for each lottery retailer location. The
212 requirements of this subsection shall be deemed to have been met
213 if, in lieu of the foregoing, disabled persons can purchase
214 tickets from the retail location by means of a drive-up window,
215 provided the hours of access at the drive-up window are not less
216 than those provided at any other entrance at that lottery
217 retailer location. Inspections for compliance with this
218 subsection shall be performed by those enforcement authorities
219 responsible for enforcement pursuant to s. 553.80 in accordance
220 with procedures established by those authorities. Those
221 enforcement authorities shall provide to the Department of the
222 Lottery a certification of noncompliance for any lottery
223 retailer not meeting such requirements.

224 (14) The secretary may, after filing with the Department of
225 State his or her manual signature certified by the secretary
226 under oath, execute or cause to be executed contracts between
227 the department and retailers by means of engraving, imprinting,
228 stamping, or other facsimile signature.

229 (15) A vending machine may be used to dispense online
230 lottery tickets, instant lottery tickets, or both online and
231 instant lottery tickets.

232 (a) The vending machine must:

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233 1. Dispense a lottery ticket after a purchaser inserts a
 234 coin or currency in the machine.

235 2. Be capable of being electronically deactivated for a
 236 period of 5 minutes or more.

237 3. Be designed to prevent its use for any purpose other
 238 than dispensing a lottery ticket.

239 (b) In order to be authorized to use a vending machine to
 240 dispense lottery tickets, a retailer must:

241 1. Locate the vending machine in the retailer's direct line
 242 of sight to ensure that purchases are only made by persons at
 243 least 18 years of age.

244 2. Ensure that at least one employee is on duty when the
 245 vending machine is available for use. However, if the retailer
 246 has previously violated s. 24.1055, at least two employees must
 247 be on duty when the vending machine is available for use.

248 (c) A vending machine that dispenses a lottery ticket may
 249 dispense change to a purchaser but may not be used to redeem any
 250 type of winning lottery ticket.

251 (d) The vending machine, or any machine or device linked to
 252 the vending machine, may not include or make use of video reels
 253 or mechanical reels or other video depictions of slot machine or
 254 casino game themes or titles for game play. This does not
 255 preclude the use of casino game themes or titles on such tickets
 256 or signage or advertising displays on the machines.

257 (16) The department, a retailer operating from one or more
 258 locations, or a vendor approved by the department may use a
 259 point-of-sale terminal to facilitate the sale of a lottery
 260 ticket or game.

261 (a) A point-of-sale terminal must:

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262 1. Dispense a paper lottery ticket with numbers selected by
 263 the purchaser or selected randomly by the machine after the
 264 purchaser uses a credit card, debit card, charge card, or other
 265 similar card issued by a bank, savings association, credit
 266 union, or charge card company or issued by a retailer pursuant
 267 to part II of chapter 520 for payment;

268 2. Recognize a valid driver license or use another age
 269 verification process approved by the department to ensure that
 270 only persons at least 18 years of age may purchase a lottery
 271 ticket or game;

272 3. Process a lottery transaction through a platform that is
 273 certified or otherwise approved by the department; and

274 4. Be in compliance with all applicable department
 275 requirements related to the lottery ticket or game offered for
 276 sale.

277 (b) A point-of-sale terminal does not reveal winning
 278 numbers, which are selected at a subsequent time and different
 279 location through a drawing by the Florida Lottery.

280 (c) A point-of-sale terminal, or any machine or device
 281 linked to the point-of-sale terminal, may not include or make
 282 use of video reels or mechanical reels or other video depictions
 283 of slot machine or casino game themes or titles for game play.
 284 This does not preclude the use of casino game themes or titles
 285 on a lottery ticket or game or on the signage or advertising
 286 displays on the terminal.

287 (d) A point-of-sale terminal may not be used to redeem a
 288 winning ticket.

289 (17) Revenue generated from a point-of-sale terminal under
 290 this section shall be used to enhance instructional technology

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291 resources for students and teachers in this state.

292 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/2015

Meeting Date

Topic _____

Bill Number 1032

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

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City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 8, 2015

Dear Chair Flores,

I would like to respectfully request that **Committee Substitute for Senate Bill #1032**, relating to Point-of-sale Terminals, be placed on the Fiscal Policy Committee Agenda at your earliest possible convenience. The committee on Fiscal Policy is the third and final committee of reference for CS/Senate Bill #1032.

Any questions regarding this legislation, please do not hesitate to contact me or my staff.

Thank you in advance for your consideration.

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

Senator Garrett Richter
Florida Senate, District 23

cc: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

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 Fiscal Policy

BILL: SB 1040

INTRODUCER: Senator Braynon

SUBJECT: Infectious Disease Elimination Pilot Program

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harper</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 1040 creates the Miami-Dade Infectious Disease Elimination Act (IDEA), which authorizes the University of Miami and its affiliates to establish a sterile needle and syringe exchange pilot program in Miami-Dade County. The bill prohibits state funds from being used to operate the pilot program and instead requires the program to be funded through private grants and donations. The bill provides that the program is not a violation of law prohibiting possession of drug paraphernalia. The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report and recommendations regarding the pilot program to the Legislature by January 1, 2020.

The bill has no fiscal impact.

II. Present Situation:

Intravenous Drug Use in Florida

The majority of Florida counties with the highest rates of persons living with HIV/AIDS (PLWHA), and with a high injection-drug-user (IDU)-associated risk, in 2013 were in the southeast or central parts of the state.¹ The Department of Health (DOH) reports that 50 to 90 percent of HIV-infected IDUs are also co-infected with Hepatitis C Virus.² The chart below

¹ Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2014* (slide 13) (revised Jan. 29, 2015), available at <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/hiv-aids-slide-sets/2014/idu-2014.pdf> (last visited April 13, 2015).

² Department of Health, *HIV Disease and Hepatitis C Virus (HCV) Co-Infection – Florida, 2013* (slide 6)(Revised Sept. 3, 2014), available at <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/hiv-aids-slide-sets/2013/hepc-hiv-2013c.pdf> (last visited April 13, 2015).

displays data from 2013 of the 11 Florida counties with the highest incidence of PLWHA with an IDU-associated risk.³

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	26,445	3,240	12%
Broward	17,214	2,132	12%
Palm Beach	7,964	1,481	19%
Orange	7,508	1,304	17%
Hillsborough	6,262	1,198	19%
Duval	5,584	999	18%
Pinellas	3,675	728	20%
Lee	1,777	310	18%
St. Lucie	1,550	309	20%
Volusia	1,408	340	24%
Brevard	1,300	273	21%
STATE TOTAL	101,977	17,368	17%

Intravenous Drug Use in Miami-Dade County

In a 2011 study, researchers from the University of Miami estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive while one in three are Hepatitis C Virus positive.⁴ The researchers also found that cities without needle and syringe exchange programs are 34 times more likely to have used and disposed syringes in a public locations relative to cities that do have exchange programs.

Currently, the city of Miami does not have a needle and syringe exchange program.

Needle and Syringe Exchange Programs

In the mid-1980s, the National Institute on Drug Abuse (NIDA) undertook a research program to develop, implement, and evaluate the effectiveness of intervention strategies to reduce risk behaviors and prevent the spread of HIV/AIDS, particularly among IDUs, their sexual partners, and offspring. The studies found that comprehensive strategies, in the absence of a vaccine or, cure for AIDS, are the most cost effective and reliable approaches to prevent new blood-borne infections. The strategies NIDA recommends are community-based outreach, drug abuse treatment, and sterile syringe access programs, including needle and syringe exchange programs (NSEPs). In general, these strategies are referred to as “harm reduction.”⁵

³ *Supra* note 1. Percent IDU adjusted to conform to previous data charts. County total excludes Department of Corrections cases; state total includes such cases and data from all 67 counties.

⁴ Hansel E. Tookes, et al. “A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs.” *Drug and Alcohol Dependence*, June 2012, Vol. 123, Issue 1, pp. 255-259, available at <http://www.ncbi.nlm.nih.gov/pubmed/22209091> (last visited April 13, 2015).

⁵ National Institute of Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, *Principles of HIV Prevention in Drug-Using Populations: A Research-Based Guide* (March 2002), available at [http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20\(17\).pdf](http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20(17).pdf) (last visited April 13, 2015).

Needle and syringe exchange programs provide free sterile needles and syringe units and collect used needles and syringes from IDUs to reduce transmission of blood-borne pathogens, including HIV, Hepatitis B virus, and Hepatitis C virus (HCV). In addition, the programs help to:

- Increase the number of drug users who enter and remain in available treatment programs;
- Disseminate HIV risk reduction information and referrals for HIV testing and counseling and drug treatment;
- Reduce injection frequency and needle-sharing behaviors;
- Reduce the number of contaminated syringes in circulation in a community; and
- Increase the availability of sterile needles, thereby reducing the risk that new infections will spread.⁶

The first sanctioned NSEP in the world began in Amsterdam, the Netherlands, in 1984. The first sanctioned program to operate in North America originated in Tacoma, Washington, in 1988. Programs have since developed throughout the United States.⁷ As of June 2014, there are 194 NSEPs in 33 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Indian Nations.⁸

Federal Ban on Funding Needle and Syringe Exchange Programs

In 1988, Congress enacted an initial ban on the use of federal funds for NSEPs which remained in place until 2009. In 2009, Congress passed the 2010 Consolidated Appropriations Act, which removed the ban on federal funding of NSEPs. In July 2010, the U.S. Department of Health and Human Services issued implementation guidelines for programs interested in using federal dollars for NSEPs.⁹

However, on December 23, 2011, President Barack Obama signed the 2012 omnibus spending bill that reinstated the ban on the use of federal funds for NSEPs, which reversed the 111th Congress's 2009 decision to allow federal funds to be used for NSEPs.¹⁰ The ban on federal funding for NSEPs remains in effect.

Florida Comprehensive Drug Abuse Prevention and Control Act

In Florida, the term “drug paraphernalia” is defined as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing,

⁶ *Id.* at 18. See also World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users*, (2004) 28 – 29, available at <http://www.who.int/hiv/pub/idu/pubidu/en/> (last visited April 13, 2015).

⁷ Sandra D. Lane, R.N., Ph.D., M.P.H., *Needle Exchange: A Brief History, a Publication from The Kaiser Forums*, available at <http://hpcpsdi.rutgers.edu/facilitator/SAP/downloads/articles%20and%20data/History+of+Needle+Exchange.pdf> (last visited April 13, 2015).

⁸ North American Syringe Exchange Network, *Syringe Services Program Coverage in the United States* (June 2014), available at http://www.amfar.org/uploadedFiles/_amfarorg/On_the_Hill/2014-SSP-Map-7-17-14.pdf (last visited April 13, 2015).

⁹ Matt Fisher, Center for Strategic and International Studies, *A History of the Ban on Federal Funding for Syringe Exchange Programs*, (Feb. 6, 2012), available at <http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/> (last visited April 13, 2015).

¹⁰ *Id.*

processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.¹¹

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

Any person who violates this provision commits a first degree misdemeanor.¹²

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance, or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

Any person who violates this provision commits a third degree felony.¹³

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.¹⁴

Federal Law Exemption

Any person authorized by local, state, or federal law to manufacture, possess, or distribute drug paraphernalia is exempt from the federal drug paraphernalia statute.¹⁵

III. Effect of Proposed Changes:

Section 1 titles the bill as the “Miami-Dade Infectious Disease Elimination Act (IDEA).”

¹¹ Section 893.145, F.S.

¹² A first degree misdemeanor is punishable by up to 1-year imprisonment in a county jail, a fine of up to \$1,000, or both. *See* ss. 775.082 and 775.083, F.S.

¹³ A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed \$5,000, or both. *See* ss. 775.082 and 775.083, F.S.

¹⁴ Section 893.146, F.S.

¹⁵ 21 U.S.C. § 863(f)(1).

Section 2 amends s. 381.0038, F.S., to create a sterile needle and syringe exchange pilot program in Miami-Dade County.

The bill authorizes the University of Miami and its affiliates to establish a single sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program may operate at a fixed location or through a mobile health unit. The pilot program is designed to offer the free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases.

The pilot program must provide for maximum security of exchange sites and equipment, including:

- An accounting of the number of needles and syringes in use;
- The number of needles and syringes in storage;
- Safe disposal of returned needles; and
- Any other measure required to control the use and dispersal of needles and syringes.

The pilot program must operate a one-to-one exchange, whereby participants receive one sterile needle and syringe unit in exchange for each used one. The pilot program must also make available:

- Educational materials;
- HIV and viral hepatitis counseling and testing;
- Referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and
- Drug-abuse prevention and treatment counseling and referral services.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program is not a violation of any law. However, a pilot program staff member, volunteer, or participant is not immune for criminal prosecution for:

- Possession of needles or syringes that are not a part of the pilot program; or
- Redistribution of needles or syringes in any form, if acting outside the pilot program.

The pilot program must collect data for annual and final reporting purposes, including information on:

- The number of participants served;
- The number of needles and syringes exchanged and distributed;
- The demographic profiles of the participants served;
- The number of participants entering drug counseling and treatment;
- The number of participants receiving HIV, AIDS, or viral hepatitis testing; and
- Other data deemed necessary for the pilot program.

Personal identifying information may not be collected from a participant for any purpose.

The bill prohibits state funds from being used to operate the pilot program and that the pilot program must be funded through grants and donations from private resources and funds.

The pilot program expires July 1, 2020. The bill directs the OPPAGA to submit a report to the President of the Senate and the Speaker of the House of Representatives on January 1, 2020. The report must include:

- The data collection requirements established in the bill;
- The rates of HIV, AIDS, viral hepatitis, and other blood-borne diseases before the pilot program began and every subsequent year thereafter; and
- A recommendation on whether to continue the pilot program.

The bill also revises current law to clarify that the DOH education program about the threat of AIDS must use all forms of media with emphasis on materials that can be used in the regular course of business for businesses, schools, and health care providers.

Section 3 provides a severability clause.

Section 4 provides an effective date of July 1, 2015.

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:

Under SB 1040, the University of Miami will be responsible for securing funding through grants and donations from private sources.

C. Government Sector Impact:

The OPPAGA will incur additional workload demands to submit the report required under the bill.

The pilot program may reduce state and local government expenditures for the treatment of blood-borne diseases associated with intravenous drug use.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the pilot program to collect data and provide an annual and final report but it is unclear to whom these reports are submitted. The bill also requires data collection, including “other data deemed necessary for the pilot program.” The bill does not provide guidance as to standards under which data may be deemed necessary or which entity may deem data to be necessary.

The OPPAGA is required to submit a report to the Legislature on the data collection requirements. It is unclear if the OPPAGA is evaluating the data collection requirements or the data collected.

VIII. Statutes Affected:

This bill substantially amends section 381.0038 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Braynon

36-00220B-15

20151040__

1 A bill to be entitled
 2 An act relating to an infectious disease elimination
 3 pilot program; creating the "Miami-Dade Infectious
 4 Disease Elimination Act (IDEA)"; amending s. 381.0038,
 5 F.S.; authorizing the University of Miami and its
 6 affiliates to establish a sterile needle and syringe
 7 exchange pilot program in Miami-Dade County;
 8 establishing pilot program criteria; providing that
 9 the distribution of needles and syringes under the
 10 pilot program is not a violation of the Florida
 11 Comprehensive Drug Abuse Prevention and Control Act or
 12 any other law; providing conditions under which a
 13 pilot program staff member or participant may be
 14 prosecuted; prohibiting the collection of participant
 15 identifying information; providing for the pilot
 16 program to be funded through private grants and
 17 donations; providing for expiration of the pilot
 18 program; requiring the Office of Program Policy
 19 Analysis and Government Accountability to submit a
 20 report and recommendations regarding the pilot program
 21 to the Legislature; providing for severability;
 22 providing an effective date.

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

26 Section 1. This act may be cited as the "Miami-Dade
 27 Infectious Disease Elimination Act (IDEA)."

28 Section 2. Section 381.0038, Florida Statutes, is amended
 29 to read:

Page 1 of 5

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

36-00220B-15

20151040__

30 381.0038 Education; sterile needle and syringe exchange
 31 pilot program.-The Department of Health shall establish a
 32 program to educate the public about the threat of acquired
 33 immune deficiency syndrome.
 34 (1) The acquired immune deficiency syndrome education
 35 program shall:
 36 (a) Be designed to reach all segments of Florida's
 37 population;
 38 (b) Contain special components designed to reach non-
 39 English-speaking and other minority groups within the state;
 40 (c) Impart knowledge to the public about methods of
 41 transmission of acquired immune deficiency syndrome and methods
 42 of prevention;
 43 (d) Educate the public about transmission risks in social,
 44 employment, and educational situations;
 45 (e) Educate health care workers and health facility
 46 employees about methods of transmission and prevention in their
 47 unique workplace environments;
 48 (f) Contain special components designed to reach persons
 49 who may frequently engage in behaviors placing them at a high
 50 risk for acquiring acquired immune deficiency syndrome;
 51 (g) Provide information and consultation to state agencies
 52 to educate all state employees; ~~and~~
 53 (h) Provide information and consultation to state and local
 54 agencies to educate law enforcement and correctional personnel
 55 and inmates;~~-~~
 56 (i) Provide information and consultation to local
 57 governments to educate local government employees;~~-~~
 58 (j) Make information available to private employers and

Page 2 of 5

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

36-00220B-15 20151040__

59 encourage them to distribute this information to their
60 employees;-

61 (k) Contain special components which emphasize appropriate
62 behavior and attitude change; and-

63 (l) Contain components that include information about
64 domestic violence and the risk factors associated with domestic
65 violence and AIDS.

66 (2) The education program designed by the Department of
67 Health shall use ~~utilize~~ all forms of the media and shall place
68 emphasis on the design of educational materials that can be used
69 by businesses, schools, and health care providers in the regular
70 course of their business.

71 (3) The department may contract with other persons in the
72 design, development, and distribution of the components of the
73 education program.

74 (4) The University of Miami and its affiliates may
75 establish a single sterile needle and syringe exchange pilot
76 program in Miami-Dade County. The pilot program may operate at a
77 fixed location or through a mobile health unit. The pilot
78 program shall offer the free exchange of clean, unused needles
79 and hypodermic syringes for used needles and hypodermic syringes
80 as a means to prevent the transmission of HIV, AIDS, viral
81 hepatitis, or other blood-borne diseases among intravenous drug
82 users and their sexual partners and offspring.

83 (a) The pilot program shall:

84 1. Provide for maximum security of exchange sites and
85 equipment, including an accounting of the number of needles and
86 syringes in use, the number of needles and syringes in storage,
87 safe disposal of returned needles, and any other measure that

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88 may be required to control the use and dispersal of sterile
89 needles and syringes.

90 2. Operate a one-to-one exchange, whereby the participant
91 shall receive one sterile needle and syringe unit in exchange
92 for each used one.

93 3. Make available educational materials; HIV and viral
94 hepatitis counseling and testing; referral services to provide
95 education regarding HIV, AIDS, and viral hepatitis transmission;
96 and drug-abuse prevention and treatment counseling and referral
97 services.

98 (b) The possession, distribution, or exchange of needles or
99 syringes as part of the pilot program established under this
100 subsection is not a violation of any part of chapter 893 or any
101 other law.

102 (c) A pilot program staff member, volunteer, or participant
103 is not immune from criminal prosecution for:

104 1. The possession of needles or syringes that are not a
105 part of the pilot program; or

106 2. Redistribution of needles or syringes in any form, if
107 acting outside the pilot program.

108 (d) The pilot program shall collect data for annual and
109 final reporting purposes, which shall include information on the
110 number of participants served, the number of needles and
111 syringes exchanged and distributed, the demographic profiles of
112 the participants served, the number of participants entering
113 drug counseling and treatment, the number of participants
114 receiving HIV, AIDS, or viral hepatitis testing, and other data
115 deemed necessary for the pilot program. However, personal
116 identifying information may not be collected from a participant

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20151040__

117 for any purpose.

118 (e) State funds may not be used to operate the pilot
119 program. The pilot program shall be funded through grants and
120 donations from private resources and funds.

121 (f) The pilot program shall expire July 1, 2020. Six months
122 before the pilot program expires, the Office of Program Policy
123 Analysis and Government Accountability shall submit a report to
124 the President of the Senate and the Speaker of the House of
125 Representatives that includes the data collection requirements
126 established in this subsection; the rates of HIV, AIDS, viral
127 hepatitis, or other blood-borne diseases before the pilot
128 program began and every subsequent year thereafter; and a
129 recommendation on whether to continue the pilot program.

130 Section 3. If any provision of this act or its application
131 to any person or circumstance is held invalid, the invalidity
132 does not affect other provisions or applications of the act that
133 can be given effect without the invalid provision or
134 application, and to this end the provisions of this act are
135 severable.

136 Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-15

Meeting Date

SB1040

Bill Number (if applicable)

Topic Disease Elimination Pilot

Name David Poole

Amendment Barcode (if applicable)

Job Title Dir. Leg. Affairs

Address 1825 Country Club Dr.

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Tallahassee FL 32301

State

Zip

Email david.poole@aidshlth.org

Speaking: For Against Information

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

Representing AHF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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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4/15/15

Meeting Date

SB 1040
Bill Number (if applicable)

Topic Infectious Disease Program

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Lobbyist

Address 2868 Mahan Dr.
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Tallahassee FL 32308
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Speaking: For Against Information

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

Representing Florida Alcohol and Drug Abuse Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

412-k
9:02

4-15-2015

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Meeting Date

SB 1040

Bill Number (if applicable)

Topic INFECTIOUS DISEASE ELIMINATION PROGRAM

Name STEPHEN R. WINN

Amendment Barcode (if applicable)

Job Title EXECUTIVE DIRECTOR

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Phone 878-7364

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TALLAHASSEE

FL

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State

Zip

Email

Speaking: For Against Information

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

Representing FLORIDA DOSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4-15-15

Meeting Date

1070

Bill Number (if applicable)

Topic needle exchange pilot

Name MARTHA DeCASTRO

Amendment Barcode (if applicable)

Job Title VP for Nursing

Address 306 E. College Avenue

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State

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Email martha@fha.org

Speaking: For Against Information

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

Representing Florida Hosp. In Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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4/15/15
Meeting Date

1040
Bill Number (if applicable)

Topic Infectious Disease Elimination Act

Amendment Barcode (if applicable)

Name Hansel Tookes

Job Title resident physician

Address 475 Biscayne Ave #4114
Street

Phone _____

Miami FL 33131
City State Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/15/15

Meeting Date

SB 1040

Bill Number (if applicable)

Topic RT Infectious Disease Elimination Pilot Program

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Director of Gov. Affairs

Address 204 S. Monroe St.
Street

Phone _____

Tallahassee FL 32309
City State Zip

Email _____

Speaking: For Against Information

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

Representing The Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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9/15/15

Meeting Date

1040

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Noland

Job Title _____

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Street

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Zip

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Speaking: For Against Information

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

Representing Florida Chapter, American College of Physicians

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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4/15/15
Meeting Date

1040
Bill Number (if applicable)

Topic Infectious Disease Elimination Pilot Program Amendment Barcode (if applicable)

Name Avery Coleman

Job Title Lobbyist

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Tall FL 32305
City State Zip

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Speaking: For Against Information

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

Representing Florida Association of Community Health Centers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

3/15/15

Meeting Date

1040

Bill Number (if applicable)

Topic Infectious Disease

Amendment Barcode (if applicable)

Name Raena Wright

Job Title AVP Government Relations

Address 10200 San Aman Drive

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Coval Gables

FL

33146

City

State

Zip

Email raenawright@miami.edu

Speaking: For Against Information

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

Representing University of Miami

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

SB 1040
Bill Number (if applicable)

Topic SYRINGE ACCESS

Amendment Barcode (if applicable)

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Fiscal Policy

BILL: CS/SB 1098

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Controlled Substances

DATE: April 14, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Fav/CS
2. Harkness	Sadberry	ACJ	Recommend: Favorable
3. Goedert	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1098 adds several synthetic cannabinoids to the controlled substances list in Schedule I of s. 893.03, F.S. As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

This bill creates a fiscal impact to the General Revenue Fund of not more than \$180,000 annually.

II. Present Situation:

Schedule I Controlled Substances

A substance is a "controlled substance" if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties, i.e. which penalties may be imposed for unlawful possession, sale, manufacture, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. A substance in Schedule I is considered to have a high potential

for abuse,¹ has no currently accepted medical use in treatment in the United States, and does not meet accepted safety standards in its use under medical supervision.²

The sale, manufacture, and delivery of a controlled substance listed in s. 893.03(1)(c), F.S., (Schedule I(c)), as well as the possession with intent to sell, manufacture, or deliver such substance is considered a third degree felony.³ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.⁴ For example, selling a controlled substance listed in Schedule I(c) within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.⁵ Other prohibited activity includes bringing the controlled substances listed in Schedule I(c) into the state and the purchase or possession with intent to purchase such a controlled substance, which are all third degree felonies.⁶

Synthetic Cannabinoids

“Synthetic cannabinoids are substances that are designed to affect the body in a manner similar to marijuana but that are not derived from the marijuana plant.”⁷ “Chemically they are not similar to cannabinoids but the term ‘Synthetic Cannabinoids’ or ‘Cannabinomimetics’ is widely used to refer to them as they are cannabinoid-like in their activity.”⁸

The Florida Department of Law Enforcement (FDLE) has provided the following information regarding synthetic cannabinoids:

These substances are being abused because they are ostensibly legal and oftentimes perceived as a safer alternative to illegal drugs such as marijuana. In many cases they are more dangerous and are commonly available over the Internet. These substances are often purchased in wholesale quantities to be redistributed in specialty smoke shops and convenience stores, making them easily available to Florida’s children and young adults. Abuse of these substances presents severe health risks and

¹ “Potential for abuse” means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user’s health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user’s own initiative rather than on the basis of professional medical advice. s. 893.02(20), F.S.

² Section 893.03(1), F.S.

³ Section 893.13(9), F.S., provides that the provisions of s. 893.13(1)-(8), F.S., are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in certain classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties. *See also* s. 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. ss. 775.082 and 775.083, F.S.

⁴ Section 893.13(1)(c)-(f) and (h), F.S.

⁵ Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. ss. 775.082 and 775.083, F.S.

⁶ Section 893.13(2)(a)2. and (5)(b), F.S.

⁷ Substance Abuse and Mental Health Services Administration, The DAWN Report, “Drug-Related Emergency Department Visits Involving Synthetic Cannabinoids”, December 4, 2012, *available at* <http://archive.samhsa.gov/data/2k12/DAWN105/SR105-synthetic-marijuana.pdf> (last visited on April 10, 2015).

⁸ Redwood Toxicology Laboratory, “Synthetic Cannabinoid Drug Information,” *available at* https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last visited on April 10, 2015).

an immediate danger to the health, safety, and welfare of Florida residents and visitors.

FDLE has received information through recent crime laboratory submissions indicating that the referenced compounds are being inaccurately labeled and marketed as legitimate household products under a variety of pseudo brand names. The products usually contain the disclaimer “not for human consumption,” but are sold in specialty smoke shops, over the Internet and in convenience stores... Furthermore, a pattern has emerged in which the distributors of these substances respond to the scheduling of additional controlled substances by introducing new variants with labels on the packaging that claim to conform to the new laws... The State Surgeon General and Secretary of Health, Dr. John Armstrong stated, “Illicit synthetic drugs are dangerous to Florida’s children, adults and families. These drugs destroy lives, and are threats to public health and safety.”⁹

The effects of synthetic cannabinoids can include agitation, anxiety, nausea, vomiting, tachycardia, elevated blood pressure, tremor, seizures, hallucinations, paranoid behavior, and nonresponsiveness.¹⁰ An estimated 11,406 emergency department visits nationwide in 2010 involved synthetic cannabinoids.¹¹ Approximately 75 percent of the patients were between 12 and 29 years of age, most of whom were between 12 and 17 years of age.¹²

III. Effect of Proposed Changes:

The bill places the following substances in Schedule I(c) of the controlled substance schedules:

- AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate;
- Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide;
- Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate; and
- THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl) methanone.

This scheduling will also apply to any material, compound, mixture, or preparation that contains any of the substances’ salts, isomers, including optical, positional, or geometric isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.¹³

As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

⁹ Florida Department of Law Enforcement, *Senate Bill 1098 Policy Analysis* (Feb. 23, 2015) (on file with the Senate Committee on Criminal Justice).

¹⁰ The DAWN Report.

¹¹ *Id.*

¹² *Id.*

¹³ Section 893.03(1)(c), F.S. In addition to applying to any material, compound, mixture, or preparation that contains the listed controlled substances in Schedule I.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1098 may impact private businesses if they sell a product containing any of the synthetic cannabinoids scheduled by the bill. These businesses would be prohibited from selling products containing any of these substances.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a positive insignificant prison bed impact because the bill is expected to increase the Department of Corrections' prison population by 10 or fewer beds annually. Accordingly, the projected prison bed impact would create a fiscal impact to the General Revenue Fund of not more than \$180,000 annually as to operating costs. No additional fixed capital outlay costs are anticipated for these additional prison beds because the prison population is below the capacity of the correctional system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.03 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 39.01, 316.193, 322.2616, 327.35, 440.102, 458.3265, 459.0137, 782.04, 893.0356, 893.05, 893.12, 893.13, 893.135, and 921.0022.

IX. Additional Information:

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

CS by Criminal Justice on March 23, 2015:

The committee substitute:

- Corrects chemical nomenclature used to describe two scheduled synthetic cannabinoids; and
- Changes the effective date.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Bradley

591-02778-15

20151098c1

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.03, F.S.; adding certain substances to the
 4 Schedule I list of controlled substances; reenacting
 5 ss. 39.01(30) (a) and (g), 316.193(5), 322.2616(2) (c),
 6 327.35(5), 440.102(11) (b), 458.3265(1) (e),
 7 459.0137(1) (e), 782.04(1) (a) and (4), 893.0356(2) (a)
 8 and (5), 893.05(1), 893.12(2) (b), (c), and (d),
 9 893.13(1) (a), (c), (d), (e), (f), and (h), (2) (a),
 10 (4) (b), (5) (b), and (7) (a), 893.135(1) (k) and (l), and
 11 921.0022(3) (b), (c), and (e), F.S., relating to the
 12 definitions used in ch. 39, F.S., driving under the
 13 influence, suspension of driver licenses, boating
 14 under the influence, drug-free workplace programs,
 15 pain-management clinics, murder, controlled substance
 16 analogs, practitioners and persons administering
 17 controlled substances in their absence, contraband
 18 seizure and forfeiture, controlled substance offenses,
 19 offenses involving trafficking in controlled
 20 substances, and the offense severity ranking chart of
 21 the Criminal Punishment Code, respectively, to
 22 incorporate the amendment made to s. 893.03, F.S., in
 23 references thereto; providing an effective date.
 24
 25 Be It Enacted by the Legislature of the State of Florida:
 26
 27 Section 1. Paragraph (c) of subsection (1) of section
 28 893.03, Florida Statutes, is amended to read:
 29 893.03 Standards and schedules.—The substances enumerated

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30 in this section are controlled by this chapter. The controlled
 31 substances listed or to be listed in Schedules I, II, III, IV,
 32 and V are included by whatever official, common, usual,
 33 chemical, or trade name designated. The provisions of this
 34 section shall not be construed to include within any of the
 35 schedules contained in this section any excluded drugs listed
 36 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 37 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 38 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 39 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 40 Anabolic Steroid Products."
 41 (1) SCHEDULE I.—A substance in Schedule I has a high
 42 potential for abuse and has no currently accepted medical use in
 43 treatment in the United States and in its use under medical
 44 supervision does not meet accepted safety standards. The
 45 following substances are controlled in Schedule I:
 46 (c) Unless specifically excepted or unless listed in
 47 another schedule, any material, compound, mixture, or
 48 preparation that contains any quantity of the following
 49 hallucinogenic substances or that contains any of their salts,
 50 isomers, including optical, positional, or geometric isomers,
 51 and salts of isomers, if the existence of such salts, isomers,
 52 and salts of isomers is possible within the specific chemical
 53 designation:
 54 1. Alpha-ethyltryptamine.
 55 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 56 methylaminorex).
 57 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
 58 4. 4-Bromo-2,5-dimethoxyamphetamine.

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59 5. 4-Bromo-2,5-dimethoxyphenethylamine.
 60 6. Bufotenine.
 61 7. Cannabis.
 62 8. Cathinone.
 63 9. Diethyltryptamine.
 64 10. 2,5-Dimethoxyamphetamine.
 65 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
 66 12. Dimethyltryptamine.
 67 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
 68 analog of phencyclidine).
 69 14. N-Ethyl-3-piperidyl benzilate.
 70 15. N-ethylamphetamine.
 71 16. Fenethylamine.
 72 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
 73 18. Ibogaine.
 74 19. Lysergic acid diethylamide (LSD).
 75 20. Mescaline.
 76 21. Methcathinone.
 77 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
 78 23. 4-methoxyamphetamine.
 79 24. 4-methoxymethamphetamine.
 80 25. 4-Methyl-2,5-dimethoxyamphetamine.
 81 26. 3,4-Methylenedioxy-N-ethylamphetamine.
 82 27. 3,4-Methylenedioxyamphetamine.
 83 28. N-Methyl-3-piperidyl benzilate.
 84 29. N,N-dimethylamphetamine.
 85 30. Parahexyl.
 86 31. Peyote.
 87 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine

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88 analog of phencyclidine).
 89 33. Psilocybin.
 90 34. Psilocyn.
 91 35. *Salvia divinorum*, except for any drug product approved
 92 by the United States Food and Drug Administration which contains
 93 *Salvia divinorum* or its isomers, esters, ethers, salts, and
 94 salts of isomers, esters, and ethers, if the existence of such
 95 isomers, esters, ethers, and salts is possible within the
 96 specific chemical designation.
 97 36. Salvinorin A, except for any drug product approved by
 98 the United States Food and Drug Administration which contains
 99 Salvinorin A or its isomers, esters, ethers, salts, and salts of
 100 isomers, esters, and ethers, if the existence of such isomers,
 101 esters, ethers, and salts is possible within the specific
 102 chemical designation.
 103 37. Tetrahydrocannabinols.
 104 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 105 (Thiophene analog of phencyclidine).
 106 39. 3,4,5-Trimethoxyamphetamine.
 107 40. 3,4-Methylenedioxy-methcathinone.
 108 41. 3,4-Methylenedioxy-pyrovalerone (MDPV).
 109 42. Methylenedioxy-methcathinone.
 110 43. Methoxy-methcathinone.
 111 44. Fluoromethcathinone.
 112 45. Methylethcathinone.
 113 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 114 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 115 homologue.
 116 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-

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117 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
 118 also known as HU-210.
 119 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
 120 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
 121 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also
 122 known as JWH-200.
 123 51. BZP (Benzylpiperazine).
 124 52. Fluorophenylpiperazine.
 125 53. Methylphenylpiperazine.
 126 54. Chlorophenylpiperazine.
 127 55. Methoxyphenylpiperazine.
 128 56. DBZP (1,4-dibenzylpiperazine).
 129 57. TFMPP (3-Trifluoromethylphenylpiperazine).
 130 58. MBDB (Methylbenzodioxolylbutanamine).
 131 59. 5-Hydroxy-alpha-methyltryptamine.
 132 60. 5-Hydroxy-N-methyltryptamine.
 133 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
 134 62. 5-Methoxy-alpha-methyltryptamine.
 135 63. Methyltryptamine.
 136 64. 5-Methoxy-N,N-dimethyltryptamine.
 137 65. 5-Methyl-N,N-dimethyltryptamine.
 138 66. Tyramine (4-Hydroxyphenethylamine).
 139 67. 5-Methoxy-N,N-Diisopropyltryptamine.
 140 68. DiPT (N,N-Diisopropyltryptamine).
 141 69. DPT (N,N-Dipropyltryptamine).
 142 70. 4-Hydroxy-N,N-diisopropyltryptamine.
 143 71. N,N-Diallyl-5-Methoxytryptamine.
 144 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
 145 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).

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146 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
 147 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
 148 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 149 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
 150 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
 151 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
 152 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 153 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
 154 82. Ethcathinone.
 155 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
 156 84. Naphyrone (naphthylpyrovalerone).
 157 85. N-N-Dimethyl-3,4-methylenedioxy-cathinone.
 158 86. N-N-Diethyl-3,4-methylenedioxy-cathinone.
 159 87. 3,4-methylenedioxy-propiofenone.
 160 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
 161 89. 3,4-methylenedioxy-propiofenone-2-oxime.
 162 90. N-Acetyl-3,4-methylenedioxy-cathinone.
 163 91. N-Acetyl-N-Methyl-3,4-Methylenedioxy-cathinone.
 164 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxy-cathinone.
 165 93. Bromomethcathinone.
 166 94. Buphedrone (alpha-methylamino-butyrophenone).
 167 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
 168 96. Dimethylcathinone.
 169 97. Dimethylmethcathinone.
 170 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
 171 99. (MDPPP) 3,4-Methylenedioxy-alpha-
 172 pyrrolidinopropiofenone.
 173 100. (MDPBP) 3,4-Methylenedioxy-alpha-
 174 pyrrolidinobutiophenone.

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175 101. Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).

176 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).

177 103. Benocyclidine (BCP) or

178 benzothiophenylcyclohexylpiperidine (BTCP).

179 104. Fluoromethylaminobutyrophenone (F-MABP).

180 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).

181 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).

182 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).

183 108. Methyl-ethylaminobutyrophenone (Me-EABP).

184 109. Methylamino-butyrophenone (MABP).

185 110. Pyrrolidinopropiophenone (PPP).

186 111. Pyrrolidinobutyrophenone (PBP).

187 112. Pyrrolidinovalerophenone (PVP).

188 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).

189 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).

190 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-

191 naphthalenylmethanone).

192 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-

193 yl)methanone).

194 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).

195 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-

196 yl)methanone).

197 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-

198 yl)methanone).

199 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).

200 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-

201 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran).

202 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-

203 indole).

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204 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).

205 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-

206 yl)ethanone).

207 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-

208 yl)methanone).

209 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-

210 yl)ethanone).

211 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-

212 yl)ethanone).

213 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).

214 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).

215 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-

216 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-

217 ol).

218 131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-

219 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]

220 methanol).

221 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-

222 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-

223 1,4-dione).

224 133. CB-13 (Naphthalen-1-yl-(4-pentylloxynaphthalen-1-

225 yl)methanone).

226 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-

227 undecanamide).

228 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-

229 undecanamide).

230 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-

231 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).

232 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-

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233 iodophenyl)methanone).

234 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-

235 (naphthalen-1-yl)methanone).

236 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-

237 yl)methanone).

238 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-

239 methoxyphenylethanone).

240 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-

241 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

242 naphthalenylmethanone).

243 142. WIN55,212-3 ([[3S]-2,3-Dihydro-5-methyl-3-(4-

244 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

245 naphthalenylmethanone).

246 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).

247 144. Fluoroamphetamine.

248 145. Fluoromethamphetamine.

249 146. Methoxetamine.

250 147. Methiopropamine.

251 148. 4-Methylbuphedrone (2-Methylamino-1-(4-

252 methylphenyl)butan-1-one).

253 149. APB ((2-aminopropyl)benzofuran).

254 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).

255 151. UR-144 ((1-pentyl-1H-indol-3-yl) (2,2,3,3-

256 tetramethylcyclopropyl)methanone).

257 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl) (2,2,3,3-

258 tetramethylcyclopropyl)methanone).

259 153. (1-(5-chloropentyl)-1H-indol-3-yl) (2,2,3,3-

260 tetramethylcyclopropyl)methanone.

261 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-

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262 indazole-3-carboxamide).

263 155. AM-2233 ((2-iodophenyl) [1-[(1-methyl-2-

264 piperidinyl)methyl]-1H-indol-3-yl]-methanone).

265 156. STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.1^{3,7}]dec-

266 1-yl-1H-indole-3-carboxamide).

267 157. URB-597 ((3'-(aminocarbonyl) [1,1'-biphenyl]-3-yl)-

268 cyclohexylcarbamate).

269 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,

270 cyclohexyl ester).

271 159. URB-754 (6-methyl-2-[(4-methylphenyl) amino]-1-

272 benzoxazin-4-one).

273 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).

274 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).

275 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).

276 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine).

277 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-

278 methoxyphenyl)methyl]-benzeneethanamine).

279 165. 3,4-Methylenedioxyamphetamine (MDMA).

280 166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-

281 carboxylic acid).

282 167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-fluoropentyl)-

283 1H-indole-3-carboxylic acid).

284 168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-

285 indole-3-carboxylic acid).

286 169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-

287 fluoropentyl)-1H-indazole-3-carboxamide).

288 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

289 pentyl-1H-indazole-3-carboxamide).

290 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

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291 (4-fluorobenzyl)-1H-indazole-3-carboxamide).

292 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-

293 1-pentyl-1H-indazole-3-carboxamide).

294 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-

295 yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).

296 174. 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)

297 methyl]-benzeneethanamine).

298 175. 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-

299 methoxyphenyl)methyl]-benzeneethanamine).

300 176. AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-

301 (cyclohexylmethyl)-1H-indazole-3-carboxamide.

302 177. FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-

303 3-carboxylate.

304 178. Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-

305 indole-3-carboxamide.

306 179. Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-

307 carboxamido)-3-methylbutanoate.

308 180. THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-

309 yl](naphthalen-1-yl)methanone.

310 Section 2. For the purpose of incorporating the amendment

311 made by this act to section 893.03, Florida Statutes, in

312 references thereto, paragraphs (a) and (g) of subsection (30) of

313 section 39.01, Florida Statutes, are reenacted to read:

314 39.01 Definitions.—When used in this chapter, unless the

315 context otherwise requires:

316 (30) “Harm” to a child’s health or welfare can occur when

317 any person:

318 (a) Inflicts or allows to be inflicted upon the child

319 physical, mental, or emotional injury. In determining whether

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320 harm has occurred, the following factors must be considered in

321 evaluating any physical, mental, or emotional injury to a child:

322 the age of the child; any prior history of injuries to the

323 child; the location of the injury on the body of the child; the

324 multiplicity of the injury; and the type of trauma inflicted.

325 Such injury includes, but is not limited to:

326 1. Willful acts that produce the following specific

327 injuries:

328 a. Sprains, dislocations, or cartilage damage.

329 b. Bone or skull fractures.

330 c. Brain or spinal cord damage.

331 d. Intracranial hemorrhage or injury to other internal

332 organs.

333 e. Asphyxiation, suffocation, or drowning.

334 f. Injury resulting from the use of a deadly weapon.

335 g. Burns or scalding.

336 h. Cuts, lacerations, punctures, or bites.

337 i. Permanent or temporary disfigurement.

338 j. Permanent or temporary loss or impairment of a body part

339 or function.

340

341 As used in this subparagraph, the term “willful” refers to the

342 intent to perform an action, not to the intent to achieve a

343 result or to cause an injury.

344 2. Purposely giving a child poison, alcohol, drugs, or

345 other substances that substantially affect the child’s behavior,

346 motor coordination, or judgment or that result in sickness or

347 internal injury. For the purposes of this subparagraph, the term

348 “drugs” means prescription drugs not prescribed for the child or

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349 not administered as prescribed, and controlled substances as
350 outlined in Schedule I or Schedule II of s. 893.03.

351 3. Leaving a child without adult supervision or arrangement
352 appropriate for the child's age or mental or physical condition,
353 so that the child is unable to care for the child's own needs or
354 another's basic needs or is unable to exercise good judgment in
355 responding to any kind of physical or emotional crisis.

356 4. Inappropriate or excessively harsh disciplinary action
357 that is likely to result in physical injury, mental injury as
358 defined in this section, or emotional injury. The significance
359 of any injury must be evaluated in light of the following
360 factors: the age of the child; any prior history of injuries to
361 the child; the location of the injury on the body of the child;
362 the multiplicity of the injury; and the type of trauma
363 inflicted. Corporal discipline may be considered excessive or
364 abusive when it results in any of the following or other similar
365 injuries:

- 366 a. Sprains, dislocations, or cartilage damage.
- 367 b. Bone or skull fractures.
- 368 c. Brain or spinal cord damage.
- 369 d. Intracranial hemorrhage or injury to other internal
370 organs.
- 371 e. Asphyxiation, suffocation, or drowning.
- 372 f. Injury resulting from the use of a deadly weapon.
- 373 g. Burns or scalding.
- 374 h. Cuts, lacerations, punctures, or bites.
- 375 i. Permanent or temporary disfigurement.
- 376 j. Permanent or temporary loss or impairment of a body part
377 or function.

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378 k. Significant bruises or welts.

379 (g) Exposes a child to a controlled substance or alcohol.
380 Exposure to a controlled substance or alcohol is established by:

- 381 1. A test, administered at birth, which indicated that the
382 child's blood, urine, or meconium contained any amount of
383 alcohol or a controlled substance or metabolites of such
384 substances, the presence of which was not the result of medical
385 treatment administered to the mother or the newborn infant; or
386 2. Evidence of extensive, abusive, and chronic use of a
387 controlled substance or alcohol by a parent when the child is
388 demonstrably adversely affected by such usage.

389
390 As used in this paragraph, the term "controlled substance" means
391 prescription drugs not prescribed for the parent or not
392 administered as prescribed and controlled substances as outlined
393 in Schedule I or Schedule II of s. 893.03.

394 Section 3. For the purpose of incorporating the amendment
395 made by this act to section 893.03, Florida Statutes, in a
396 reference thereto, subsection (5) of section 316.193, Florida
397 Statutes, is reenacted to read:

398 316.193 Driving under the influence; penalties.—

399 (5) The court shall place all offenders convicted of
400 violating this section on monthly reporting probation and shall
401 require completion of a substance abuse course conducted by a
402 DUI program licensed by the department under s. 322.292, which
403 must include a psychosocial evaluation of the offender. If the
404 DUI program refers the offender to an authorized substance abuse
405 treatment provider for substance abuse treatment, in addition to
406 any sentence or fine imposed under this section, completion of

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407 all such education, evaluation, and treatment is a condition of
 408 reporting probation. The offender shall assume reasonable costs
 409 for such education, evaluation, and treatment. The referral to
 410 treatment resulting from a psychosocial evaluation shall not be
 411 waived without a supporting independent psychosocial evaluation
 412 conducted by an authorized substance abuse treatment provider
 413 appointed by the court, which shall have access to the DUI
 414 program's psychosocial evaluation before the independent
 415 psychosocial evaluation is conducted. The court shall review the
 416 results and recommendations of both evaluations before
 417 determining the request for waiver. The offender shall bear the
 418 full cost of this procedure. The term "substance abuse" means
 419 the abuse of alcohol or any substance named or described in
 420 Schedules I through V of s. 893.03. If an offender referred to
 421 treatment under this subsection fails to report for or complete
 422 such treatment or fails to complete the DUI program substance
 423 abuse education course and evaluation, the DUI program shall
 424 notify the court and the department of the failure. Upon receipt
 425 of the notice, the department shall cancel the offender's
 426 driving privilege, notwithstanding the terms of the court order
 427 or any suspension or revocation of the driving privilege. The
 428 department may temporarily reinstate the driving privilege on a
 429 restricted basis upon verification from the DUI program that the
 430 offender is currently participating in treatment and the DUI
 431 education course and evaluation requirement has been completed.
 432 If the DUI program notifies the department of the second failure
 433 to complete treatment, the department shall reinstate the
 434 driving privilege only after notice of completion of treatment
 435 from the DUI program. The organization that conducts the

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436 substance abuse education and evaluation may not provide
 437 required substance abuse treatment unless a waiver has been
 438 granted to that organization by the department. A waiver may be
 439 granted only if the department determines, in accordance with
 440 its rules, that the service provider that conducts the substance
 441 abuse education and evaluation is the most appropriate service
 442 provider and is licensed under chapter 397 or is exempt from
 443 such licensure. A statistical referral report shall be submitted
 444 quarterly to the department by each organization authorized to
 445 provide services under this section.

446 Section 4. For the purpose of incorporating the amendment
 447 made by this act to section 893.03, Florida Statutes, in a
 448 reference thereto, paragraph (c) of subsection (2) of section
 449 322.2616, Florida Statutes, is reenacted to read:

450 322.2616 Suspension of license; persons under 21 years of
 451 age; right to review.-

452 (2)

453 (c) When a driver subject to this section has a blood-
 454 alcohol or breath-alcohol level of 0.05 or higher, the
 455 suspension shall remain in effect until such time as the driver
 456 has completed a substance abuse course offered by a DUI program
 457 licensed by the department. The driver shall assume the
 458 reasonable costs for the substance abuse course. As part of the
 459 substance abuse course, the program shall conduct a substance
 460 abuse evaluation of the driver, and notify the parents or legal
 461 guardians of drivers under the age of 19 years of the results of
 462 the evaluation. The term "substance abuse" means the abuse of
 463 alcohol or any substance named or described in Schedules I
 464 through V of s. 893.03. If a driver fails to complete the

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465 substance abuse education course and evaluation, the driver
466 license shall not be reinstated by the department.

467 Section 5. For the purpose of incorporating the amendment
468 made by this act to section 893.03, Florida Statutes, in a
469 reference thereto, subsection (5) of section 327.35, Florida
470 Statutes, is reenacted to read:

471 327.35 Boating under the influence; penalties; "designated
472 drivers."—

473 (5) In addition to any sentence or fine, the court shall
474 place any offender convicted of violating this section on
475 monthly reporting probation and shall require attendance at a
476 substance abuse course specified by the court; and the agency
477 conducting the course may refer the offender to an authorized
478 service provider for substance abuse evaluation and treatment,
479 in addition to any sentence or fine imposed under this section.
480 The offender shall assume reasonable costs for such education,
481 evaluation, and treatment, with completion of all such
482 education, evaluation, and treatment being a condition of
483 reporting probation. Treatment resulting from a psychosocial
484 evaluation may not be waived without a supporting psychosocial
485 evaluation conducted by an agency appointed by the court and
486 with access to the original evaluation. The offender shall bear
487 the cost of this procedure. The term "substance abuse" means the
488 abuse of alcohol or any substance named or described in
489 Schedules I-V of s. 893.03.

490 Section 6. For the purpose of incorporating the amendment
491 made by this act to section 893.03, Florida Statutes, in a
492 reference thereto, paragraph (b) of subsection (11) of section
493 440.102, Florida Statutes, is reenacted to read:

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494 440.102 Drug-free workplace program requirements.—The
495 following provisions apply to a drug-free workplace program
496 implemented pursuant to law or to rules adopted by the Agency
497 for Health Care Administration:

498 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING OR SPECIAL-RISK
499 POSITIONS.—

500 (b) An employee who is employed by a public employer in a
501 special-risk position may be discharged or disciplined by a
502 public employer for the first positive confirmed test result if
503 the drug confirmed is an illicit drug under s. 893.03. A
504 special-risk employee who is participating in an employee
505 assistance program or drug rehabilitation program may not be
506 allowed to continue to work in any special-risk or mandatory-
507 testing position of the public employer, but may be assigned to
508 a position other than a mandatory-testing position or placed on
509 leave while the employee is participating in the program.
510 However, the employee shall be permitted to use any accumulated
511 annual leave credits before leave may be ordered without pay.

512 Section 7. For the purpose of incorporating the amendment
513 made by this act to section 893.03, Florida Statutes, in a
514 reference thereto, paragraph (e) of subsection (1) of section
515 458.3265, Florida Statutes, is reenacted to read:

516 458.3265 Pain-management clinics.—

517 (1) REGISTRATION.—

518 (e) The department shall deny registration to any pain-
519 management clinic owned by or with any contractual or employment
520 relationship with a physician:

521 1. Whose Drug Enforcement Administration number has ever
522 been revoked.

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523 2. Whose application for a license to prescribe, dispense,
524 or administer a controlled substance has been denied by any
525 jurisdiction.

526 3. Who has been convicted of or pleaded guilty or nolo
527 contendere to, regardless of adjudication, an offense that
528 constitutes a felony for receipt of illicit and diverted drugs,
529 including a controlled substance listed in Schedule I, Schedule
530 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in
531 this state, any other state, or the United States.

532 Section 8. For the purpose of incorporating the amendment
533 made by this act to section 893.03, Florida Statutes, in a
534 reference thereto, paragraph (e) of subsection (1) of section
535 459.0137, Florida Statutes, is reenacted to read:

536 459.0137 Pain-management clinics.—

537 (1) REGISTRATION.—

538 (e) The department shall deny registration to any pain-
539 management clinic owned by or with any contractual or employment
540 relationship with a physician:

541 1. Whose Drug Enforcement Administration number has ever
542 been revoked.

543 2. Whose application for a license to prescribe, dispense,
544 or administer a controlled substance has been denied by any
545 jurisdiction.

546 3. Who has been convicted of or pleaded guilty or nolo
547 contendere to, regardless of adjudication, an offense that
548 constitutes a felony for receipt of illicit and diverted drugs,
549 including a controlled substance listed in Schedule I, Schedule
550 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in
551 this state, any other state, or the United States.

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552 Section 9. For the purpose of incorporating the amendment
553 made by this act to section 893.03, Florida Statutes, in
554 references thereto, paragraph (a) of subsection (1) and
555 subsection (4) of section 782.04, Florida Statutes, are
556 reenacted to read:

557 782.04 Murder.—

558 (1) (a) The unlawful killing of a human being:

559 1. When perpetrated from a premeditated design to effect
560 the death of the person killed or any human being;

561 2. When committed by a person engaged in the perpetration
562 of, or in the attempt to perpetrate, any:

563 a. Trafficking offense prohibited by s. 893.135(1),

564 b. Arson,

565 c. Sexual battery,

566 d. Robbery,

567 e. Burglary,

568 f. Kidnapping,

569 g. Escape,

570 h. Aggravated child abuse,

571 i. Aggravated abuse of an elderly person or disabled adult,

572 j. Aircraft piracy,

573 k. Unlawful throwing, placing, or discharging of a

574 destructive device or bomb,

575 l. Carjacking,

576 m. Home-invasion robbery,

577 n. Aggravated stalking,

578 o. Murder of another human being,

579 p. Resisting an officer with violence to his or her person,

580 q. Aggravated fleeing or eluding with serious bodily injury

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581 or death,
 582 r. Felony that is an act of terrorism or is in furtherance
 583 of an act of terrorism; or
 584 3. Which resulted from the unlawful distribution of any
 585 substance controlled under s. 893.03(1), cocaine as described in
 586 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
 587 compound, derivative, or preparation of opium, or methadone by a
 588 person 18 years of age or older, when such drug is proven to be
 589 the proximate cause of the death of the user,
 590
 591 is murder in the first degree and constitutes a capital felony,
 592 punishable as provided in s. 775.082.
 593 (4) The unlawful killing of a human being, when perpetrated
 594 without any design to effect death, by a person engaged in the
 595 perpetration of, or in the attempt to perpetrate, any felony
 596 other than any:
 597 (a) Trafficking offense prohibited by s. 893.135(1),
 598 (b) Arson,
 599 (c) Sexual battery,
 600 (d) Robbery,
 601 (e) Burglary,
 602 (f) Kidnapping,
 603 (g) Escape,
 604 (h) Aggravated child abuse,
 605 (i) Aggravated abuse of an elderly person or disabled
 606 adult,
 607 (j) Aircraft piracy,
 608 (k) Unlawful throwing, placing, or discharging of a
 609 destructive device or bomb,

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610 (l) Unlawful distribution of any substance controlled under
 611 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or
 612 opium or any synthetic or natural salt, compound, derivative, or
 613 preparation of opium by a person 18 years of age or older, when
 614 such drug is proven to be the proximate cause of the death of
 615 the user,
 616 (m) Carjacking,
 617 (n) Home-invasion robbery,
 618 (o) Aggravated stalking,
 619 (p) Murder of another human being,
 620 (q) Aggravated fleeing or eluding with serious bodily
 621 injury or death,
 622 (r) Resisting an officer with violence to his or her
 623 person, or
 624 (s) Felony that is an act of terrorism or is in furtherance
 625 of an act of terrorism,
 626
 627 is murder in the third degree and constitutes a felony of the
 628 second degree, punishable as provided in s. 775.082, s. 775.083,
 629 or s. 775.084.
 630 Section 10. For the purpose of incorporating the amendment
 631 made by this act to section 893.03, Florida Statutes, in
 632 references thereto, paragraph (a) of subsection (2) and
 633 subsection (5) of section 893.0356, Florida Statutes, are
 634 reenacted to read:
 635 893.0356 Control of new substances; findings of fact;
 636 "controlled substance analog" defined.—
 637 (2)(a) As used in this section, "controlled substance
 638 analog" means a substance which, due to its chemical structure

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639 and potential for abuse, meets the following criteria:

- 640 1. Is substantially similar to that of a controlled
641 substance listed in Schedule I or Schedule II of s. 893.03; and
642 2. Has a stimulant, depressant, or hallucinogenic effect on
643 the central nervous system or is represented or intended to have
644 a stimulant, depressant, or hallucinogenic effect on the central
645 nervous system substantially similar to or greater than that of
646 a controlled substance listed in Schedule I or Schedule II of s.
647 893.03.

648 (5) A controlled substance analog shall, for purposes of
649 drug abuse prevention and control, be treated as a controlled
650 substance in Schedule I of s. 893.03.

651 Section 11. For the purpose of incorporating the amendment
652 made by this act to section 893.03, Florida Statutes, in a
653 reference thereto, subsection (1) of section 893.05, Florida
654 Statutes, is reenacted to read:

655 893.05 Practitioners and persons administering controlled
656 substances in their absence.—

657 (1) A practitioner, in good faith and in the course of his
658 or her professional practice only, may prescribe, administer,
659 dispense, mix, or otherwise prepare a controlled substance, or
660 the practitioner may cause the same to be administered by a
661 licensed nurse or an intern practitioner under his or her
662 direction and supervision only. A veterinarian may so prescribe,
663 administer, dispense, mix, or prepare a controlled substance for
664 use on animals only, and may cause it to be administered by an
665 assistant or orderly under the veterinarian's direction and
666 supervision only. A certified optometrist licensed under chapter
667 463 may not administer or prescribe a controlled substance

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668 listed in Schedule I or Schedule II of s. 893.03.

669 Section 12. For the purpose of incorporating the amendment
670 made by this act to section 893.03, Florida Statutes, in
671 references thereto, paragraphs (b), (c), and (d) of subsection
672 (2) of section 893.12, Florida Statutes, are reenacted to read:
673 893.12 Contraband; seizure, forfeiture, sale.—

674 (2)
675 (b) All real property, including any right, title,
676 leasehold interest, and other interest in the whole of any lot
677 or tract of land and any appurtenances or improvements, which
678 real property is used, or intended to be used, in any manner or
679 part, to commit or to facilitate the commission of, or which
680 real property is acquired with proceeds obtained as a result of,
681 a violation of any provision of this chapter related to a
682 controlled substance described in s. 893.03(1) or (2) may be
683 seized and forfeited as provided by the Florida Contraband
684 Forfeiture Act except that no property shall be forfeited under
685 this paragraph to the extent of an interest of an owner or
686 lienholder by reason of any act or omission established by that
687 owner or lienholder to have been committed or omitted without
688 the knowledge or consent of that owner or lienholder.

689 (c) All moneys, negotiable instruments, securities, and
690 other things of value furnished or intended to be furnished by
691 any person in exchange for a controlled substance described in
692 s. 893.03(1) or (2) or a listed chemical in violation of any
693 provision of this chapter, all proceeds traceable to such an
694 exchange, and all moneys, negotiable instruments, and securities
695 used or intended to be used to facilitate any violation of any
696 provision of this chapter or which are acquired with proceeds

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697 obtained in violation of any provision of this chapter may be
 698 seized and forfeited as provided by the Florida Contraband
 699 Forfeiture Act, except that no property shall be forfeited under
 700 this paragraph to the extent of an interest of an owner or
 701 lienholder by reason of any act or omission established by that
 702 owner or lienholder to have been committed or omitted without
 703 the knowledge or consent of that owner or lienholder.

704 (d) All books, records, and research, including formulas,
 705 microfilm, tapes, and data which are used, or intended for use,
 706 or which are acquired with proceeds obtained, in violation of
 707 any provision of this chapter related to a controlled substance
 708 described in s. 893.03(1) or (2) or a listed chemical may be
 709 seized and forfeited as provided by the Florida Contraband
 710 Forfeiture Act.

711 Section 13. For the purpose of incorporating the amendment
 712 made by this act to section 893.03, Florida Statutes, in
 713 references thereto, paragraphs (a), (c), (d), (e), (f), and (h)
 714 of subsection (1), paragraph (a) of subsection (2), paragraph
 715 (b) of subsection (4), paragraph (b) of subsection (5), and
 716 paragraph (a) of subsection (7) of section 893.13, Florida
 717 Statutes, are reenacted to read:

718 893.13 Prohibited acts; penalties.—

719 (1) (a) Except as authorized by this chapter and chapter
 720 499, a person may not sell, manufacture, or deliver, or possess
 721 with intent to sell, manufacture, or deliver, a controlled
 722 substance. A person who violates this provision with respect to:

723 1. A controlled substance named or described in s.
 724 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.
 725 commits a felony of the second degree, punishable as provided in

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726 s. 775.082, s. 775.083, or s. 775.084.

727 2. A controlled substance named or described in s.
 728 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,
 729 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of
 730 the third degree, punishable as provided in s. 775.082, s.
 731 775.083, or s. 775.084.

732 3. A controlled substance named or described in s.
 733 893.03(5) commits a misdemeanor of the first degree, punishable
 734 as provided in s. 775.082 or s. 775.083.

735 (c) Except as authorized by this chapter, a person may not
 736 sell, manufacture, or deliver, or possess with intent to sell,
 737 manufacture, or deliver, a controlled substance in, on, or
 738 within 1,000 feet of the real property comprising a child care
 739 facility as defined in s. 402.302 or a public or private
 740 elementary, middle, or secondary school between the hours of 6
 741 a.m. and 12 midnight, or at any time in, on, or within 1,000
 742 feet of real property comprising a state, county, or municipal
 743 park, a community center, or a publicly owned recreational
 744 facility. As used in this paragraph, the term "community center"
 745 means a facility operated by a nonprofit community-based
 746 organization for the provision of recreational, social, or
 747 educational services to the public. A person who violates this
 748 paragraph with respect to:

749 1. A controlled substance named or described in s.
 750 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.
 751 commits a felony of the first degree, punishable as provided in
 752 s. 775.082, s. 775.083, or s. 775.084. The defendant must be
 753 sentenced to a minimum term of imprisonment of 3 calendar years
 754 unless the offense was committed within 1,000 feet of the real

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755 property comprising a child care facility as defined in s.
 756 402.302.

757 2. A controlled substance named or described in s.
 758 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 759 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 760 the second degree, punishable as provided in s. 775.082, s.
 761 775.083, or s. 775.084.

762 3. Any other controlled substance, except as lawfully sold,
 763 manufactured, or delivered, must be sentenced to pay a \$500 fine
 764 and to serve 100 hours of public service in addition to any
 765 other penalty prescribed by law.

766

767 This paragraph does not apply to a child care facility unless
 768 the owner or operator of the facility posts a sign that is not
 769 less than 2 square feet in size with a word legend identifying
 770 the facility as a licensed child care facility and that is
 771 posted on the property of the child care facility in a
 772 conspicuous place where the sign is reasonably visible to the
 773 public.

774 (d) Except as authorized by this chapter, a person may not
 775 sell, manufacture, or deliver, or possess with intent to sell,
 776 manufacture, or deliver, a controlled substance in, on, or
 777 within 1,000 feet of the real property comprising a public or
 778 private college, university, or other postsecondary educational
 779 institution. A person who violates this paragraph with respect
 780 to:

781 1. A controlled substance named or described in s.
 782 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 783 commits a felony of the first degree, punishable as provided in

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784 s. 775.082, s. 775.083, or s. 775.084.

785 2. A controlled substance named or described in s.
 786 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 787 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 788 the second degree, punishable as provided in s. 775.082, s.
 789 775.083, or s. 775.084.

790 3. Any other controlled substance, except as lawfully sold,
 791 manufactured, or delivered, must be sentenced to pay a \$500 fine
 792 and to serve 100 hours of public service in addition to any
 793 other penalty prescribed by law.

794 (e) Except as authorized by this chapter, a person may not
 795 sell, manufacture, or deliver, or possess with intent to sell,
 796 manufacture, or deliver, a controlled substance not authorized
 797 by law in, on, or within 1,000 feet of a physical place for
 798 worship at which a church or religious organization regularly
 799 conducts religious services or within 1,000 feet of a
 800 convenience business as defined in s. 812.171. A person who
 801 violates this paragraph with respect to:

802 1. A controlled substance named or described in s.
 803 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 804 commits a felony of the first degree, punishable as provided in
 805 s. 775.082, s. 775.083, or s. 775.084.

806 2. A controlled substance named or described in s.
 807 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 808 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 809 the second degree, punishable as provided in s. 775.082, s.
 810 775.083, or s. 775.084.

811 3. Any other controlled substance, except as lawfully sold,
 812 manufactured, or delivered, must be sentenced to pay a \$500 fine

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813 and to serve 100 hours of public service in addition to any
814 other penalty prescribed by law.

815 (f) Except as authorized by this chapter, a person may not
816 sell, manufacture, or deliver, or possess with intent to sell,
817 manufacture, or deliver, a controlled substance in, on, or
818 within 1,000 feet of the real property comprising a public
819 housing facility at any time. As used in this section, the term
820 "real property comprising a public housing facility" means real
821 property, as defined in s. 421.03(12), of a public corporation
822 created as a housing authority pursuant to part I of chapter
823 421. A person who violates this paragraph with respect to:

824 1. A controlled substance named or described in s.
825 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
826 commits a felony of the first degree, punishable as provided in
827 s. 775.082, s. 775.083, or s. 775.084.

828 2. A controlled substance named or described in s.
829 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
830 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
831 the second degree, punishable as provided in s. 775.082, s.
832 775.083, or s. 775.084.

833 3. Any other controlled substance, except as lawfully sold,
834 manufactured, or delivered, must be sentenced to pay a \$500 fine
835 and to serve 100 hours of public service in addition to any
836 other penalty prescribed by law.

837 (h) Except as authorized by this chapter, a person may not
838 sell, manufacture, or deliver, or possess with intent to sell,
839 manufacture, or deliver, a controlled substance in, on, or
840 within 1,000 feet of the real property comprising an assisted
841 living facility, as that term is used in chapter 429. A person

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842 who violates this paragraph with respect to:

843 1. A controlled substance named or described in s.
844 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
845 commits a felony of the first degree, punishable as provided in
846 s. 775.082, s. 775.083, or s. 775.084.

847 2. A controlled substance named or described in s.
848 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
849 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
850 the second degree, punishable as provided in s. 775.082, s.
851 775.083, or s. 775.084.

852 (2)(a) Except as authorized by this chapter and chapter
853 499, a person may not purchase, or possess with intent to
854 purchase, a controlled substance. A person who violates this
855 provision with respect to:

856 1. A controlled substance named or described in s.
857 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
858 commits a felony of the second degree, punishable as provided in
859 s. 775.082, s. 775.083, or s. 775.084.

860 2. A controlled substance named or described in s.
861 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
862 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
863 the third degree, punishable as provided in s. 775.082, s.
864 775.083, or s. 775.084.

865 3. A controlled substance named or described in s.
866 893.03(5) commits a misdemeanor of the first degree, punishable
867 as provided in s. 775.082 or s. 775.083.

868 (4) Except as authorized by this chapter, a person 18 years
869 of age or older may not deliver any controlled substance to a
870 person younger than 18 years of age, use or hire a person

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871 younger than 18 years of age as an agent or employee in the sale
872 or delivery of such a substance, or use such person to assist in
873 avoiding detection or apprehension for a violation of this
874 chapter. A person who violates this provision with respect to:

875 (b) A controlled substance named or described in s.
876 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
877 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
878 the second degree, punishable as provided in s. 775.082, s.
879 775.083, or s. 775.084.

880

881 Imposition of sentence may not be suspended or deferred, and the
882 person so convicted may not be placed on probation.

883 (5) A person may not bring into this state any controlled
884 substance unless the possession of such controlled substance is
885 authorized by this chapter or unless such person is licensed to
886 do so by the appropriate federal agency. A person who violates
887 this provision with respect to:

888 (b) A controlled substance named or described in s.
889 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
890 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
891 the third degree, punishable as provided in s. 775.082, s.
892 775.083, or s. 775.084.

893 (7)(a) A person may not:

894 1. Distribute or dispense a controlled substance in
895 violation of this chapter.

896 2. Refuse or fail to make, keep, or furnish any record,
897 notification, order form, statement, invoice, or information
898 required under this chapter.

899 3. Refuse entry into any premises for any inspection or

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900 refuse to allow any inspection authorized by this chapter.

901 4. Distribute a controlled substance named or described in
902 s. 893.03(1) or (2) except pursuant to an order form as required
903 by s. 893.06.

904 5. Keep or maintain any store, shop, warehouse, dwelling,
905 building, vehicle, boat, aircraft, or other structure or place
906 which is resorted to by persons using controlled substances in
907 violation of this chapter for the purpose of using these
908 substances, or which is used for keeping or selling them in
909 violation of this chapter.

910 6. Use to his or her own personal advantage, or reveal, any
911 information obtained in enforcement of this chapter except in a
912 prosecution or administrative hearing for a violation of this
913 chapter.

914 7. Possess a prescription form unless it has been signed by
915 the practitioner whose name appears printed thereon and
916 completed. This subparagraph does not apply if the person in
917 possession of the form is the practitioner whose name appears
918 printed thereon, an agent or employee of that practitioner, a
919 pharmacist, or a supplier of prescription forms who is
920 authorized by that practitioner to possess those forms.

921 8. Withhold information from a practitioner from whom the
922 person seeks to obtain a controlled substance or a prescription
923 for a controlled substance that the person making the request
924 has received a controlled substance or a prescription for a
925 controlled substance of like therapeutic use from another
926 practitioner within the previous 30 days.

927 9. Acquire or obtain, or attempt to acquire or obtain,
928 possession of a controlled substance by misrepresentation,

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929 fraud, forgery, deception, or subterfuge.

930 10. Affix any false or forged label to a package or
931 receptacle containing a controlled substance.

932 11. Furnish false or fraudulent material information in, or
933 omit any material information from, any report or other document
934 required to be kept or filed under this chapter or any record
935 required to be kept by this chapter.

936 12. Store anhydrous ammonia in a container that is not
937 approved by the United States Department of Transportation to
938 hold anhydrous ammonia or is not constructed in accordance with
939 sound engineering, agricultural, or commercial practices.

940 13. With the intent to obtain a controlled substance or
941 combination of controlled substances that are not medically
942 necessary for the person or an amount of a controlled substance
943 or substances that is not medically necessary for the person,
944 obtain or attempt to obtain from a practitioner a controlled
945 substance or a prescription for a controlled substance by
946 misrepresentation, fraud, forgery, deception, subterfuge, or
947 concealment of a material fact. For purposes of this
948 subparagraph, a material fact includes whether the person has an
949 existing prescription for a controlled substance issued for the
950 same period of time by another practitioner or as described in
951 subparagraph 8.

952 Section 14. For the purpose of incorporating the amendment
953 made by this act to section 893.03, Florida Statutes, in
954 references thereto, paragraphs (k) and (l) of subsection (1) of
955 section 893.135, Florida Statutes, are reenacted to read:

956 893.135 Trafficking; mandatory sentences; suspension or
957 reduction of sentences; conspiracy to engage in trafficking.-

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958 (1) Except as authorized in this chapter or in chapter 499
959 and notwithstanding the provisions of s. 893.13:

960 (k)1. A person who knowingly sells, purchases,
961 manufactures, delivers, or brings into this state, or who is
962 knowingly in actual or constructive possession of, 10 grams or
963 more of any of the following substances described in s.

964 893.03(1)(c):

- 965 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 966 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 967 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 968 d. 2,5-Dimethoxyamphetamine;
- 969 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 970 f. N-ethylamphetamine;
- 971 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 972 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 973 i. 4-methoxyamphetamine;
- 974 j. 4-methoxymethamphetamine;
- 975 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 976 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 977 m. 3,4-Methylenedioxyamphetamine;
- 978 n. N,N-dimethylamphetamine;
- 979 o. 3,4,5-Trimethoxyamphetamine;
- 980 p. 3,4-Methylenedioxyamphetaminone;
- 981 q. 3,4-Methylenedioxypropylamphetamine (MDPV); or
- 982 r. Methylmethcathinone,

983
984 individually or analogs thereto or isomers thereto or in any
985 combination of or any mixture containing any substance listed in
986 sub-subparagraphs a.-r., commits a felony of the first degree,

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987 which felony shall be known as "trafficking in Phenethylamines,"
 988 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 989 2. If the quantity involved:
 990 a. Is 10 grams or more, but less than 200 grams, such
 991 person shall be sentenced to a mandatory minimum term of
 992 imprisonment of 3 years and shall be ordered to pay a fine of
 993 \$50,000.
 994 b. Is 200 grams or more, but less than 400 grams, such
 995 person shall be sentenced to a mandatory minimum term of
 996 imprisonment of 7 years and shall be ordered to pay a fine of
 997 \$100,000.
 998 c. Is 400 grams or more, such person shall be sentenced to
 999 a mandatory minimum term of imprisonment of 15 years and shall
 1000 be ordered to pay a fine of \$250,000.
 1001 3. A person who knowingly manufactures or brings into this
 1002 state 30 kilograms or more of any of the following substances
 1003 described in s. 893.03(1)(c):
 1004 a. 3,4-Methylenedioxyamphetamine (MDMA);
 1005 b. 4-Bromo-2,5-dimethoxyamphetamine;
 1006 c. 4-Bromo-2,5-dimethoxyphenethylamine;
 1007 d. 2,5-Dimethoxyamphetamine;
 1008 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
 1009 f. N-ethylamphetamine;
 1010 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
 1011 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
 1012 i. 4-methoxyamphetamine;
 1013 j. 4-methoxymethamphetamine;
 1014 k. 4-Methyl-2,5-dimethoxyamphetamine;
 1015 l. 3,4-Methylenedioxy-N-ethylamphetamine;

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1016 m. 3,4-Methylenedioxyamphetamine;
 1017 n. N,N-dimethylamphetamine;
 1018 o. 3,4,5-Trimethoxyamphetamine;
 1019 p. 3,4-Methylenedioxyamphetaminone;
 1020 q. 3,4-Methylenedioxypropylamphetamine (MDPPV); or
 1021 r. Methylmethcathinone,
 1022
 1023 individually or analogs thereto or isomers thereto or in any
 1024 combination of or any mixture containing any substance listed in
 1025 sub-subparagraphs a.-r., and who knows that the probable result
 1026 of such manufacture or importation would be the death of any
 1027 person commits capital manufacture or importation of
 1028 Phenethylamines, a capital felony punishable as provided in ss.
 1029 775.082 and 921.142. A person sentenced for a capital felony
 1030 under this paragraph shall also be sentenced to pay the maximum
 1031 fine provided under subparagraph 1.
 1032 (1)1. Any person who knowingly sells, purchases,
 1033 manufactures, delivers, or brings into this state, or who is
 1034 knowingly in actual or constructive possession of, 1 gram or
 1035 more of lysergic acid diethylamide (LSD) as described in s.
 1036 893.03(1)(c), or of any mixture containing lysergic acid
 1037 diethylamide (LSD), commits a felony of the first degree, which
 1038 felony shall be known as "trafficking in lysergic acid
 1039 diethylamide (LSD)," punishable as provided in s. 775.082, s.
 1040 775.083, or s. 775.084. If the quantity involved:
 1041 a. Is 1 gram or more, but less than 5 grams, such person
 1042 shall be sentenced to a mandatory minimum term of imprisonment
 1043 of 3 years, and the defendant shall be ordered to pay a fine of
 1044 \$50,000.

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1045 b. Is 5 grams or more, but less than 7 grams, such person
 1046 shall be sentenced to a mandatory minimum term of imprisonment
 1047 of 7 years, and the defendant shall be ordered to pay a fine of
 1048 \$100,000.

1049 c. Is 7 grams or more, such person shall be sentenced to a
 1050 mandatory minimum term of imprisonment of 15 calendar years and
 1051 pay a fine of \$500,000.

1052 2. Any person who knowingly manufactures or brings into
 1053 this state 7 grams or more of lysergic acid diethylamide (LSD)
 1054 as described in s. 893.03(1)(c), or any mixture containing
 1055 lysergic acid diethylamide (LSD), and who knows that the
 1056 probable result of such manufacture or importation would be the
 1057 death of any person commits capital manufacture or importation
 1058 of lysergic acid diethylamide (LSD), a capital felony punishable
 1059 as provided in ss. 775.082 and 921.142. Any person sentenced for
 1060 a capital felony under this paragraph shall also be sentenced to
 1061 pay the maximum fine provided under subparagraph 1.

1062 Section 15. For the purpose of incorporating the amendment
 1063 made by this act to section 893.03, Florida Statutes, in
 1064 references thereto, paragraphs (b), (c), and (e) of subsection
 1065 (3) of section 921.0022, Florida Statutes, are reenacted to
 1066 read:

1067 921.0022 Criminal Punishment Code; offense severity ranking
 1068 chart.—

1069 (3) OFFENSE SEVERITY RANKING CHART

1070 (b) LEVEL 2

1071

Florida Statute	Felony Degree	Description
-----------------	---------------	-------------

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1072 379.2431 3rd Possession of 11 or
 (1) (e) 3. fewer marine turtle eggs
 in violation of the
 Marine Turtle Protection
 Act.

1073 379.2431 3rd Possession of more than
 (1) (e) 4. 11 marine turtle eggs in
 violation of the Marine
 Turtle Protection Act.

1074 403.413(6) (c) 3rd Dumps waste litter
 exceeding 500 lbs. in
 weight or 100 cubic feet
 in volume or any
 quantity for commercial
 purposes, or hazardous
 waste.

1075 517.07(2) 3rd Failure to furnish a
 prospectus meeting
 requirements.

1076 590.28(1) 3rd Intentional burning of
 lands.

1077 784.05(3) 3rd Storing or leaving a
 loaded firearm within

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			reach of minor who uses it to inflict injury or death.	
1078	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.	
1079	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.	
1080	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.	
1081	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.	
1082	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.	
1083	812.014(2)(d)	3rd	Grand theft, 3rd degree;	

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			\$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.	
1084	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.	
1085	817.234(1)(a)2.	3rd	False statement in support of insurance claim.	
1086	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.	
1087	817.52(3)	3rd	Failure to redeliver hired vehicle.	
1088	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.	
1089				

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1090	817.60(5)	3rd	Dealing in credit cards of another.
1091	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
1092	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
1093	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
1094	831.01	3rd	Forgery.
1095	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
1096	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.

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1097	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
1098	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
1099	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
1100	843.08	3rd	Falsely impersonating an officer.
1101	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
1102	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
1103			

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1104	(c) LEVEL 3		
1105	Florida Statute	Felony Degree	Description
1106	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
1107	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
1108	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
1109	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
1110	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
1111	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile

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1112	319.33(1)(c)	3rd	home. Procure or pass title on stolen vehicle.
1113	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1114	327.35(2)(b)	3rd	Felony BUI.
1115	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1116	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1117	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1118			

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	379.2431	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
1119	(1) (e) 5.		
	379.2431	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
1120	(1) (e) 6.		
	400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
1121			
	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
1122			
	501.001(2) (b)	2nd	Tampers with a consumer product or the container

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			using materially false/misleading information.
1123			
	624.401(4) (a)	3rd	Transacting insurance without a certificate of authority.
1124			
	624.401(4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1125			
	626.902(1) (a) & (b)	3rd	Representing an unauthorized insurer.
1126			
	697.08	3rd	Equity skimming.
1127			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1128			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1129			
	806.10(2)	3rd	Interferes with or assaults

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			firefighter in performance of duty.
1130	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
1131	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
1132	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
1133	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
1134	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
1135	817.233	3rd	Burning to defraud insurer.
1136	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor

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			vehicle accidents.
1137	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
1138	817.236	3rd	Filing a false motor vehicle insurance application.
1139	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1140	817.413(2)	3rd	Sale of used goods as new.
1141	817.505(4)	3rd	Patient brokering.
1142	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1143	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
1144			

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

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	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1145			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
1146			
	843.19	3rd	Injure, disable, or kill police dog or horse.
1147			
	860.15(3)	3rd	Overcharging for repairs and parts.
1148			
	870.01(2)	3rd	Riot; inciting or encouraging.
1149			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
1150			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2.,

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

	591-02778-15		20151098c1
			(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
1151			
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
1152			
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
1153			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
1154			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery,

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	591-02778-15		20151098c1	
			misrepresentation, etc.	
1155	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.	
1156	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.	
1157	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.	
1158	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.	
1159	893.13(8)(a)3.	3rd	Knowingly write a	

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

	591-02778-15		20151098c1	
			prescription for a controlled substance for a fictitious person.	
1160	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.	
1161	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.	
1162	944.47	3rd	Introduce contraband to correctional facility.	
1163	(1)(a)1. & 2.			
	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.	
1164	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).	
1165				
1166	(e) LEVEL 5			

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

	591-02778-15		20151098c1
1167	Florida Statute	Felony Degree	Description
1168	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
1169	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
1170	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
1171	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
1172	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
1173	379.3671	3rd	Willful molestation,

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	(2)(c)3.		possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
1174	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
1175	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
1176	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
1177	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1178	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or

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

	591-02778-15		20151098c1	authority; premium collected \$20,000 or more but less than \$100,000.
1179	626.902(1)(c)	2nd		Representing an unauthorized insurer; repeat offender.
1180	790.01(2)	3rd		Carrying a concealed firearm.
1181	790.162	2nd		Threat to throw or discharge destructive device.
1182	790.163(1)	2nd		False report of deadly explosive or weapon of mass destruction.
1183	790.221(1)	2nd		Possession of short-barreled shotgun or machine gun.
1184	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
1185				

	591-02778-15		20151098c1	
	796.05(1)	2nd		Live on earnings of a prostitute; 1st offense.
1186	800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
1187	800.04(7)(b)	2nd		Lewd or lascivious exhibition; offender 18 years of age or older.
1188	806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
1189	812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
1190	812.015(8)	3rd		Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
1191	812.019(1)	2nd		Stolen property; dealing in or trafficking in.
1192				

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1193	812.131(2)(b)	3rd	Robbery by sudden snatching.
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
1194	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
1195	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
1196	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
1197	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment

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			avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
1198	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1199	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
1200	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1201	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc.,

	591-02778-15		20151098c1	which includes sexual conduct by a child.
1202	839.13(2) (b)	2nd		Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
1203	843.01	3rd		Resist officer with violence to person; resist arrest with violence.
1204	847.0135(5) (b)	2nd		Lewd or lascivious exhibition using computer; offender 18 years or older.
1205	847.0137 (2) & (3)	3rd		Transmission of pornography by electronic device or equipment.
1206	847.0138 (2) & (3)	3rd		Transmission of material harmful to minors to a minor by electronic device or equipment.
1207				

	591-02778-15		20151098c1	
	874.05(1) (b)	2nd		Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1208	874.05(2) (a)	2nd		Encouraging or recruiting person under 13 years of age to join a criminal gang.
1209	893.13(1) (a)1.	2nd		Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c)4. drugs).
1210	893.13(1) (c)2.	2nd		Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or

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municipal park or
publicly owned
recreational facility or
community center.

1211

893.13(1)(d)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.
drugs) within 1,000 feet
of university.

1212

893.13(1)(e)2.

2nd

Sell, manufacture, or
deliver cannabis or
other drug prohibited
under s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3),
or (4) within 1,000 feet
of property used for
religious services or a
specified business site.

1213

893.13(1)(f)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),

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(1)(b), (1)(d), or
(2)(a), (2)(b), or
(2)(c)4. drugs) within
1,000 feet of public
housing facility.

1214

893.13(4)(b)

2nd

Deliver to minor
cannabis (or other s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3.,
(2)(c)5., (2)(c)6.,
(2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4)
drugs).

1215

893.1351(1)

3rd

Ownership, lease, or
rental for trafficking
in or manufacturing of
controlled substance.

1216

1217

Section 16. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

SB1098

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Lobbyist

Address 2868 Mahan Dr.
Street

Phone 850-878-2196

Tallahassee
City

FL
State

32308
Zip

Email Jill@Fadaa.org

Speaking: For Against Information

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

Representing Florida Alcohol and Drug Abuse Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 15, 2015

Meeting Date

1098

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRYAN BARBAM

Job Title _____

Address 2617 Mahan Drive
Street

Phone 850-877-2165

Tallahassee FL 32308
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4 1 16/2015

Meeting Date

Topic _____

Bill Number 1098
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.15.15

Meeting Date

1098

Bill Number (if applicable)

Topic CONTROLLED SUBSTANCES

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST

Phone 241-1830

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.

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 Fiscal Policy

BILL: PCS/CS/SB 1126 (242306)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee of General Government); Banking and Insurance Committee; and Senator Altman

SUBJECT: Continuing Care Communities

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1126 requires continuing care facilities to provide refunds of entrance fees within 90 days after the continuing care contract is terminated and the unit is vacated, instead of within 120 days of the notice to cancel under current law.

The bill requires continuing care contracts to specify one of three sources of payment for refunds paid from the proceeds of subsequent entrance fees and prohibits refunds conditioned on receipt of the entrance fee for the same unit as of October 1, 2016.

The bill requires continuing care retirement communities (CCRCs) to establish residents' councils, whose activities must be independent of the CCRC.

The bill clarifies that continuing care and continuing care at-home contracts are preferred claims in the event of receivership or liquidation and are subordinate only to secured claims.

The bill revises disclosure requirements for third-party audits of the CCRC and notice requirements related to examination reports and any related corrective action plan.

There is no fiscal impact to the state.

II. Present Situation:

Continuing Care Retirement Communities

A continuing care retirement community (CCRC) provides shelter and nursing care or personal services to residents upon the payment of an entrance fee.¹ According to representatives, CCRCs generally feature apartment style independent living units, assisted living units, and nursing care, typically all on a single campus.² Many also offer assisted living, memory support care, and other specialty care arrangements.³ These facilities also provide residents with dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs.⁴ Continuing care facilities may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.⁵ In addition to the entrance fee, a CCRC also generally charges residents monthly fees to cover costs related to health care and other aspects of community living.⁶

There are currently 71 licensed CCRCs in Florida.⁷ CCRCs are spread throughout the state, with Palm Beach, Sarasota, and Pinellas counties having the greatest numbers of these communities. Almost 25,000 residents lived in a CCRC during 2013.

Oversight responsibility of these entities is shared between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR). The AHCA regulates aspects of CCRCs related to the provision of health care such as assisted living, skilled nursing care, quality of care, and concerns with medical facilities. Because residents pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, there is a need to ensure that CCRCs are in the proper financial and managerial position to provide services to present and future residents. Accordingly, the OIR is given primary responsibility to authorize and monitor the operation of facilities and to determine facilities' financial status and the management capabilities of their managers and owners.⁸ If a continuing care provider is accredited through a process substantially equivalent to the requirements of chapter 651, F.S., the OIR may waive requirements of that chapter.⁹

Continuing Care Retirement Community Contracts

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product and are

¹ Section 651.011, F.S.

² Jane E. Zarem, CCRC Task Force, *Today's Continuing Care Retirement Community*, pg. 2 available at http://www.leadingage.org/uploadedFiles/Content/Consumers/Paying_for_Aging_Services/CCRCcharacteristics_7_2011.pdf (July 2010) (last visited April 13, 2015).

³ *Id.*

⁴ *Id.*

⁵ Section 651.057, F.S.

⁶ American Association of Retired Persons, *About Continuing Care Retirement Communities*, available at http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited March 7, 2015).

⁷ Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council*, (September 29, 2014) available at <http://www.floir.com/siteDocuments/CouncilPresentation.pdf> (last visited April 13, 2015).

⁸ See ss. 651.021 and 651.023, F.S.

⁹ Section 651.028, F.S.

reviewed and approved for the market by the OIR.¹⁰ Each contract for continuing care services must:

- Provide for continuing care of one resident, or two residents living in a double occupancy room, under regulations set out by the provider;
- List all property transferred to the facility by the resident upon moving to the CCRC, including amounts paid or payable by the resident;
- Specify all services to be provided by the provider to each resident, including, but not limited to, food, shelter, personal services, nursing care, drugs, burial and incidentals;
- Describe the terms and conditions for cancellation of the contract given a variety of circumstances; and
- Describe all other relevant terms and conditions included in statute.¹¹

The entrance fee is an initial or deferred payment made as full or partial payment for continuing care.¹² According to CCRC providers, entrance fees typically are strongly correlated to local housing prices, though they range widely.¹³ Generally, entrance fees range from \$100,000 to \$1 million.¹⁴ Under Florida law, a continuing care contract must specify the terms governing the refund of any portion of the entrance fee.¹⁵ A CCRC facility may only retain up to 2 percent of the entrance fee per month of resident occupancy along with a processing fee of up to 5 percent.¹⁶ If the continuing care contract provides that the facility will only retain up to 1 percent of the entrance fee per month, the contract may also provide that the refund will be paid from the proceeds of the next entrance fees received by the provider,¹⁷ or, if the provider is no longer marketing CCRC contracts, within 200 days after the date of notice.¹⁸ If the contract is cancelled before the unit is occupied, the entire entrance fee must be refunded other than a processing fee of up to 5 percent of the entire entrance fee.¹⁹ Florida law requires the contract to specify the terms under which a contract is cancelled due to the resident's death, which may include a provision allowing the CCRC provider to retain the entire entrance fee.²⁰

Rights of Residents in a CCRC

The OIR is also authorized to discipline a facility for violations of residents' rights.²¹ These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities; to achieve the highest possible level of independence, autonomy, and interaction within the community; and to present grievances and recommend changes in policies, procedures, and services to the staff of

¹⁰ Section 651.055(1), F.S.

¹¹ *Id.*

¹² See s. 651.011(5), F.S.

¹³ *Supra* note 2 at 9.

¹⁴ *Supra* note 6.

¹⁵ Section 651.055(1)(g)1., F.S.

¹⁶ Section 651.055(1)(g)2., F.S.

¹⁷ For units for which there are not prior resident claims.

¹⁸ Section 651.055(1)(g)3., F.S.

¹⁹ Section 651.055(1)(g)4., F.S.

²⁰ Section 651.055(1)(h), F.S.

²¹ Section 651.083, F.S.

the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.²²

Current law requires CCRCs to hold quarterly meetings at which residents' organizations may be represented.²³ The meetings are for the purpose of holding a free discussion of subjects such as the facility's income, expenditures, financial trends, and problems, as well as proposed changes in policies, programs, and services. If the CCRC proposes the imposition or increase of a monthly maintenance fee, additional duties are placed on the CCRC provider to provide notice and give reasons for the proposed action.

Residents of a CCRC may form a residents' council for the purpose of representing residents in quarterly meetings with the CCRC provider.²⁴ Florida law provides a process by which a residents' council is formed. The residents' council must be created by a vote in which at least 40 percent of the total resident population participates and a majority of the participants vote in favor of creating the council.²⁵ A residents' council may designate a resident to represent them before the governing body of the provider.²⁶ The residents' council representative must be invited to participate in the portion of any meeting of the full governing body of the CCRC during which proposed changes in resident fees or services will be discussed.²⁷

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider.²⁸ Such claims are subordinate, however, to any secured claim and the priority claims detailed in s. 631.271, F.S. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

III. Effect of Proposed Changes:

Refunds of Entrance Fees at Cancellation of Continuing Care Contracts

Section 1 amends s. 651.055, F.S., to revise the statutory requirements for refunding portions of entrance fees to residents who do not have a transferrable membership or ownership right in the continuing care facility. The bill requires for all contract entered into on or after January 1, 2016, continuing care facilities must provide refunds of entrance fees within 90 days after the continuing care contract is terminated and the unit is vacated. Currently, refunds must be provided within 120 days of the notice to cancel. For contracts entered into before January 1, 2016, the continuing care resident may execute a contract addendum approved by the OIR providing for a revised refund requirement.

²² *Id.*

²³ Section 651.085, F.S.

²⁴ Section 651.081, F.S.

²⁵ Section 651.081(2), F.S.

²⁶ Section 651.085(2), F.S.

²⁷ Section 651.085(3), F.S.

²⁸ Section 651.071, F.S.

The bill prohibits the CCRC from charging a processing fee in excess of 5 percent. However, the bill maintains the requirement that CCRC providers may retain up to 2 percent of the entrance fee per month of occupancy by the resident.

If the continuing care contract provides for the CCRC to retain no more than 1 percent per month of resident occupancy, current law allows continuing care contracts to specify that an entrance fee refund will be paid from the proceeds of the next entrance fee received by the CCRC for which there are no prior claims. The bill requires continuing care contracts to specify one of three sources of payment for the refund:

- From the proceeds of the next entrance fee;
- From the proceeds of the next entrance fee for a like or similar unit²⁹ for which there are no prior claims; or
- From the proceeds of the next entrance fee for the unit being vacated. This option may only be used until October 1, 2016. The option is allowed until October 1, 2016, because there are CCRCs that currently have this option in their contracts. Such CCRCs must submit to the OIR for approval by August 2, 2016, a new or amended contract that uses one of the other refund options.

The bill also requires the contract to specify the following time frames for the refund of an entrance fee if the continuing care contract specifies that the entrance fee refund will be paid from the proceeds of the next entrance fee for a like or similar unit:

- If the refund is due upon the resident's death or relocation to another level of care that results in termination of the CCRC contract, the refund must be made the earlier of 30 days after the CCRC receives the next entrance fee for a like or similar unit or within a specified maximum number of months or years, as specified by the contract.
- If the refund is due because the resident vacates the unit and voluntarily terminates³⁰ the contract after the 7-day rescission period, the refund must be paid within 30 days after the CCRC receives the next entrance fee for a like or similar unit for which there are no prior claims.

If the CCRC is not marketing continuing care contracts, refunds must be paid within 200 days after the contract terminates and the unit is vacated.

Waiver of Continuing Care Facility Requirements

Section 2 amends s. 651.028, F.S., to limit the OIR's authority to waive requirements placed on accredited CCRCs to an accredited CCRCs without stipulations or conditions. The bill maintains current law allowing only those waivers that are consistent with the security protections of the chapter. The only requirement typically waived by the OIR is the requirement to submit quarterly financial reports.³¹

²⁹ The bill defines "like or similar unit" as a category that has similar characteristics including comparable square footage, number of bedrooms, or location. Each such category must contain at least 5 percent of the total number of residential units or, if the units are not single family homes, at least 10 units.

³⁰ Under the bill, a continuing care contract is voluntarily terminated when a resident provides written notice of intent to leave and moves out of the CCRC after the 7-day rescission period.

³¹ See Office of Insurance Regulation, *Senate Bill 1126 Agency Analysis* (March 3, 2015) (on file with the Senate Committee on Banking and Insurance).

Priority of Claims in Receivership or Liquidation

Section 3 amends s. 651.071, F.S., to specify that in a receivership or liquidation proceeding, CCRC contract claims are subordinate to the priority claims listed in s. 631.271, F.S., related to the estate of an insurer. Current law makes such contracts preferred claims in a liquidation or receivership, but subordinates them to secured claims and the priority claims listed in s. 631.271, F.S.

Residents' Councils and Quarterly Meetings

Section 5 amends s. 651.081, F.S., to require each CCRC to establish a residents' council, which must be established through an election by the residents. Currently, it is optional both to establish a residents' council and to do so through the election process outlined in statute.

The bill establishes roles and responsibilities of a residents' council. Specifically, the residents' council must:

- Be independent of the CCRC provider;
- Adopt its own bylaws and governance documents subject to the vote and approval of the residents. The governing documents may include term limits for council members;
- Develop governing documents that define the process by which residents may submit such inquiries and issues and the timeframe for the council to respond;
- Provide for open meetings when appropriate;
- Provide a forum for residents to submit issues or make inquiries, particularly on matters that impact the general residential quality of life and cultural environment of the CCRC; and
- Serve as a liaison to provide input on such matters to the appropriate representative of the CCRC.

The CCRC provider is not responsible for the residents' council costs and compliance with statute.

If a licensed CCRC files for federal Chapter 11 bankruptcy, the CCRC must include in its required filing with the United States Trustee the 20 largest unsecured creditors, the name and contact information of a designated resident of the residents' council, and, if appropriate, a statement explaining why the designated resident was chosen by the residents' council to serve as a representative of the residents' interest on the creditors' committee.

Section 6 amends s. 651.085, F.S., to require the OIR to request verification from each CCRC that required quarterly meetings between the CCRC governing body or designated representative and the residents are held and open to all residents. Currently, the OIR is only required to request verification upon receiving a complaint from the residents' council.

The bill also requires the residents' council to designate a resident to represent them before the governing body of the provider. A licensed CCRC provider may allow a resident of a facility to be a voting member of the board of directors or governing body of the CCRC, and may establish criteria for the selection of that resident. If the board or governing body of a licensed CCRC

provider operates more than one facility, it may select a resident from among its facilities to serve on the board or governing body on a rotating basis.

Notice of Examination Report and Corrective Action Plan; Disclosure of Audit

Section 4 amends s. 651.105, F.S., to require the OIR to provide notice to the CCRC executive officer of all compliance deficiencies identified by the OIR in an examination. The bill also directs the OIR to determine during each routine examination whether all required disclosures have been made to the CCRC executive officer. A representative of the provider must give a copy of the OIR final examination report and any corrective action plan to the executive officer of the CCRC governing body within 60 days after report issuance.

Section 7 amends s. 651.091, F.S., to require each CCRC to distribute a copy of the most recent third-party financial audit filed with the annual report to the president or chair of the residents' council within 30 days after filing the annual report with the OIR. Currently, the CCRC is only required to distribute a copy of the full annual statement.

Effective Date

Section 8 provides an effective date of October 1, 2015.

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:

Under the bill, residents of CCRC communities that enter receivership or liquidation may benefit from continuing care contracts that are made priority claims subordinate only to secured claims.

C. **Government Sector Impact:**

The Office of Insurance Regulation and the Department of Children and Families each indicated there is no fiscal impact to their respective agencies.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 651.055, 651.028, 651.071, 651.105, 651.081, 651.085, and 651.091.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:

The proposed committee substitute removes a reference adding “bankruptcy” in s. 651.071, F.S., to the types of proceedings in which continuing care and continuing care at home contracts executed by a provider will be deemed preferred claims. Also, the proposed committee substitute makes a clarifying change stating that a residents’ council governance documents shall be approved by the residents.

CS by Banking and Insurance on March 10, 2015:

The CS makes technical and clarifying changes to the bill.

B. **Amendments:**

None.



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Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to continuing care communities;
amending s. 651.055, F.S.; revising requirements for
continuing care contracts; amending s. 651.028, F.S.;
revising authority of the Office of Insurance
Regulation to waive requirements for accredited
facilities; amending s. 651.071, F.S.; revising the
subordination of continuing care and continuing care
at-home contracts that are deemed preferred claims in
receivership or liquidation proceedings; amending s.
651.105, F.S.; revising notice requirements; revising
duties of the office; requiring an agent of a provider
to provide a copy of an examination report and
corrective action plan under certain conditions;
amending s. 651.081, F.S.; requiring a residents'
council to provide a forum for certain purposes;
requiring a residents' council to adopt its own bylaws
and governance documents; amending s. 651.085, F.S.;
revising provisions relating to quarterly meetings
between residents and the governing body of the
provider; revising powers of the residents' council;
amending s. 651.091, F.S.; revising continuing care
facility reporting requirements; providing an
effective date.

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



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Section 1. Paragraphs (g) through (k) of subsection (1) of
section 651.055, Florida Statutes, are amended to read:

651.055 Continuing care contracts; right to rescind.—

(1) Each continuing care contract and each addendum to such
contract shall be submitted to and approved by the office before
its use in this state. Thereafter, no other form of contract
shall be used by the provider until it has been submitted to and
approved by the office. Each contract must:

(g) Provide that the contract may be canceled by giving at
least 30 days' written notice of cancellation by the provider,
the resident, or the person who provided the transfer of
property or funds for the care of such resident. However, if a
contract is canceled because there has been a good faith
determination that a resident is a danger to himself or herself
or others, only such notice as is reasonable under the
circumstances is required.

~~(h)1- Describe The contract must also provide~~ in clear and
understandable language, in print no smaller than the largest
type used in the body of the contract, the terms governing the
refund of any portion of the entrance fee.

~~1.2-~~ For a resident whose contract with the facility
provides that the resident does not receive a transferable
membership or ownership right in the facility, and who has
occupied his or her unit, the refund shall be calculated on a
pro rata basis with the facility retaining up to 2 percent per
month of occupancy by the resident and up to a 5 percent
processing fee. Such refund must be paid within 120 days after
giving the notice of intention to cancel. For contracts entered
into on or after January 1, 2016, refunds must be made within 90



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57 days after the contract is terminated and the unit is vacated. A
58 resident who enters into a contract before January 1, 2016, may
59 voluntarily sign a contract addendum approved by the office that
60 provides for a revised refund requirement.

61 ~~2.3.~~ In addition to a processing fee not to exceed 5
62 percent, if the contract provides for the facility to retain no
63 more than ~~up to~~ 1 percent per month of occupancy by the resident
64 and the resident does not receive a transferable membership or
65 ownership right in the facility, the contract shall, it may
66 provide that such refund will be paid from one of the following
67 sources of proceeds:

68 a. The proceeds of the next entrance fees received by the
69 provider for units for which there are no prior claims by any
70 resident until paid in full;

71 b. The proceeds of the next entrance fee received by the
72 provider for a like or similar unit as specified in the
73 residency or reservation contract signed by the resident for
74 which there are no prior claims by any resident until paid in
75 full; or

76 c. The proceeds of the next entrance fee received by the
77 provider for the unit that is vacated if the contract is
78 approved by the office before October 1, 2015. A provider may
79 not use this refund option after October 1, 2016, and must
80 submit a new or amended contract with an alternative refund
81 provision to the office for approval by August 2, 2016, if the
82 provider has discontinued marketing continuing care contracts,
83 within 200 days after the date of notice.

84 3. For contracts entered into on or after January 1, 2016,
85 that provide for a refund in accordance with sub-subparagraph



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86 2.b., the following provisions apply:

87 a. Any refund that is due upon the resident's death or
88 relocation of the resident to another level of care that results
89 in the termination of the contract must be paid by the earlier
90 of:

91 (I) Thirty days after receipt by the provider of the next
92 entrance fee received for a like or similar unit for which there
93 is no prior claim by any resident until paid in full; or

94 (II) Within a specified maximum number of months or years,
95 determined by the provider and specified in the contract, after
96 the contract is terminated and the unit is vacated.

97 b. Any refund that is due to a resident who vacates the
98 unit and voluntarily terminates a contract after the 7-day
99 rescission period required in subsection (2) must be paid within
100 30 days after receipt by the provider of the next entrance fee
101 for a like or similar unit for which there are no prior claims
102 by any resident until paid in full and is not subject to the
103 provisions in sub-subparagraph a. A contract is voluntarily
104 terminated when a resident provides written notice of intent to
105 leave and moves out of the continuing care facility after the 7-
106 day rescission period.

107 4. For purposes of this paragraph, the term "like or
108 similar unit" means a residential dwelling categorized into a
109 group of units which have similar characteristics, such as
110 comparable square footage, number of bedrooms, location, age of
111 construction, or a combination of one or more of these features
112 as specified in the residency or reservation contract. Each
113 category must consist of at least 5 percent of the total number
114 of residential units designated for independent living or 10



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115 residential units designated for independent living, whichever
116 is less. However, a group of units consisting of single family
117 homes may contain fewer than 10 units.

118 5. If the provider has discontinued marketing continuing
119 care contracts, any refund due a resident must be paid within
120 200 days after the contract is terminated and the unit is
121 vacated.

122 6.4- Unless subsection (5) applies, for any prospective
123 resident, regardless of whether or not such a resident receives
124 a transferable membership or ownership right in the facility,
125 who cancels the contract before occupancy of the unit, the
126 entire amount paid toward the entrance fee shall be refunded,
127 less a processing fee of up to 5 percent of the entire entrance
128 fee; however, the processing fee may not exceed the amount paid
129 by the prospective resident. Such refund must be paid within 60
130 days after the resident gives giving notice of intention to
131 cancel. For a resident who has occupied his or her unit and who
132 has received a transferable membership or ownership right in the
133 facility, the foregoing refund provisions do not apply but are
134 deemed satisfied by the acquisition or receipt of a transferable
135 membership or an ownership right in the facility. The provider
136 may not charge any fee for the transfer of membership or sale of
137 an ownership right.

138 (i) (h) State the terms under which a contract is canceled
139 by the death of the resident. These terms may contain a
140 provision that, upon the death of a resident, the entrance fee
141 of such resident is considered earned and becomes the property
142 of the provider. If the unit is shared, the conditions with
143 respect to the effect of the death or removal of one of the



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144 residents must be included in the contract.

145 (j) (i) Describe the policies that may lead to changes in
146 monthly recurring and nonrecurring charges or fees for goods and
147 services received. The contract must provide for advance notice
148 to the resident, of at least 60 days, before any change in fees
149 or charges or the scope of care or services is effective, except
150 for changes required by state or federal assistance programs.

151 (k) (j) Provide that charges for care paid in one lump sum
152 may not be increased or changed during the duration of the
153 agreed upon care, except for changes required by state or
154 federal assistance programs.

155 (l) (k) Specify whether the facility is, or is affiliated
156 with, a religious, nonprofit, or proprietary organization or
157 management entity; the extent to which the affiliate
158 organization will be responsible for the financial and
159 contractual obligations of the provider; and the provisions of
160 the federal Internal Revenue Code, if any, under which the
161 provider or affiliate is exempt from the payment of federal
162 income tax.

163 Section 2. Section 651.028, Florida Statutes, is amended to
164 read:

165 651.028 Accredited facilities.—If a provider is accredited
166 without stipulations or conditions by a process found by the
167 office to be acceptable and substantially equivalent to the
168 provisions of this chapter, the office may, pursuant to rule of
169 the commission, waive any requirements of this chapter with
170 respect to the provider if the office finds that such waivers
171 are not inconsistent with the security protections intended by
172 this chapter.



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173 Section 3. Subsection (1) of section 651.071, Florida
174 Statutes, is amended to read:

175 651.071 Contracts as preferred claims on liquidation or
176 receivership.—

177 (1) In the event of receivership or liquidation proceedings
178 against a provider, all continuing care and continuing care at-
179 home contracts executed by a provider shall be deemed preferred
180 claims against all assets owned by the provider; however, such
181 claims are subordinate to ~~those priority claims set forth in s.~~
182 ~~631.271~~ and any secured claim.

183 Section 4. Subsections (4) and (5) of section 651.105,
184 Florida Statutes, are amended, and subsection (6) is added to
185 that section, to read:

186 651.105 Examination and inspections.—

187 (4) The office shall notify the provider and the executive
188 officer of the governing body of the provider in writing of all
189 deficiencies in its compliance with the provisions of this
190 chapter and the rules adopted pursuant to this chapter and shall
191 set a reasonable length of time for compliance by the provider.
192 In addition, the office shall require corrective action or
193 request a corrective action plan from the provider which plan
194 demonstrates a good faith attempt to remedy the deficiencies by
195 a specified date. If the provider fails to comply within the
196 established length of time, the office may initiate action
197 against the provider in accordance with the provisions of this
198 chapter.

199 (5) At the time of the routine examination, the office
200 shall determine if all disclosures required under this chapter
201 have been made to the president or chair of the residents'



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202 council and the executive officer of the governing body of the
203 provider.

204 (6) A representative of the provider must give a copy of
205 the final examination report and corrective action plan, if one
206 is required by the office, to the executive officer of the
207 governing body of the provider within 60 days after issuance of
208 the report.

209 Section 5. Section 651.081, Florida Statutes, is amended to
210 read:

211 651.081 Residents' council.—

212 (1) Residents living in a facility holding a valid
213 certificate of authority under this chapter have the right of
214 self-organization, the right to be represented by an individual
215 of their own choosing, and the right to engage in concerted
216 activities for the purpose of keeping informed on the operation
217 of the facility that is caring for them or for the purpose of
218 other mutual aid or protection.

219 (2)(a) Each facility shall establish a residents' council
220 created for the purpose of representing residents on matters set
221 forth in s. 651.085. The residents' council shall ~~may~~ be
222 established through an election in which the residents, as
223 defined in s. 651.011, vote by ballot, physically or by proxy.
224 If the election is to be held during a meeting, a notice of the
225 organizational meeting must be provided to all residents of the
226 community at least 10 business days before the meeting. Notice
227 may be given through internal mailboxes, communitywide
228 newsletters, bulletin boards, in-house television stations, and
229 other similar means of communication. An election creating a
230 residents' council is valid if at least 40 percent of the total



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231 resident population participates in the election and a majority
232 of the participants vote affirmatively for the council. The
233 initial residents' council created under this section is valid
234 for at least 12 months. A residents' organization formalized by
235 bylaws and elected officials must be recognized as the
236 residents' council under this section and s. 651.085. Within 30
237 days after the election of a newly elected president or chair of
238 the residents' council, the provider shall give the president or
239 chair a copy of this chapter and rules adopted thereunder, or
240 direct him or her to the appropriate public website to obtain
241 this information. Only one residents' council may represent
242 residents before the governing body of the provider as described
243 in s. 651.085(2).

244 (b) In addition to those matters provided in s. 651.085, a
245 residents' council shall provide a forum in which a resident may
246 submit issues or make inquiries related to, but not limited to,
247 subjects that impact the general residential quality of life and
248 cultural environment. The residents' council shall serve as a
249 formal liaison to provide input related to such matters to the
250 appropriate representative of the provider.

251 (c) The activities of a residents' council are independent
252 of the provider. The provider is not responsible for ensuring,
253 or for the associated costs of, compliance of the residents'
254 council with the provisions of this section with respect to the
255 operation of a residents' council.

256 (d) A residents' council shall adopt its own bylaws and
257 governance documents subject to the vote and approval of the
258 residents. The residents' council shall provide for open
259 meetings when appropriate. The governing documents shall define



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260 the manner in which residents may submit an issue to the council
261 and define a reasonable timeframe in which the residents'
262 council shall respond to a resident submission or inquiry. A
263 residents' council may include term limits in its governing
264 documents to ensure consistent integration of new leaders. If a
265 licensed facility files for bankruptcy under chapter 11 of the
266 United States Bankruptcy Code, 11 U.S.C. chapter 11, the
267 facility, in its required filing of the 20 largest unsecured
268 creditors with the United States Trustee, shall include the name
269 and contact information of a designated resident selected by the
270 residents' council and a statement explaining that the
271 designated resident was chosen by the residents' council to
272 serve as a representative of the residents' interest on the
273 creditors' committee.

274 Section 6. Section 651.085, Florida Statutes, is amended to
275 read:

276 651.085 Quarterly meetings between residents and the
277 governing body of the provider; resident representation before
278 the governing body of the provider.—

279 (1) The governing body of a provider, or the designated
280 representative of the provider, shall hold quarterly meetings
281 with the residents of the continuing care facility for the
282 purpose of free discussion of subjects including, but not
283 limited to, income, expenditures, and financial trends and
284 problems as they apply to the facility, as well as a discussion
285 on proposed changes in policies, programs, and services. At
286 quarterly meetings where monthly maintenance fee increases are
287 discussed, a summary of the reasons for raising the fee as
288 specified in subsection (4) must be provided in writing to the



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289 president or chair of the residents' council. Upon request of
290 the residents' council, a member of the governing body of the
291 provider, such as a board member, general partner, principal
292 owner, or designated representative shall attend such meetings.
293 Residents are entitled to at least 7 days' advance notice of
294 each quarterly meeting. An agenda and any materials that will be
295 distributed by the governing body or representative of the
296 provider shall be posted in a conspicuous place at the facility
297 and shall be available upon request to residents of the
298 facility. The office shall request verification from a facility
299 that quarterly meetings are held and open to all residents ~~if it~~
300 ~~receives a complaint from the residents' council that a facility~~
301 ~~is not in compliance with this subsection.~~ In addition, a
302 facility shall report to the office in the annual report
303 required under s. 651.026 the dates on which quarterly meetings
304 were held during the reporting period.

305 (2) A residents' council formed pursuant to s. 651.081,
306 members of which are elected by the residents, shall may
307 designate a resident to represent them before the governing body
308 of the provider ~~or organize a meeting or ballot election of the~~
309 ~~residents to determine whether to elect a resident to represent~~
310 ~~them before the governing body of the provider. If a residents'~~
311 ~~council does not exist, any resident may organize a meeting or~~
312 ~~ballot election of the residents of the facility to determine~~
313 ~~whether to elect a resident to represent them before the~~
314 ~~governing body and, if applicable, elect the representative. The~~
315 ~~residents' council, or the resident that organizes a meeting or~~
316 ~~ballot election to elect a representative, shall give all~~
317 ~~residents notice at least 10 business days before the meeting or~~



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318 ~~election. Notice may be given through internal mailboxes,~~
319 ~~communitywide newsletters, bulletin boards, in-house television~~
320 ~~stations, and other similar means of communication. An election~~
321 ~~of the representative is valid if at least 40 percent of the~~
322 ~~total resident population participates in the election and a~~
323 ~~majority of the participants vote affirmatively for the~~
324 ~~representative.~~ The initial designated representative elected
325 under this section shall be elected to serve at least 12 months.

326 (3) The designated representative shall be notified at
327 least 14 days in advance of any meeting of the full governing
328 body at which proposed changes in resident fees or services will
329 be discussed. The representative shall be invited to attend and
330 participate in that portion of the meeting designated for the
331 discussion of such changes.

332 (4) At a quarterly meeting prior to the implementation of
333 any increase in the monthly maintenance fee, the designated
334 representative of the provider must provide the reasons, by
335 department cost centers, for any increase in the fee that
336 exceeds the most recently published Consumer Price Index for All
337 Urban Consumers, all items, Class A Areas of the Southern
338 Region. Nothing in this subsection shall be construed as placing
339 a cap or limitation on the amount of any increase in the monthly
340 maintenance fee, establishing a presumption of the
341 appropriateness of the Consumer Price Index as the basis for any
342 increase in the monthly maintenance fee, or limiting or
343 restricting the right of a provider to establish or set monthly
344 maintenance fee increases.

345 (5) The board of directors or governing board of a licensed
346 provider may at its sole discretion allow a resident of the



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347 facility to be a voting member of the board or governing body of
348 the facility. The board of directors or governing board of a
349 licensed provider may establish specific criteria for the
350 nomination, selection, and term of a resident as a member of the
351 board or governing body. If the board or governing body of a
352 licensed provider operates more than one licensed facility,
353 regardless of whether the facility is in-state or out-of-state,
354 the board or governing body may select at its sole discretion
355 one resident from among its facilities to serve on the board of
356 directors or governing body on a rotating basis.

357 Section 7. Paragraph (d) of subsection (2) of section
358 651.091, Florida Statutes, is amended to read:

359 651.091 Availability, distribution, and posting of reports
360 and records; requirement of full disclosure.-

361 (2) Every continuing care facility shall:

362 (d) Distribute a copy of the full annual statement and a
363 copy of the most recent third-party financial audit filed with
364 the annual report to the president or chair of the residents'
365 council within 30 days after filing the annual report with the
366 office, and designate a staff person to provide explanation
367 thereof.

368 Section 8. This act shall take effect October 1, 2015.

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 Fiscal Policy

BILL: CS/CS/SB 1126

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

SUBJECT: Continuing Care Communities

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1126 requires continuing care facilities to provide refunds of entrance fees within 90 days after the continuing care contract is terminated and the unit is vacated, instead of within 120 days of the notice to cancel under current law.

The bill requires continuing care contracts to specify one of three sources of payment for refunds paid from the proceeds of subsequent entrance fees and prohibits refunds conditioned on receipt of the entrance fee for the same unit as of October 1, 2016.

The bill requires continuing care retirement communities (CCRCs) to establish residents' councils, whose activities must be independent of the CCRC.

The bill clarifies that continuing care and continuing care at-home contracts are preferred claims in the event of receivership or liquidation and are subordinate only to secured claims.

The bill revises disclosure requirements for third-party audits of the CCRC and notice requirements related to examination reports and any related corrective action plan.

There is no fiscal impact to the state.

II. Present Situation:

Continuing Care Retirement Communities

A continuing care retirement community (CCRC) provides shelter and nursing care or personal services to residents upon the payment of an entrance fee.¹ According to representatives, CCRCs generally feature apartment style independent living units, assisted living units, and nursing care, typically all on a single campus.² Many also offer assisted living, memory support care, and other specialty care arrangements.³ These facilities also provide residents with dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs.⁴ Continuing care facilities may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.⁵ In addition to the entrance fee, a CCRC also generally charges residents monthly fees to cover costs related to health care and other aspects of community living.⁶

There are currently 71 licensed CCRCs in Florida.⁷ CCRCs are spread throughout the state, with Palm Beach, Sarasota, and Pinellas counties having the greatest numbers of these communities. Almost 25,000 residents lived in a CCRC during 2013.

Oversight responsibility of these entities is shared between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR). The AHCA regulates aspects of CCRCs related to the provision of health care such as assisted living, skilled nursing care, quality of care, and concerns with medical facilities. Because residents pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, there is a need to ensure that CCRCs are in the proper financial and managerial position to provide services to present and future residents. Accordingly, the OIR is given primary responsibility to authorize and monitor the operation of facilities and to determine facilities' financial status and the management capabilities of their managers and owners.⁸ If a continuing care provider is accredited through a process substantially equivalent to the requirements of chapter 651, F.S., the OIR may waive requirements of that chapter.⁹

Continuing Care Retirement Community Contracts

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product and are

¹ Section 651.011, F.S.

² Jane E. Zarem, CCRC Task Force, *Today's Continuing Care Retirement Community*, pg. 2 available at http://www.leadingage.org/uploadedFiles/Content/Consumers/Paying_for_Aging_Services/CCRCcharacteristics_7_2011.pdf (July 2010) (last visited April 13, 2015).

³ *Id.*

⁴ *Id.*

⁵ Section 651.057, F.S.

⁶ American Association of Retired Persons, *About Continuing Care Retirement Communities*, available at http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited March 7, 2015).

⁷ Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council*, (September 29, 2014) available at <http://www.floir.com/siteDocuments/CouncilPresentation.pdf> (last visited April 13, 2015).

⁸ See ss. 651.021 and 651.023, F.S.

⁹ Section 651.028, F.S.

reviewed and approved for the market by the OIR.¹⁰ Each contract for continuing care services must:

- Provide for continuing care of one resident, or two residents living in a double occupancy room, under regulations set out by the provider;
- List all property transferred to the facility by the resident upon moving to the CCRC, including amounts paid or payable by the resident;
- Specify all services to be provided by the provider to each resident, including, but not limited to, food, shelter, personal services, nursing care, drugs, burial and incidentals;
- Describe the terms and conditions for cancellation of the contract given a variety of circumstances; and
- Describe all other relevant terms and conditions included in statute.¹¹

The entrance fee is an initial or deferred payment made as full or partial payment for continuing care.¹² According to CCRC providers, entrance fees typically are strongly correlated to local housing prices, though they range widely.¹³ Generally, entrance fees range from \$100,000 to \$1 million.¹⁴ Under Florida law, a continuing care contract must specify the terms governing the refund of any portion of the entrance fee.¹⁵ A CCRC facility may only retain up to 2 percent of the entrance fee per month of resident occupancy along with a processing fee of up to 5 percent.¹⁶ If the continuing care contract provides that the facility will only retain up to 1 percent of the entrance fee per month, the contract may also provide that the refund will be paid from the proceeds of the next entrance fees received by the provider,¹⁷ or, if the provider is no longer marketing CCRC contracts, within 200 days after the date of notice.¹⁸ If the contract is cancelled before the unit is occupied, the entire entrance fee must be refunded other than a processing fee of up to 5 percent of the entire entrance fee.¹⁹ Florida law requires the contract to specify the terms under which a contract is cancelled due to the resident's death, which may include a provision allowing the CCRC provider to retain the entire entrance fee.²⁰

Rights of Residents in a CCRC

The OIR is also authorized to discipline a facility for violations of residents' rights.²¹ These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities; to achieve the highest possible level of independence, autonomy, and interaction within the community; and to present grievances and recommend changes in policies, procedures, and services to the staff of

¹⁰ Section 651.055(1), F.S.

¹¹ *Id.*

¹² See s. 651.011(5), F.S.

¹³ *Supra* note 2 at 9.

¹⁴ *Supra* note 6.

¹⁵ Section 651.055(1)(g)1., F.S.

¹⁶ Section 651.055(1)(g)2., F.S.

¹⁷ For units for which there are not prior resident claims.

¹⁸ Section 651.055(1)(g)3., F.S.

¹⁹ Section 651.055(1)(g)4., F.S.

²⁰ Section 651.055(1)(h), F.S.

²¹ Section 651.083, F.S.

the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.²²

Current law requires CCRCs to hold quarterly meetings at which residents' organizations may be represented.²³ The meetings are for the purpose of holding a free discussion of subjects such as the facility's income, expenditures, financial trends, and problems, as well as proposed changes in policies, programs, and services. If the CCRC proposes the imposition or increase of a monthly maintenance fee, additional duties are placed on the CCRC provider to provide notice and give reasons for the proposed action.

Residents of a CCRC may form a residents' council for the purpose of representing residents in quarterly meetings with the CCRC provider.²⁴ Florida law provides a process by which a residents' council is formed. The residents' council must be created by a vote in which at least 40 percent of the total resident population participates and a majority of the participants vote in favor of creating the council.²⁵ A residents' council may designate a resident to represent them before the governing body of the provider.²⁶ The residents' council representative must be invited to participate in the portion of any meeting of the full governing body of the CCRC during which proposed changes in resident fees or services will be discussed.²⁷

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider.²⁸ Such claims are subordinate, however, to any secured claim and the priority claims detailed in s. 631.271, F.S. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

III. Effect of Proposed Changes:

Refunds of Entrance Fees at Cancellation of Continuing Care Contracts

Section 1 amends s. 651.055, F.S., to revise the statutory requirements for refunding portions of entrance fees to residents who do not have a transferrable membership or ownership right in the continuing care facility. The bill requires for all contract entered into on or after January 1, 2016, continuing care facilities must provide refunds of entrance fees within 90 days after the continuing care contract is terminated and the unit is vacated. Currently, refunds must be provided within 120 days of the notice to cancel. For contracts entered into before January 1, 2016, the continuing care resident may execute a contract addendum approved by the OIR providing for a revised refund requirement.

²² *Id.*

²³ Section 651.085, F.S.

²⁴ Section 651.081, F.S.

²⁵ Section 651.081(2), F.S.

²⁶ Section 651.085(2), F.S.

²⁷ Section 651.085(3), F.S.

²⁸ Section 651.071, F.S.

The bill prohibits the CCRC from charging a processing fee in excess of 5 percent. However, the bill maintains the requirement that CCRC providers may retain up to 2 percent of the entrance fee per month of occupancy by the resident.

If the continuing care contract provides for the CCRC to retain no more than 1 percent per month of resident occupancy, current law allows continuing care contracts to specify that an entrance fee refund will be paid from the proceeds of the next entrance fee received by the CCRC for which there are no prior claims. The bill requires continuing care contracts to specify one of three sources of payment for the refund:

- From the proceeds of the next entrance fee;
- From the proceeds of the next entrance fee for a like or similar unit²⁹ for which there are no prior claims; or
- From the proceeds of the next entrance fee for the unit being vacated. This option may only be used until October 1, 2016. The option is allowed until October 1, 2016, because there are CCRCs that currently have this option in their contracts. Such CCRCs must submit to the OIR for approval by August 2, 2016, a new or amended contract that uses one of the other refund options.

The bill also requires the contract to specify the following time frames for the refund of an entrance fee if the continuing care contract specifies that the entrance fee refund will be paid from the proceeds of the next entrance fee for a like or similar unit:

- If the refund is due upon the resident's death or relocation to another level of care that results in termination of the CCRC contract, the refund must be made the earlier of 30 days after the CCRC receives the next entrance fee for a like or similar unit or within a specified maximum number of months or years, as specified by the contract.
- If the refund is due because the resident vacates the unit and voluntarily terminates³⁰ the contract after the 7-day rescission period, the refund must be paid within 30 days after the CCRC receives the next entrance fee for a like or similar unit for which there are no prior claims.

If the CCRC is not marketing continuing care contracts, refunds must be paid within 200 days after the contract terminates and the unit is vacated.

Waiver of Continuing Care Facility Requirements

Section 2 amends s. 651.028, F.S., to limit the OIR's authority to waive requirements placed on accredited CCRCs to an accredited CCRCs without stipulations or conditions. The bill maintains current law allowing only those waivers that are consistent with the security protections of the chapter. The only requirement typically waived by the OIR is the requirement to submit quarterly financial reports.³¹

²⁹ The bill defines "like or similar unit" as a category that has similar characteristics including comparable square footage, number of bedrooms, or location. Each such category must contain at least 5 percent of the total number of residential units or, if the units are not single family homes, at least 10 units.

³⁰ Under the bill, a continuing care contract is voluntarily terminated when a resident provides written notice of intent to leave and moves out of the CCRC after the 7-day rescission period.

³¹ See Office of Insurance Regulation, *Senate Bill 1126 Agency Analysis* (March 3, 2015) (on file with the Senate Committee on Banking and Insurance).

Priority of Claims in Receivership or Liquidation

Section 3 amends s. 651.071, F.S., to specify that in a receivership or liquidation proceeding, CCRC contract claims are subordinate to the priority claims listed in s. 631.271, F.S., related to the estate of an insurer. Current law makes such contracts preferred claims in a liquidation or receivership, but subordinates them to secured claims and the priority claims listed in s. 631.271, F.S.

Residents' Councils and Quarterly Meetings

Section 5 amends s. 651.081, F.S., to require each CCRC to establish a residents' council, which must be established through an election by the residents. Currently, it is optional both to establish a residents' council and to do so through the election process outlined in statute.

The bill establishes roles and responsibilities of a residents' council. Specifically, the residents' council must:

- Be independent of the CCRC provider;
- Adopt its own bylaws and governance documents subject to the vote and approval of the residents. The governing documents may include term limits for council members;
- Develop governing documents that define the process by which residents may submit such inquiries and issues and the timeframe for the council to respond;
- Provide for open meetings when appropriate;
- Provide a forum for residents to submit issues or make inquiries, particularly on matters that impact the general residential quality of life and cultural environment of the CCRC; and
- Serve as a liaison to provide input on such matters to the appropriate representative of the CCRC.

The CCRC provider is not responsible for the residents' council costs and compliance with statute.

If a licensed CCRC files for federal Chapter 11 bankruptcy, the CCRC must include in its required filing with the United States Trustee the 20 largest unsecured creditors, the name and contact information of a designated resident of the residents' council, and, if appropriate, a statement explaining why the designated resident was chosen by the residents' council to serve as a representative of the residents' interest on the creditors' committee.

Section 6 amends s. 651.085, F.S., to require the OIR to request verification from each CCRC that required quarterly meetings between the CCRC governing body or designated representative and the residents are held and open to all residents. Currently, the OIR is only required to request verification upon receiving a complaint from the residents' council.

The bill also requires the residents' council to designate a resident to represent them before the governing body of the provider. A licensed CCRC provider may allow a resident of a facility to be a voting member of the board of directors or governing body of the CCRC, and may establish criteria for the selection of that resident. If the board or governing body of a licensed CCRC

provider operates more than one facility, it may select a resident from among its facilities to serve on the board or governing body on a rotating basis.

Notice of Examination Report and Corrective Action Plan; Disclosure of Audit

Section 4 amends s. 651.105, F.S., to require the OIR to provide notice to the CCRC executive officer of all compliance deficiencies identified by the OIR in an examination. The bill also directs the OIR to determine during each routine examination whether all required disclosures have been made to the CCRC executive officer. A representative of the provider must give a copy of the OIR final examination report and any corrective action plan to the executive officer of the CCRC governing body within 60 days after report issuance.

Section 7 amends s. 651.091, F.S., to require each CCRC to distribute a copy of the most recent third-party financial audit filed with the annual report to the president or chair of the residents' council within 30 days after filing the annual report with the OIR. Currently, the CCRC is only required to distribute a copy of the full annual statement.

Effective Date

Section 8 provides an effective date of October 1, 2015.

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:

Under the bill, residents of CCRC communities that enter receivership or liquidation may benefit from continuing care contracts that are made priority claims subordinate only to secured claims.

C. **Government Sector Impact:**

The Office of Insurance Regulation and the Department of Children and Families each indicated there is no fiscal impact to their respective agencies.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 651.055, 651.028, 651.071, 651.105, 651.081, 651.085, and 651.091.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Fiscal Policy on April 15, 2015:

As recommended by the Appropriations Subcommittee on General Government the committee substitute removes a reference adding “bankruptcy” in s. 651.071, F.S., to the types of proceedings in which continuing care and continuing care at home contracts executed by a provider will be deemed preferred claims. Also, the committee substitute makes a clarifying change stating that a residents’ council governance documents shall be approved by the residents.

CS by Banking and Insurance on March 10, 2015:

The CS makes technical and clarifying changes to the bill.

B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Altman

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1 A bill to be entitled
 2 An act relating to continuing care communities;
 3 amending s. 651.055, F.S.; revising requirements for
 4 continuing care contracts; amending s. 651.028, F.S.;
 5 revising authority of the Office of Insurance
 6 Regulation to waive requirements for accredited
 7 facilities; amending s. 651.071, F.S.; providing that
 8 continuing care and continuing care at-home contracts
 9 are preferred claims in the event of bankruptcy
 10 proceedings against a provider; revising subordination
 11 of claims; amending s. 651.105, F.S.; revising notice
 12 requirements; revising duties of the office; requiring
 13 an agent of a provider to provide a copy of an
 14 examination report and corrective action plan under
 15 certain conditions; amending s. 651.081, F.S.;
 16 requiring a residents' council to provide a forum for
 17 certain purposes; requiring a residents' council to
 18 adopt its own bylaws and governance documents;
 19 amending s. 651.085, F.S.; revising provisions
 20 relating to quarterly meetings between residents and
 21 the governing body of the provider; revising powers of
 22 the residents' council; amending s. 651.091, F.S.;
 23 revising continuing care facility reporting
 24 requirements; providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Paragraphs (g) through (k) of subsection (1) of
 29 section 651.055, Florida Statutes, are amended to read:

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30 651.055 Continuing care contracts; right to rescind.—
 31 (1) Each continuing care contract and each addendum to such
 32 contract shall be submitted to and approved by the office before
 33 its use in this state. Thereafter, no other form of contract
 34 shall be used by the provider until it has been submitted to and
 35 approved by the office. Each contract must:
 36 (g) Provide that the contract may be canceled by giving at
 37 least 30 days' written notice of cancellation by the provider,
 38 the resident, or the person who provided the transfer of
 39 property or funds for the care of such resident. However, if a
 40 contract is canceled because there has been a good faith
 41 determination that a resident is a danger to himself or herself
 42 or others, only such notice as is reasonable under the
 43 circumstances is required.
 44 (h)1- Describe The contract must also provide in clear and
 45 understandable language, in print no smaller than the largest
 46 type used in the body of the contract, the terms governing the
 47 refund of any portion of the entrance fee.
 48 1.2- For a resident whose contract with the facility
 49 provides that the resident does not receive a transferable
 50 membership or ownership right in the facility, and who has
 51 occupied his or her unit, the refund shall be calculated on a
 52 pro rata basis with the facility retaining up to 2 percent per
 53 month of occupancy by the resident and up to a 5 percent
 54 processing fee. Such refund must be paid within 120 days after
 55 giving the notice of intention to cancel. For contracts entered
 56 into on or after January 1, 2016, refunds must be made within 90
 57 days after the contract is terminated and the unit is vacated. A
 58 resident who enters into a contract before January 1, 2016, may

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59 voluntarily sign a contract addendum approved by the office that
60 provides for a revised refund requirement.

61 ~~2.3.~~ In addition to a processing fee not to exceed 5
62 percent, if the contract provides for the facility to retain no
63 more than ~~up to~~ 1 percent per month of occupancy by the resident
64 and the resident does not receive a transferable membership or
65 ownership right in the facility, the contract shall ~~it may~~
66 provide that such refund will be paid from one of the following
67 sources of proceeds:

68 a. The proceeds of the next entrance fees received by the
69 provider for units for which there are no prior claims by any
70 resident until paid in full;

71 b. The proceeds of the next entrance fee received by the
72 provider for a like or similar unit as specified in the
73 residency or reservation contract signed by the resident for
74 which there are no prior claims by any resident until paid in
75 full; or

76 c. The proceeds of the next entrance fee received by the
77 provider for the unit that is vacated if the contract is
78 approved by the office before October 1, 2015. A provider may
79 not use this refund option after October 1, 2016, and must
80 submit a new or amended contract with an alternative refund
81 provision to the office for approval by August 2, 2016, if the
82 provider has discontinued marketing continuing care contracts,
83 within 200 days after the date of notice.

84 3. For contracts entered into on or after January 1, 2016,
85 that provide for a refund in accordance with sub-subparagraph
86 2.b., the following provisions apply:

87 a. Any refund that is due upon the resident's death or

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88 relocation of the resident to another level of care that results
89 in the termination of the contract must be paid by the earlier
90 of:

91 (I) Thirty days after receipt by the provider of the next
92 entrance fee received for a like or similar unit for which there
93 is no prior claim by any resident until paid in full; or

94 (II) Within a specified maximum number of months or years,
95 determined by the provider and specified in the contract, after
96 the contract is terminated and the unit is vacated.

97 b. Any refund that is due to a resident who vacates the
98 unit and voluntarily terminates a contract after the 7-day
99 rescission period required in subsection (2) must be paid within
100 30 days after receipt by the provider of the next entrance fee
101 for a like or similar unit for which there are no prior claims
102 by any resident until paid in full and is not subject to the
103 provisions in sub-subparagraph a. A contract is voluntarily
104 terminated when a resident provides written notice of intent to
105 leave and moves out of the continuing care facility after the 7-
106 day rescission period.

107 4. For purposes of this paragraph, the term "like or
108 similar unit" means a residential dwelling categorized into a
109 group of units which have similar characteristics, such as
110 comparable square footage, number of bedrooms, location, age of
111 construction, or a combination of one or more of these features
112 as specified in the residency or reservation contract. Each
113 category must consist of at least 5 percent of the total number
114 of residential units designated for independent living or 10
115 residential units designated for independent living, whichever
116 is less. However, a group of units consisting of single family

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117 homes may contain fewer than 10 units.

118 5. If the provider has discontinued marketing continuing
 119 care contracts, any refund due a resident must be paid within
 120 200 days after the contract is terminated and the unit is
 121 vacated.

122 ~~6.4-~~ Unless subsection (5) applies, for any prospective
 123 resident, regardless of whether or not such a resident receives
 124 a transferable membership or ownership right in the facility,
 125 who cancels the contract before occupancy of the unit, the
 126 entire amount paid toward the entrance fee shall be refunded,
 127 less a processing fee of up to 5 percent of the entire entrance
 128 fee; however, the processing fee may not exceed the amount paid
 129 by the prospective resident. Such refund must be paid within 60
 130 days after the resident gives ~~giving~~ notice of intention to
 131 cancel. For a resident who has occupied his or her unit and who
 132 has received a transferable membership or ownership right in the
 133 facility, the foregoing refund provisions do not apply but are
 134 deemed satisfied by the acquisition or receipt of a transferable
 135 membership or an ownership right in the facility. The provider
 136 may not charge any fee for the transfer of membership or sale of
 137 an ownership right.

138 ~~(i)-(h)~~ State the terms under which a contract is canceled
 139 by the death of the resident. These terms may contain a
 140 provision that, upon the death of a resident, the entrance fee
 141 of such resident is considered earned and becomes the property
 142 of the provider. If the unit is shared, the conditions with
 143 respect to the effect of the death or removal of one of the
 144 residents must be included in the contract.

145 ~~(j)-(i)~~ Describe the policies that may lead to changes in

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146 monthly recurring and nonrecurring charges or fees for goods and
 147 services received. The contract must provide for advance notice
 148 to the resident, of at least 60 days, before any change in fees
 149 or charges or the scope of care or services is effective, except
 150 for changes required by state or federal assistance programs.

151 ~~(k)-(j)~~ Provide that charges for care paid in one lump sum
 152 may not be increased or changed during the duration of the
 153 agreed upon care, except for changes required by state or
 154 federal assistance programs.

155 ~~(l)-(k)~~ Specify whether the facility is, or is affiliated
 156 with, a religious, nonprofit, or proprietary organization or
 157 management entity; the extent to which the affiliate
 158 organization will be responsible for the financial and
 159 contractual obligations of the provider; and the provisions of
 160 the federal Internal Revenue Code, if any, under which the
 161 provider or affiliate is exempt from the payment of federal
 162 income tax.

163 Section 2. Section 651.028, Florida Statutes, is amended to
 164 read:

165 651.028 Accredited facilities.—If a provider is accredited
 166 without stipulations or conditions by a process found by the
 167 office to be acceptable and substantially equivalent to the
 168 provisions of this chapter, the office may, pursuant to rule of
 169 the commission, waive any requirements of this chapter with
 170 respect to the provider if the office finds that such waivers
 171 are not inconsistent with the security protections intended by
 172 this chapter.

173 Section 3. Subsection (1) of section 651.071, Florida
 174 Statutes, is amended to read:

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175 651.071 Contracts as preferred claims on liquidation or
176 receivership.-

177 (1) In the event of bankruptcy, receivership, or
178 liquidation proceedings against a provider, all continuing care
179 and continuing care at-home contracts executed by a provider
180 shall be deemed preferred claims against all assets owned by the
181 provider; however, such claims are subordinate to ~~those priority~~
182 ~~claims set forth in s. 631.271~~ and any secured claim.

183 Section 4. Subsections (4) and (5) of section 651.105,
184 Florida Statutes, are amended, and subsection (6) is added to
185 that section, to read:

186 651.105 Examination and inspections.-

187 (4) The office shall notify the provider and the executive
188 officer of the governing body of the provider in writing of all
189 deficiencies in its compliance with the provisions of this
190 chapter and the rules adopted pursuant to this chapter and shall
191 set a reasonable length of time for compliance by the provider.
192 In addition, the office shall require corrective action or
193 request a corrective action plan from the provider which plan
194 demonstrates a good faith attempt to remedy the deficiencies by
195 a specified date. If the provider fails to comply within the
196 established length of time, the office may initiate action
197 against the provider in accordance with the provisions of this
198 chapter.

199 (5) At the time of the routine examination, the office
200 shall determine if all disclosures required under this chapter
201 have been made to the president or chair of the residents'
202 council and the executive officer of the governing body of the
203 provider.

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204 (6) A representative of the provider must give a copy of
205 the final examination report and corrective action plan, if one
206 is required by the office, to the executive officer of the
207 governing body of the provider within 60 days after issuance of
208 the report.

209 Section 5. Section 651.081, Florida Statutes, is amended to
210 read:

211 651.081 Residents' council.-

212 (1) Residents living in a facility holding a valid
213 certificate of authority under this chapter have the right of
214 self-organization, the right to be represented by an individual
215 of their own choosing, and the right to engage in concerted
216 activities for the purpose of keeping informed on the operation
217 of the facility that is caring for them or for the purpose of
218 other mutual aid or protection.

219 (2) (a) Each facility shall establish a residents' council
220 created for the purpose of representing residents on matters set
221 forth in s. 651.085. The residents' council shall ~~may~~ be
222 established through an election in which the residents, as
223 defined in s. 651.011, vote by ballot, physically or by proxy.
224 If the election is to be held during a meeting, a notice of the
225 organizational meeting must be provided to all residents of the
226 community at least 10 business days before the meeting. Notice
227 may be given through internal mailboxes, communitywide
228 newsletters, bulletin boards, in-house television stations, and
229 other similar means of communication. An election creating a
230 residents' council is valid if at least 40 percent of the total
231 resident population participates in the election and a majority
232 of the participants vote affirmatively for the council. The

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 233 initial residents' council created under this section is valid
 234 for at least 12 months. A residents' organization formalized by
 235 bylaws and elected officials must be recognized as the
 236 residents' council under this section and s. 651.085. Within 30
 237 days after the election of a newly elected president or chair of
 238 the residents' council, the provider shall give the president or
 239 chair a copy of this chapter and rules adopted thereunder, or
 240 direct him or her to the appropriate public website to obtain
 241 this information. Only one residents' council may represent
 242 residents before the governing body of the provider as described
 243 in s. 651.085(2).

244 (b) In addition to those matters provided in s. 651.085, a
 245 residents' council shall provide a forum in which a resident may
 246 submit issues or make inquiries related to, but not limited to,
 247 subjects that impact the general residential quality of life and
 248 cultural environment. The residents' council shall serve as a
 249 formal liaison to provide input related to such matters to the
 250 appropriate representative of the provider.

251 (c) The activities of a residents' council are independent
 252 of the provider. The provider is not responsible for ensuring,
 253 or for the associated costs of, compliance of the residents'
 254 council with the provisions of this section with respect to the
 255 operation of a residents' council.

256 (d) A residents' council shall adopt its own bylaws and
 257 governance documents. The residents' council shall provide for
 258 open meetings when appropriate. The governing documents shall
 259 define the manner in which residents may submit an issue to the
 260 council and define a reasonable timeframe in which the
 261 residents' council shall respond to a resident submission or

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 262 inquiry. A residents' council may include term limits in its
 263 governing documents to ensure consistent integration of new
 264 leaders. If a licensed facility files for bankruptcy under
 265 chapter 11 of the United States Bankruptcy Code, 11 U.S.C.
 266 chapter 11, the facility, in its required filing of the 20
 267 largest unsecured creditors with the United States Trustee,
 268 shall include the name and contact information of a designated
 269 resident selected by the residents' council and a statement
 270 explaining that the designated resident was chosen by the
 271 residents' council to serve as a representative of the
 272 residents' interest on the creditors' committee.

273 Section 6. Section 651.085, Florida Statutes, is amended to
 274 read:

275 651.085 Quarterly meetings between residents and the
 276 governing body of the provider; resident representation before
 277 the governing body of the provider.—

278 (1) The governing body of a provider, or the designated
 279 representative of the provider, shall hold quarterly meetings
 280 with the residents of the continuing care facility for the
 281 purpose of free discussion of subjects including, but not
 282 limited to, income, expenditures, and financial trends and
 283 problems as they apply to the facility, as well as a discussion
 284 on proposed changes in policies, programs, and services. At
 285 quarterly meetings where monthly maintenance fee increases are
 286 discussed, a summary of the reasons for raising the fee as
 287 specified in subsection (4) must be provided in writing to the
 288 president or chair of the residents' council. Upon request of
 289 the residents' council, a member of the governing body of the
 290 provider, such as a board member, general partner, principal

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291 owner, or designated representative shall attend such meetings.
 292 Residents are entitled to at least 7 days' advance notice of
 293 each quarterly meeting. An agenda and any materials that will be
 294 distributed by the governing body or representative of the
 295 provider shall be posted in a conspicuous place at the facility
 296 and shall be available upon request to residents of the
 297 facility. The office shall request verification from a facility
 298 that quarterly meetings are held and open to all residents ~~if it~~
 299 ~~receives a complaint from the residents' council that a facility~~
 300 ~~is not in compliance with this subsection.~~ In addition, a
 301 facility shall report to the office in the annual report
 302 required under s. 651.026 the dates on which quarterly meetings
 303 were held during the reporting period.

304 (2) A residents' council formed pursuant to s. 651.081,
 305 members of which are elected by the residents, shall may
 306 designate a resident to represent them before the governing body
 307 of the provider ~~or organize a meeting or ballot election of the~~
 308 ~~residents to determine whether to elect a resident to represent~~
 309 ~~them before the governing body of the provider. If a residents'~~
 310 ~~council does not exist, any resident may organize a meeting or~~
 311 ~~ballot election of the residents of the facility to determine~~
 312 ~~whether to elect a resident to represent them before the~~
 313 ~~governing body and, if applicable, elect the representative. The~~
 314 ~~residents' council, or the resident that organizes a meeting or~~
 315 ~~ballot election to elect a representative, shall give all~~
 316 ~~residents notice at least 10 business days before the meeting or~~
 317 ~~election. Notice may be given through internal mailboxes,~~
 318 ~~communitywide newsletters, bulletin boards, in-house television~~
 319 ~~stations, and other similar means of communication. An election~~

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320 ~~of the representative is valid if at least 40 percent of the~~
 321 ~~total resident population participates in the election and a~~
 322 ~~majority of the participants vote affirmatively for the~~
 323 ~~representative.~~ The initial designated representative elected
 324 under this section shall be elected to serve at least 12 months.

325 (3) The designated representative shall be notified at
 326 least 14 days in advance of any meeting of the full governing
 327 body at which proposed changes in resident fees or services will
 328 be discussed. The representative shall be invited to attend and
 329 participate in that portion of the meeting designated for the
 330 discussion of such changes.

331 (4) At a quarterly meeting prior to the implementation of
 332 any increase in the monthly maintenance fee, the designated
 333 representative of the provider must provide the reasons, by
 334 department cost centers, for any increase in the fee that
 335 exceeds the most recently published Consumer Price Index for All
 336 Urban Consumers, all items, Class A Areas of the Southern
 337 Region. Nothing in this subsection shall be construed as placing
 338 a cap or limitation on the amount of any increase in the monthly
 339 maintenance fee, establishing a presumption of the
 340 appropriateness of the Consumer Price Index as the basis for any
 341 increase in the monthly maintenance fee, or limiting or
 342 restricting the right of a provider to establish or set monthly
 343 maintenance fee increases.

344 (5) The board of directors or governing board of a licensed
 345 provider may at its sole discretion allow a resident of the
 346 facility to be a voting member of the board or governing body of
 347 the facility. The board of directors or governing board of a
 348 licensed provider may establish specific criteria for the

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

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349 nomination, selection, and term of a resident as a member of the
350 board or governing body. If the board or governing body of a
351 licensed provider operates more than one licensed facility,
352 regardless of whether the facility is in-state or out-of-state,
353 the board or governing body may select at its sole discretion
354 one resident from among its facilities to serve on the board of
355 directors or governing body on a rotating basis.

356 Section 7. Paragraph (d) of subsection (2) of section
357 651.091, Florida Statutes, is amended to read:
358 651.091 Availability, distribution, and posting of reports
359 and records; requirement of full disclosure.—

360 (2) Every continuing care facility shall:

361 (d) Distribute a copy of the full annual statement and a
362 copy of the most recent third-party financial audit filed with
363 the annual report to the president or chair of the residents'
364 council within 30 days after filing the annual report with the
365 office, and designate a staff person to provide explanation
366 thereof.

367 Section 8. This act shall take effect October 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-15
Meeting Date

SB-1126
Bill Number (if applicable)

Topic CONTINUING CARE COMMUNITIES

Amendment Barcode (if applicable)

Name Robby Bernal

Job Title Dir. Bus. Development

Address 1812 Riggins Road
Street

Phone 850 671-3700

Tallahassee, FL. 32308
City State Zip

Email RBERNAL@LeadingAgeFlorida.org

Speaking: For Against Information

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

Representing Leading Age 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

APPEARANCE RECORD

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

4-15-15

Meeting Date

SB 1126

Bill Number (if applicable)

Topic Continuing Care Communities

Name Beth Vecchioli

Amendment Barcode (if applicable)

Job Title Sr. Policy Advisor

Address 319 S. Calhoun St Ste 600

Phone 850-425-5623

Street Tallahassee

City FL State 32301 Zip

Email beth.vecchioli@hkw.com

Speaking: For Against Information

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

Representing LeadingAge Fla.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/2015
Meeting Date

1126
Bill Number (if applicable)

Topic Continuing Care Communities

Amendment Barcode (if applicable)

Name Carol Berkowitz

Job Title Director of Govt Affairs

Address 307 West Park Ave
Street

Phone 850-224-3907

TLH
City

FL
State

32307
Zip

Email cberkowitz@

fnca.org

Speaking: For Against Information

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

Representing FL Healthcare Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

April 13, 2015

The Honorable Anitere Flores
Senate Committee on Fiscal Policy, Chair
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair Flores:

I respectfully request that CS/SB 1126, related to *Continuing Care Communities*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building
Tamra Lyon, Committee Administrative Assistant

TA/svb

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

April 14, 2015

The Honorable Anitere Flores
Senate Committee on Fiscal Policy, Chair
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair Flores,

Senate Bill 1126, related to *Continuing Care Communities* is on the Fiscal Policy Committee agenda tomorrow, April 15, 2015. Due to a scheduling conflict I will be unable to attend.

Please recognize my Legislative Assistant, Rick Kendust, to present SB 1126 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Jennifer Hrdlicka, Staff Director, 225 Knott Building
Tamra Lyon, Committee Administrative Assistant

TA/dmw

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: PCS/CS/SB 1134 (125558)

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

SUBJECT: Blanket Health Insurance

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1134 expands the types of individuals and entities which are eligible for blanket health insurance coverage.

There is no fiscal impact to the state.

II. Present Situation:

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.¹ Blanket health insurance policies and contracts are issued to a policyholder, such as a school, business, or an organization, and provide coverage to a group of individuals or participants who share a common activity or operation of the policyholder. The coverage is for persons participating in specific activities and coverage begins and ends with the covered activity.² An individual application is not required from an individual covered under a blanket health insurance policy or contract.³ Generally, the insurer is

¹ Section 20.121(3)(a)1., F.S.

² Office of Insurance Regulation, *2015 Agency Bill Analysis for SB 1134*, March 6, 2015 (on file with the Senate Fiscal Policy Committee).

³ Section 627.660(1), F.S.

not required to provide a written certificate of the insurance coverage to each insured person.⁴ The certificate is subject to filing and approval with the OIR pursuant to ss. 627.410 and 627.640, F.S.

Blanket health insurance covers special groups of individuals under a policy or contract issued to the following groups:

- A common carrier;
- An employer;
- A volunteer fire department;
- A school, school district, college, university, or other institution of learning;
- An organization or branch of the Boys Scouts of America, Future Farmers of America, religious or educational organizations, or similar organizations;
- An individual, firm, or corporation holding or operating summer camps or other meetings;
- A newspaper;
- A health care provider;
- An HMO; and
- Other specified entities.⁵

III. Effect of Proposed Changes:

The bill revises and expands the special groups of individuals that are eligible under a blanket health insurance policy or contract. The bill expands the special groups to include policies or contracts issued to:

- Operators, owners, or lessees of a means of transportation (under current law a common carrier is eligible);
- Employers covering insured employees' dependents or guests, who are defined by reference to an activity or operation of the policyholder;
- Institutions of learning covering all or any grouping of the institution's students, teachers and employees and their spouses and dependent children;
- Local emergency management agencies or other groups of first responders;
- Instructional, charitable, recreational, or civic organizations;
- Individuals, firms, or corporations holding or operating meetings for educational, charitable, or civic purposes;
- Other publishers besides newspapers;
- Coordinators of health services covering donors or surrogates;
- Sports teams or camps, or a sponsor thereof;
- Travel agencies or other organizations that provide travel-related services;
- Associations having at least 25 individuals that have been organized and maintained for 1 year for purposes other than that of obtaining insurance coverage; and
- Financial institutions, vendors or parent holding companies of a financial institution, and trustees or agents of a financial institution.

⁴ An insurer is required to furnish a written certificate disclosing the essential features of the coverage to each person covered under a policy issued pursuant to s. 627.659(3), F.S., relating to policies issued to a school, district school system, college, university, or other institution of learning. Section 627.660(6), F.S.

⁵ Section 627.659, F.S.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would allow additional groups to obtain blanket health insurance coverage. According to advocates of the bill, although this coverage is not a substitute for liability insurance, such blanket policies may assist in reducing liability claims and offer reimbursement to participants for medical and other accidental injury-related expenses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The OIR has indicated that the additional groups and covered persons are not well defined or not defined at all.⁶

VIII. Statutes Affected:

This bill substantially amends section 627.659 of the Florida Statutes.

⁶ Supra note 2.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:

The CS revises and clarifies the groups that would be eligible for blanket health insurance coverage.

CS by Banking and Insurance on March 17, 2015:

The CS eliminates the discretionary authority of the OIR to determine additional risks or classes of risks not specified in statute that would be eligible for blanket health insurance coverage.

- B. **Amendments:**

None.



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Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to blanket health insurance; amending
s. 627.659, F.S.; expanding the types of individuals
and entities which are eligible for blanket health
insurance coverage; limiting the types of insurance
coverages that may be provided to specified groups;
providing an effective date.

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

Section 1. Section 627.659, Florida Statutes, is amended to
read:

627.659 Blanket health insurance; eligible groups.—Blanket
health insurance is ~~that form of~~ health insurance ~~that~~ which
covers special groups of individuals under a policy or contract
issued as enumerated in one of the following subsections:

(1) ~~Under a policy or contract issued To a~~ any common
carrier, ~~or to an operator, an owner, or a lessee of a means of~~
transportation, which is shall be deemed to be the policyholder,
covering a group that is defined as all persons who may become
passengers on such common carrier or means of transportation.

(2) ~~Under a policy or contract issued To an employer, who~~
is shall be deemed to be the policyholder, covering all or any
grouping group of employees or insured employees' dependents or
guests, who are defined by reference to an activity or operation
of the policyholder exceptional hazards incident to such
employment, or under a policy or contract issued to an employer



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~~if when~~ all of its employees are covered under the any such
policy or contract.

(3) ~~Under a policy issued~~ To a school, district school
system, college, university, or other institution of learning,
or to an the official ~~or officials~~ of the such institution,
insuring all or any grouping of the institution's students, ~~and~~
teachers, ~~and employees.~~ The any such policy ~~issued~~ may insure
the spouse or dependent children of the insured student,
teacher, or employee.

(4) ~~Under a policy or contract issued~~ In the name of a any
volunteer fire department, ~~or~~ first aid group, local emergency
management agency as defined in s. 252.34, or other ~~such~~
~~volunteer~~ group of first responders as defined in s. 112.1815,
which is shall be deemed to be the policyholder, covering all or
any grouping of the members or employees of the policyholder or
covering all or any grouping of participants which is defined by
reference to an activity or operation sponsored or supervised by
the policyholder such department or group.

(5) ~~Under a policy or contract issued~~ To an organization,
or branch thereof, such as the Boy Scouts of America, the Future
Farmers of America, a religious, instructional, ~~or~~ educational,
charitable, recreational, or civic body bodies, or similar
organization organizations, or to an individual, firm, or
corporation, holding or operating meetings, such as summer camps
or other meetings for religious, instructive, educational,
charitable, or recreational, or civic purposes, which
organization, branch, or body is deemed to be the policyholder,
covering all or any grouping of participants which is defined by
reference to an activity or operation of the policyholder,



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57 including those who attend the attending such camps or meetings,
58 such as including counselors, instructors, and persons in other
59 administrative positions.

60 (6) Under a policy or contract issued In the name of a
61 newspaper or other publisher, which is shall be deemed to be the
62 policyholder, covering independent contractor newspaper or
63 publication delivery persons. Such a policy or contract may only
64 provide coverage for accident or disability income insurance, or
65 a combination thereof; limited scope dental or vision benefits;
66 coverage for a specified disease or illness; or hospital
67 indemnity or other fixed indemnity insurance.

68 (7) Under a policy or contract issued In the name of a
69 health care provider, which is shall be deemed to be the
70 policyholder, covering patients, or in the name of a coordinator
71 of fertility medicine relationships, such as a surrogacy agency,
72 which is deemed to be the policyholder, covering donors,
73 recipients, or surrogates. This coverage may be offered to the
74 patients, donors, recipients, or surrogates of such
75 policyholders, a health care provider but may not be required as
76 made a condition of receiving care. The benefits provided under
77 the such policy or contract are shall not be assignable to any
78 health care provider.

79 (8) Under a policy or contract issued To a any health
80 maintenance organization licensed pursuant to the provisions of
81 part I of chapter 641, which is shall be deemed to be the
82 policyholder, covering the subscribers of the health maintenance
83 organization. Payment may be made directly to the health
84 maintenance organization by the blanket health insurer for
85 health care services rendered by providers pursuant to the



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86 health care delivery plan.

87 (9) To a sports team or camp, or a sponsor thereof, which
88 is deemed to be the policyholder, covering all or any grouping
89 of members, campers, participants, employees, officials, or
90 supervisors.

91 (10) To a travel agency or other organization that provides
92 travel-related services, which is deemed to be the policyholder,
93 covering all or any grouping of persons to whom the policyholder
94 provides travel or travel-related services.

95 (11) To an association having a constitution and bylaws,
96 having at least 25 individual members, and having been organized
97 and maintained in good faith for a period of 1 year for purposes
98 other than that of obtaining insurance, which association is
99 deemed to be the policyholder, covering all or any grouping of
100 the members of the association.

101 (12) To a financial institution as defined in s. 655.005, a
102 parent holding company of the financial institution, or a
103 trustee or agent designated by the financial institution or
104 parent holding company, which is deemed to be the policyholder,
105 covering accountholders, cardholders, debtors, or guarantors.
106 Such a policy or contract may only provide coverage for accident
107 or disability income insurance, or a combination thereof;
108 limited scope dental or vision benefits; coverage for a
109 specified disease or illness; or hospital indemnity or other
110 fixed indemnity insurance.

111 Section 2. This act shall take effect July 1, 2015.

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 Fiscal Policy

BILL: CS/CS/SB 1134

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

SUBJECT: Blanket Health Insurance

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1134 expands the types of individuals and entities which are eligible for blanket health insurance coverage.

There is no fiscal impact to the state.

II. Present Situation:

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.¹ Blanket health insurance policies and contracts are issued to a policyholder, such as a school, business, or an organization, and provide coverage to a group of individuals or participants who share a common activity or operation of the policyholder. The coverage is for persons participating in specific activities and coverage begins and ends with the covered activity.² An individual application is not required from an individual covered under a blanket health insurance policy or contract.³ Generally, the insurer is

¹ Section 20.121(3)(a)1., F.S.

² Office of Insurance Regulation, *2015 Agency Bill Analysis for SB 1134*, March 6, 2015 (on file with the Senate Fiscal Policy Committee).

³ Section 627.660(1), F.S.

not required to provide a written certificate of the insurance coverage to each insured person.⁴ The certificate is subject to filing and approval with the OIR pursuant to ss. 627.410 and 627.640, F.S.

Blanket health insurance covers special groups of individuals under a policy or contract issued to the following groups:

- A common carrier;
- An employer;
- A volunteer fire department;
- A school, school district, college, university, or other institution of learning;
- An organization or branch of the Boys Scouts of America, Future Farmers of America, religious or educational organizations, or similar organizations;
- An individual, firm, or corporation holding or operating summer camps or other meetings;
- A newspaper;
- A health care provider;
- An HMO; and
- Other specified entities.⁵

III. Effect of Proposed Changes:

The bill revises and expands the special groups of individuals that are eligible under a blanket health insurance policy or contract. The bill expands the special groups to include policies or contracts issued to:

- Operators, owners, or lessees of a means of transportation (under current law a common carrier is eligible);
- Employers covering insured employees' dependents or guests, who are defined by reference to an activity or operation of the policyholder;
- Institutions of learning covering all or any grouping of the institution's students, teachers and employees and their spouses and dependent children;
- Local emergency management agencies or other groups of first responders;
- Instructional, charitable, recreational, or civic organizations;
- Individuals, firms, or corporations holding or operating meetings for educational, charitable, or civic purposes;
- Other publishers besides newspapers;
- Coordinators of health services covering donors or surrogates;
- Sports teams or camps, or a sponsor thereof;
- Travel agencies or other organizations that provide travel-related services;
- Associations having at least 25 individuals that have been organized and maintained for 1 year for purposes other than that of obtaining insurance coverage; and
- Financial institutions, vendors or parent holding companies of a financial institution, and trustees or agents of a financial institution.

⁴ An insurer is required to furnish a written certificate disclosing the essential features of the coverage to each person covered under a policy issued pursuant to s. 627.659(3), F.S., relating to policies issued to a school, district school system, college, university, or other institution of learning. Section 627.660(6), F.S.

⁵ Section 627.659, F.S.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would allow additional groups to obtain blanket health insurance coverage. According to advocates of the bill, although this coverage is not a substitute for liability insurance, such blanket policies may assist in reducing liability claims and offer reimbursement to participants for medical and other accidental injury-related expenses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The OIR has indicated that the additional groups and covered persons are not well defined or not defined at all.⁶

VIII. Statutes Affected:

This bill substantially amends section 627.659 of the Florida Statutes.

⁶ Supra note 2.

IX. Additional Information:

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

CS/CS by Fiscal Policy on April 15, 2015:

As recommended by the Appropriations Subcommittee on General Government the committee substitute revises and clarifies the groups that would be eligible for blanket health insurance coverage.

CS by Banking and Insurance on March 17, 2015:

The CS eliminates the discretionary authority of the OIR to determine additional risks or classes of risks not specified in statute that would be eligible for blanket health insurance coverage.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Hays

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A bill to be entitled

An act relating to blanket health insurance; amending s. 627.659, F.S.; expanding the types of individuals and entities which are eligible for blanket health insurance coverage; providing an effective date.

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

Section 1. Section 627.659, Florida Statutes, is amended to read:

627.659 Blanket health insurance; eligible groups.—Blanket health insurance is ~~that form of~~ health insurance that which covers special groups of individuals under a policy or contract issued as enumerated in one of the following subsections:

(1) ~~Under a policy or contract issued~~ To a any common carrier, or to an operator, an owner, or a lessee of a means of transportation, which ~~is shall be~~ deemed to be the policyholder, covering a group that is defined as all persons who may become passengers on such common carrier or means of transportation.

(2) ~~Under a policy or contract issued~~ To an employer, who ~~is shall be~~ deemed to be the policyholder, covering all or any grouping group of employees or insured employees' dependents or guests, who are defined by reference to an activity or operation of the policyholder ~~exceptional hazards incident to such employment,~~ or under a policy or contract issued to an employer if when all of its employees are covered under the any such policy or contract.

(3) ~~Under a policy issued~~ To a school, district school system, college, university, or other institution of learning,

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or to an ~~the~~ official ~~or officials~~ of the ~~such~~ institution, insuring all or any grouping of the institution's students, ~~and~~ teachers, and employees. ~~The any such~~ policy ~~issued~~ may insure the spouse or dependent children of the insured student, teacher, or employee.

(4) ~~Under a policy or contract issued~~ In the name of a any volunteer fire department, ~~or~~ first aid group, emergency management group, or other first responder ~~such volunteer~~ group, which ~~is shall be~~ deemed to be the policyholder, covering all or any grouping of the members or employees of the policyholder or covering all or any grouping of participants which is defined by reference to an activity or operation sponsored or supervised by the policyholder ~~such department or group.~~

(5) ~~Under a policy or contract issued~~ To an organization, or branch thereof, such as the Boy Scouts of America, the Future Farmers of America, a religious, instructional, ~~or~~ educational, charitable, recreational, or civic body ~~bodies,~~ or similar organization organizations, or to an individual, firm, or corporation, holding or operating meetings, such as summer camps or other meetings for religious, instructive, educational, charitable, or recreational, or civic purposes, which organization, branch, or body is deemed to be the policyholder, covering all or any grouping of participants which is defined by reference to an activity or operation of the policyholder, including those who attend the attending such camps or meetings, ~~such as including~~ counselors, instructors, and persons in other administrative positions.

(6) ~~Under a policy or contract issued~~ In the name of a newspaper or other publisher, which ~~is shall be~~ deemed to be the

Page 2 of 4

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59 policyholder, covering independent contractor newspaper or
60 publication delivery persons.

61 ~~(7) Under a policy or contract issued~~ In the name of a
62 health care provider or coordinator of health services, which is
63 ~~shall be~~ deemed to be the policyholder, covering patients,
64 donors, or surrogates. This coverage may be offered to patients,
65 donors, or surrogates of the policyholder, ~~a health care~~
66 ~~provider~~ but may not be required as ~~made~~ a condition of
67 receiving care. The benefits provided under the such policy or
68 contract are ~~shall not be~~ assignable to any health care
69 provider.

70 ~~(8) Under a policy or contract issued~~ To a any health
71 maintenance organization licensed pursuant to the provisions of
72 part I of chapter 641, which is ~~shall be~~ deemed to be the
73 policyholder, covering the subscribers of the health maintenance
74 organization. Payment may be made directly to the health
75 maintenance organization by the blanket health insurer for
76 health care services rendered by providers pursuant to the
77 health care delivery plan.

78 (9) To a sports team or camp, or a sponsor thereof, which
79 is deemed to be the policyholder, covering all or any grouping
80 of members, campers, participants, employees, officials, or
81 supervisors.

82 (10) To a travel agency or other organization that provides
83 travel-related services, which is deemed to be the policyholder,
84 covering all or any grouping of persons to whom the policyholder
85 provides travel or travel-related services.

86 (11) To an association having a constitution and bylaws,
87 having at least 25 individual members, and having been organized

597-02401-15 20151134c1

88 and maintained in good faith for a period of 1 year for purposes
89 other than that of obtaining insurance, which association is
90 deemed to be the policyholder, covering all or any grouping of
91 the members of the association.

92 (12) To a bank or other financial institution, a vendor of
93 the institution, or a parent holding company of the institution,
94 or to a trustee or agent of such institution, vendor, or
95 company, which is deemed to be the policyholder, covering
96 accountholders, cardholders, debtors, guarantors, or purchasers.

97 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 16 / 2015

Meeting Date

Topic _____

Bill Number 1139

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

To: Senator Anitere Flores, Chair
Fiscal Policy Committee
CC: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 1134 – Blanket Health Insurance

Date: April 2, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



442200

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 430 - 440
and insert:

Section 9. Subsection (3) of section 626.7354, Florida Statutes, is amended to read:

626.7354 Customer representative's powers; agent's or agency's responsibility.—

(3) A customer representative shall be a salaried employee of the agent or agency. His or her compensation ~~shall not include commissions and~~ shall not be primarily based on



442200

12 commissions or the production of applications, insurance, or
13 premiums.

14 Section 10. Section 626.748, Florida Statutes, is amended
15 to read:

16 626.748 Agent's records.—Every agent transacting any
17 insurance policy must maintain in his or her office, or have
18 readily accessible by electronic or photographic means, for a
19 period of at last 5 years after policy expiration, such records
20 of policies transacted by him or her as to enable the
21 policyholders and department to obtain all necessary
22 information, including daily reports, applications, change
23 endorsements, or documents signed or initialed by the insured
24 concerning such policies.

25 Section 11. Subsection (1) of section 626.753, Florida
26 Statutes, is amended to read:

27 626.753 Sharing commissions; penalty.—

28 (1) (a) An agent may divide or share in commissions only
29 with other agents appointed and licensed to write the same kind
30 or kinds of insurance or may divide commissions with a customer
31 representative.

32 (b) This section shall not be construed to prevent the
33 payment or receipt of renewal commissions or other deferred
34 commissions or pensions to or by any person solely because such
35 person has ceased to hold a license to act as an insurance agent
36 or customer representative, and shall not prevent the payment of
37 renewal commissions or other deferred commissions to any
38 incorporated insurance agency solely because any of its
39 stockholders has ceased to hold a license to act as an insurance
40 agent or customer representative.



442200

41 (c) A customer representative may share in commissions with
42 an agent.

43
44 ===== T I T L E A M E N D M E N T =====

45 And the title is amended as follows:

46 Delete line 23

47 and insert:

48 representative's license; amending s. 626.7354, F.S;
49 revising provisions relating to customer
50 representative compensation to allow the receipt of
51 commissions by such representatives if the commissions
52 do not constitute the primary source of compensation;
53 amending s. 626.748, F.S.; requiring agents to
54 maintain certain records for a specified period of
55 time; amending s. 626.753, F.S.; conforming provisions
56 to changes made by act;

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 Fiscal Policy

BILL: PCS/CS/SB 1222 (57094)

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

SUBJECT: Division of Insurance Agent and Agency Services

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1222 revises certain insurance agent licensing requirements. Specifically, the bill:

- Repeals the limitation on general lines agents to sell health insurance only for companies which also sell property, casualty, or surety insurance;
- Provides that the agent-in-charge of an insurance agency must be licensed to transact at least two of the lines of insurance being handled at an agency location instead of being licensed to handle all lines of insurance;
- Exempts applicants for licensure as general lines agents or all-lines adjusters from certain examination requirements if they have a degree in insurance or designations from various insurance industry organizations;
- Revises the requirements for prelicensure education courses;
- Modifies the licensure requirements for customer representative and repeals the written examination requirement;
- Requires agents to maintain certain policy records for 5 years after policy expiration;
- Clarifies that licensed agents can charge and collect the “exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card” in addition to the premium charged by insurers;
- Revises the notice requirements for recommending the surrender of an annuity contract or life insurance policy; and

- Permits agents to deliver notices of insolvency by electronic mail with delivery receipt required.
- Repeals a requirement that a surplus lines agent submit a quarterly affidavit with the Florida Surplus Lines Office.

There is no fiscal impact to state funds.

II. Present Situation:

In general, insurance agents transact insurance on behalf of an insurer or insurers. Insurance agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.

Agents in Charge of an Insurance Agency

Section 626.0428(4)(a), F.S., requires each place of business established by an agent or agency, firm, corporation, or association must be in the active full-time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location. The DFS suggests that it is not necessary for the agent-in-charge to be licensed to sell all types of insurance that might be transacted at a particular agency.¹

License Types

General Lines Agent

A general lines agent is authorized to transact, for commercial or noncommercial purposes, one or more of the following kinds of insurance: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.² A general lines agent can only transact health insurance for an insurer if the agent also represents that insurer for property, casualty, or surety insurance.³

In order to be licensed as a general lines agent an applicant must hold a Chartered Property and Casualty Underwriters designation from the American Institute for Property and Liability Underwriters or complete the required prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. The prerequisites include:

- Taught or successfully completed 200 hours of classroom courses on insurance, 3 hours of which must be on the subject matter of ethics;⁴ or

¹ See Department of Financial Services, SB 1222 Bill Analysis (March 25, 2015)(on file with the Senate Committee on Banking and Insurance).

² See s. 626.015(5), F.S.

³ See s. 626.015(5)(d), F.S.

⁴ All classroom courses must be approved by the DFS and must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of health insurance by employers to their employees.

- Completed a correspondence course in insurance, 3 hours of which must be on the subject matter of ethics, and at least 6 months of responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance; or
- Completed at least 1 year in responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance; or
- Completed at least 1 year of responsible insurance duties as a licensed and appointed customer representative or limited customer representative in commercial or personal lines of property and casualty insurance and 40 hours of classroom courses approved by the covering the areas of property, casualty, surety, health, and marine insurance; or
- Completed at least 1 year of responsible insurance duties as a licensed and appointed service representative in commercial or personal lines of property and casualty insurance and 80 hours of classroom courses covering the areas of property, casualty, surety, health, and marine insurance.⁵

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.⁶ In order to be licensed as a personal lines agent an applicant must hold a Chartered Property and Casualty Underwriters designation from the American Institute for Property and Liability Underwriters or complete the required prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. The prerequisites include:

- Taught or successfully completed 52 hours of classroom courses in insurance, 3 hours of which must be on the subject matter of ethics, at a school, college, or extension division thereof; or
- Completed a correspondence course in insurance, 3 hours of which must be on the subject matter of ethics, and completed at least 3 months of responsible insurance duties as a substantially full-time employee in the area of property and casualty insurance sold to individuals and families for noncommercial purposes; or
- Completed at least 6 months of responsible insurance duties as a substantially full-time employee in the area of property and casualty insurance; or
- Completed at least 6 months of responsible duties as a licensed and appointed customer representative or limited customer representative in property and casualty insurance sold to individuals and families for noncommercial purposes and 20 hours of classroom courses related to property and casualty insurance sold to individuals and families for noncommercial purposes; or
- Completed at least 6 months of responsible insurance duties as a licensed and appointed service representative in property and casualty insurance sold to individuals and families for noncommercial purposes and 40 hours of classroom courses related to property and casualty insurance sold to individuals and families for noncommercial purposes; or
- Completed at least 3 years of responsible duties as a licensed and appointed customer representative.⁷

⁵ See s. 626.732(1), F.S. See generally s. 626.171, F.S.

⁶ See s. 626.015(15), F.S.

⁷ See s. 626.732(2), F.S. See also Office of Insurance Regulation, *Resident Personal Lines License*, available at <http://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/20-44.htm#.VSvgJE0cS70> (last visited April 13, 2015).

Health Agent

A health agent is authorized to transact health insurance.⁸ In order to be licensed an applicant must hold a Chartered Life Underwriters designation from the American College of Life Underwriters or complete the required prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. The prerequisites include:

- Successfully completed 40 hours of classroom courses in insurance, 3 hours of which must be on the subject matter of ethics; or
- Successful completion of a correspondence course in insurance, 3 hours of which shall be on the subject matter of ethics; or
- Employment by the DFS or the Office of Insurance Regulation (OIR) in health regulatory matters for at least 1 year may count as required experience if the application for the examination is made within 90 days after leaving employment and if the employee was not terminated for cause; or
- Hold a valid license in another state.⁹

According to the DFS, persons preparing to take the examination for licensure as a general lines agent or as a health agent study health insurance as part of their required training and the same examination questions on health insurance are used in each examination.¹⁰

Life Agent

A life agent is an individual representing an insurer as to life insurance and annuity contracts.¹¹ In order to be licensed an applicant must hold a Chartered Life Underwriters designation from the American College of Life Underwriters or complete the required prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. The prerequisites include:

- Successfully completed 40 hours of classroom courses in insurance, 3 hours of which shall be on the subject matter of ethics or other authorized course of study; or
- Successfully completed of a correspondence course in insurance, 3 hours of which shall be on the subject matter of ethics; or
- Employment by the DFS or the OIR in life and health regulatory matters for at least 1 year can count as required experience if the application for the examination is made within 90 days after leaving employment and if the employee was not terminated for cause; or
- Holds a valid license in another state.¹²

⁸ See s. 626.015(6), F.S.

⁹ See s. 626.8311, F.S. See also Office of Insurance Regulation, *Resident Health License*, available at <http://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/2-40.htm#.VSvgkE0cS70> (last visited April 13, 2015).

¹⁰ Supra note 1.

¹¹ See s. 626.015(10), F.S.

¹² See s. 626.7851, F.S. See also Office of Insurance Regulation, *Resident Life Agent License*, available at <http://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/2-14.htm#.VSvgzk0cS70> (last visited April 13, 2015).

Customer Representatives

A customer representative is an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.¹³ For example, a customer representative may transact automobile, water craft, home, motorcycle, and pet insurance under the supervision of a licensed and appointed general lines agent. A customer representative is a salaried employee of an agent or agency and cannot earn commissions. The customer representative license does not cover life insurance.¹⁴

To obtain a customer representative license, an applicant must, within the 2 years before the date the application for license was filed, complete a prerequisite course in insurance,¹⁵ 3 hours of which shall be on the subject matter of ethics, or has had at least 6 months' experience in responsible insurance duties as a substantially full-time employee.¹⁶ An applicant must also pass a licensure examination.¹⁷

Licensure Examination Exemptions

Section 626.221(2), F.S., provides exemptions from licensure examination requirements for some applicants for various insurance licenses. Section 626.221(2)(g), F.S., exempts an applicant from the examination requirement for a life or health agent if the applicant has received the designation Chartered Life Underwriter from the American College of Life Underwriters and has been engaged in the insurance business within the past 4 years, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code.

Applicants for general lines agent licenses, all-lines adjuster licenses, and personal lines agent licenses must pass a state examination even if they have a college degree in insurance.¹⁸ The DFS reports that, unlike Florida, other states grant licenses to applicants with college degrees in insurance or significant college coursework in insurance.¹⁹

Record Retention

Section 626.748, F.S., requires an agent to maintain records of policies transacted by him or her so that the policyholders or the DFS can obtain all necessary information. The current law does not provide a length of time to maintain the records.

Surplus Lines Agent Affidavit

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to

¹³ See s. 626.015(4), F.S.

¹⁴ See s. 626.7354(1), F.S. See also Office of Insurance Regulation, *Resident Customer Representative License*, available at <http://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/4-40.htm#.VSvhOUOcS70> (last visited April 13, 2015).

¹⁵ The insurance course must include instruction on the subject of unauthorized entities engaging in the business of insurance. See s. 626.7351(3)

¹⁶ See s. 626.7351(3), F.S.

¹⁷ See s. 626.7351(7), F.S. However, the DFS reports that very few applicants obtain a license via examination, *supra* note 1.

¹⁸ *Supra* note 1.

¹⁹ *Id.*

transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents.²⁰ Section 626.916, F.S., requires the insurance agent to make a diligent effort²¹ to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market. Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or office) within 30 days after the effective date of the transaction.²² They must also transmit service fees to the office each month and must transmit assessment and tax payments to the office quarterly.²³ Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FSLSO.²⁴ The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.²⁵ The FSLSO audits agents on a tri-annual basis to verify accuracy of submitted data with original source documents.²⁶

Credit Card Transactions

Section 501.0117(1), F.S., prohibits a seller from imposing a surcharge on the buyer for electing to use a credit card in lieu of payment by cash or check. Violation of s. 501.0117(1), F.S., is a second degree misdemeanor.²⁷

Section 626.9541(1)(o)2., F.S., provides, in part:

This provision shall not be deemed to prohibit the charging and collection, by licensed agents... of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer.

According to the DFS, there is a conflict between the two statutes. Section 626.9541(1)(o)2., F.S., allows an insurer that accepts payment by credit card to charge customers the exact amount of a fee charged by a credit card facility in connection with the use of the card while s. 501.0117, F.S., prohibits such charges.²⁸

²⁰ See s. 626.915(3), F.S.

²¹ Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market, unless the cost to replace the property insured is \$1 million or more, in which case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

²² See s. 626.921, F.S. (requiring reports of transactions as required by the FSLSO Plan of Operation); Florida Surplus Lines Office, *Agent's Procedures Manual*, (Jan. 2015) available at <http://www.fslso.com/publications/manuals/Agents.Procedures.Manual.pdf> (requiring reports within 30 days) (last visited April 13, 2015).

²³ See ss. 626.932 and 626.9325, F.S.

²⁴ See s. 626.931(1), F.S.

²⁵ See s. 626.932(2), F.S.

²⁶ E-mail from the FSLSO (on file with the Committee on Banking and Insurance).

²⁷ See s. 501.0117(2), F.S.

²⁸ Supra note 1.

Surrender of an Annuity or Life Insurance Policy

Section 627.4553, F.S., requires an insurance agent, insurer, or person performing insurance agent activities under an exemption from licensure who recommends that a consumer surrender an annuity or life insurance policy having a cash value to provide a consumer with information relating to the product being surrendered (before execution of the surrender) if no recommendation to purchase another such policy with the proceeds is made. The information must include the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction.

III. Effect of Proposed Changes:

General Lines Agents and Personal Lines Agents – ss. 626.015, 626.311, 626.732, F.S.

Sections 1 and 6 allow a general lines agent to transact health insurance. The bill repeals the restriction that limits a general lines agent to selling health insurance only for companies which also sell property, casualty, or surety insurance. According to the DFS, this change will reduce redundant training because general lines agents and health agents receive the same training and testing on health insurance.²⁹

Section 7 modifies applicant qualifications for licensure of a general lines agent and a personal lines agent. The bill increases the amount and type of coursework and modifies the types of responsible insurance duties required for licensure of both general line and personal line applicants. The bill repeals obsolete references to correspondence courses. The bill makes technical changes to clarify the method that customer representatives, services representatives, and personal lines agents may upgrade their licenses to a general lines agent license.

The prerequisites for general lines and personal lines agents under the bill include:

- Taught or successfully completed 200 hours of coursework in property, casualty, surety, health, and marine insurance (or 60 hours of coursework, for personal lines agents, in property, casualty, and inland marine insurance), 3 hours of which must be on the subject matter of ethics;
- Completed at least 1 year in responsible insurance duties as a substantially full-time bona fide employee in property and casualty insurance (or 6 months for personal lines agents, selling to individuals and families for noncommercial purposes); or
- Completed at least 1 year responsible insurance duties as a licensed and appointed customer representative, service representative, or personal lines agent and 40 hours of coursework (or 6 months for personal lines agents, in property and casualty insurance without any additional required coursework).

Agents in Charge of an Insurance Agency – s. 626.0428, F.S.

Section 2 provides that the agent-in-charge of an insurance agency must be licensed to transact at least two of the lines of insurance being handled at an agency location instead of being

²⁹ *Id.*

licensed to handle all lines of insurance. If only one line of insurance is sold at an agency, the agent-in-charge must be licensed for that line of insurance.

Customer Representatives – s. 626.221, F.S., and s. 626.7351, F.S.

Sections 3 and 8 repeal the examination requirement for persons seeking licensure as a customer representative. According to the DFS, customer representatives are unique to Florida and most applicants for the license obtain it by completing education requirements and exempting from the examination.³⁰

Section 8 changes the education requirements for the customer representative's license. Instead of completing courses approved by the DFS, the applicant can obtain the license by earning a specific designation or completing college coursework. The bill modifies the time frame within which the applicant must achieve the designation or complete college coursework from 2 years to 4 years before the application for licensure is submitted to the DFS. The required designations or coursework include:

- Accredited Advisor in Insurance, Associate in General Insurance, or Accredited Customer Service Representative from the Insurance Institute of America;
- Certified Insurance Counselor from the Society of Certified Insurance Service Counselors;
- Certified Professional Service Representative from the National Foundation for CPSRs;
- Certified Insurance Service Representative from the Society of Certified Insurance Service Representatives;
- Certified Insurance Representative from All-Lines Training;
- Professional Customer Service Representative from the Professional Career Institute;
- Registered Customer Service Representative from a regionally accredited postsecondary institution in the state whose curriculum is approved by the DFS and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or
- A degree from an accredited institution of higher learning approved by the DFS when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

The bill requires the DFS to adopt rules establishing standards for the approval of curriculum.

Licensure Examinations – s. 626.221, F.S., and s. 626.241, F.S.

Section 3 revises certain exemptions from the licensure examination. The bill:

- Revises the existing exemption from examination for a life or health agent. The bill repeals the requirement that an applicant have been engaged in the insurance business within the past 4 years. Current law is clarified by specifying that the exemption is available if the applicant has received the designation “chartered life underwriter” from the American College of Financial Services.
- Exempts an applicant from the examination requirement for a personal lines agent license or all-lines agent license. The existing exemption applies to an applicant for a general lines agent who has received the designation “chartered property and casualty underwriter” from

³⁰ *Id.*

the American Institute Property Underwriters. The bill repeals the requirement that an applicant have been engaged in the insurance business within the past 4 years. Current law is clarified by specifying that the exemption is available if the applicant has received the designation “chartered property and casualty underwriter” from the American Institute for Chartered Property Casualty Underwriters.

- Exempts an applicant from the examination requirement as general lines agent or an all-lines adjuster if the applicant has received a degree in insurance³¹ from an accredited institution of higher learning approved by the DFS, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement as personal lines agent if the applicant has received a degree³² from an accredited institution of higher learning approved by the DFS, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement as all-lines adjuster if the applicant has a designation of Associate in Claims from the Insurance Institute of America or a Certified Claims Adjuster from AE21 Incorporated;
- Exempts an applicant from the examination requirement as a life agent or as a health agent if the applicant has received a degree from an accredited institution³³ of higher learning approved by the DFS, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement if the applicant qualifies for a license transfer from another state. The bill repeals the requirement that an applicant have been engaged in the insurance business within the past 4 years, completed prelicensing exam requirements, and maintain certain designations; and
- Exempts an applicant from the examination requirement for a license as a nonresident agent if the applicant holds a comparable license in another state with similar examination requirements. The bill repeals the requirement that an applicant have been engaged in the insurance business within the past 4 years, completed prelicensing exam requirements, and maintain certain designations.

The section also makes conforming changes to reflect that applicants for licensure as a customer representative will no longer be required to take a licensure examination.

Section 4 provides that the life insurance examination covers annuities and variable contracts. Currently, the examination covers the subject but the statute does not reflect current practice.³⁴ The bill also repeals the requirement that the personal lines insurance examination consist of 100 questions.

³¹ The bill requires that the degree indicate a minimum of 18 credit hours of instruction in insurance, including specific instruction in property, casualty, health, and commercial insurance.

³² The bill requires that the degree indicate a minimum of 9 credit hours of instruction in insurance, including specific instruction in property, casualty, and inland marine insurance.

³³ The bill requires that the degree indicate a minimum of 9 credit hours of instruction in life or health insurance products.

³⁴ Supra note 1.

Life and Health Insurance Agents – ss. 626.7851, and 626.8311, F.S.

Sections 10 and 11 revise the qualifications for licensure of life and health agents. Specifically the bill modifies the course work requirements, requires specific designations, and repeals obsolete references to correspondence courses.

The bill modifies general coursework requirements to include 40 hours of department-approved coursework:

- For life agent applicants, the bill requires course work in life insurance, annuities, and variable contracts;
- For health agent applicants, the bill requires course work in health insurance. Additionally, the applicants are the only applicant still required to have course work that includes instruction on unauthorized entities engaging in the business of insurance.

The bill also requires applicants to complete 60 hours of coursework approved by the department in multiple areas of insurance including:

- For life agent applicants, life insurance, annuities, and variable contracts;
- For health agent applicants, health insurance.

The bill requires that applicants for licensure maintain the following active designations:

- Life agent applicants must earn or maintain a Chartered Financial Consultant designation from the American College of Financial Services or a Fellow, Life Management Institute designation.
- Health agent applicants must earn or maintain a Registered Health Underwriter, Chartered Healthcare Consultant, or Registered Employee Benefits Consultant designation from the American College of Financial Services, a Certified Employee Benefit Specialist designation from the Wharton School of the University of Pennsylvania, or a Health Insurance Associate designation from America's Health Insurance Plans.

In addition, an applicant for a life or health agent license that held an active insurance license in another state can qualify for licensure if:

- The life agent applicant held an active license in life insurance in another state; or
- The health agent applicant held an active license in health insurance in another state.

However, the bill repeals the option for these applicants to qualify for licensure in Florida if they held a license in life *and* health insurance from another state.

The bill also allows former employees of the DFS or the OIR who apply for the examination within 4 years, instead of 90 days, to qualify to take the examination if:

- For a life agent applicant, he or she was employed full time in life insurance regulatory matters and was not terminated for cause; or
- For a health agent applicant, he or she was employed full time in health insurance regulatory matters and was not terminated for cause.

Surplus Lines – 626.931, F.S.

Section 12 repeals s. 626.931(1) and (2), F.S., which require a surplus lines agent to file quarterly reports stating that all surplus lines transactions have been submitted to the FLSO and requiring that such reports include an affidavit of diligent effort. The FLSO reports that the provisions are no longer necessary. The FLSO receives the information relating to the surplus lines transactions from the agents and the insurers and has implemented audit procedures to verify the information.³⁵

Conforming changes are made to in **Section 13** to s. 626.932, F.S., **Section 14** to s. 626.935, F.S., and **Section 15** to s. 626.936, F.S.

Credit Card Transactions – s. 626.9541(1)(o)2., F.S.

Section 16 clarifies that notwithstanding any other provision of law, licensed surplus lines agents can charge and collect the “exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card” in addition to the premium charged by insurers.

Surrender of an Annuity or Life Insurance Policy – s. 627.4553, F.S.

Section 17 amends s. 627.4553, F.S., relating to the recommendation by an agent to surrender an annuity or life insurance policy containing a cash value. Specifically, the bill repeals the requirement that the notice be on a form prescribed by the department. The notice must contain the amount of estimated surrender charge, information relating to the possibility of tax consequences, and the estimated amount of any forfeited death benefit. Currently, the notice is required to contain more specific information related to the surrender such as, the amount of the surrender charge, the amount of tax consequences resulting from the transaction, and the amount of forfeited death benefit. The bill also requires the agent to maintain a copy of the written information provided and the date the information was provided to the owner.

The bill defines “surrender” as the voluntary surrender, at the request of the owner of the annuity contract or life insurance policy, before its maturity date in exchange for the cash surrender value which results in the surrender or termination of the contract or policy. A surrender excludes involuntary termination required by contract or policy terms or any transactions other than a surrender.

Other Provisions of the Bill

Section 5 amends s. 626.2817, F.S., to provide that prelicensure course providers may not grant credit to students unless the student attends at least 75 percent of the required course hours. Currently, there is no standard in law for course attendance.

³⁵ Supra note 26.

The bill also repeals references to “monitor groups” because they have not been in existence for some time. The groups acted as monitors when the licensure examinations were on paper but no longer exist now that the DFS administers examinations by computer.³⁶

Section 9 amends s. 626.748, F.S., to require an agent to maintain records of insurance transactions for at least 5 years after the policy expires. Such records include daily reports, applications, change endorsements, and documents signed or initialed by the insured.

Section 18 amends s. 631.341, F.S., to provide that agents may give notices of insolvency to insureds by electronic mail with delivery receipt required. Current law allows notice by registered or certified mail.

Section 19 of this bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

³⁶ Supra note 1.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.015, 626.0428, 626.221, 626.241, 626.2817, 626.311, 626.732, 626.7351, 626.748, 626.7851, 626.8311, 626.931, 626.932, 626.935, 626.936, 626.9541, 627.4553, and 631.341.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:

The committee substitute:

- Revises the notice requirements an agent must provide when recommending the surrender of an annuity contract or life insurance policy.
- Eliminates the requirement that a surplus lines agent quarterly submit an affidavit attesting that the agent has submitted all surplus lines insurance transactions to the Florida Surplus Lines Service Office and that the required diligent effort was made to place such coverages with admitted insurers.

CS by Banking and Insurance on March 17, 2015:

- Removes provisions from the bill relating to regulation of instruction schools for bail bond agents.
- Removes provisions from the bill relating to prelicensure requirements for all-lines adjusters.
- Exempts an applicant from the examination requirement as a life agent or as a health agent if the applicant has received a degree of higher learning approved by the DFS and has a minimum of nine credit hours of instruction in life or health insurance products.
- Adds experience requirements to allow applicants to qualify to take the examination as a life and health agent.

- B. **Amendments:**

None.



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Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the Division of Insurance Agent and Agency Services; amending s. 626.015, F.S.; revising the definition of "general lines agent," to remove a restriction with respect to agents transacting health insurance; limiting the types of health insurance agents; amending s. 626.0428, F.S.; revising licensure requirements of certain agents in charge of an agency's place of business; amending s. 626.221, F.S.; revising examination requirements and exemptions for applicants for certain agent and adjuster licenses; amending s. 626.241, F.S.; revising the scope of license examinations for agents and adjusters; amending s. 626.2817, F.S.; revising requirements of certain prelicensure education courses for insurance agents and other licensees; amending s. 626.311, F.S.; conforming provisions to changes made by the act; amending s. 626.732, F.S.; revising requirements relating to knowledge, experience, and instruction for applicants for a license as a general lines or personal lines agent; amending s. 626.7351, F.S.; revising qualifications for a customer representative's license; amending s. 626.748, F.S.; requiring agents to maintain certain records for a specified time period after policy expiration; amending ss. 626.7851 and 626.8311, F.S.; revising requirements relating to the knowledge, experience, or



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instruction for life agents and health agents, respectively; amending s. 626.931, F.S.; deleting provisions that require surplus lines agents to file a quarterly affidavit with the Florida Surplus Lines Office; amending ss. 626.932, 626.935, and 626.936, F.S.; conforming provisions to changes made by act; amending s. 626.9541, F.S.; providing that certain provisions relating to illegal dealings in premiums are applicable notwithstanding any other provision of law; amending s. 627.4553, F.S.; requiring an insurance agent to provide and retain certain information upon surrender of an annuity contract or life insurance policy under certain circumstances; defining the term "surrender"; amending s. 631.341, F.S.; authorizing certain notices of insolvency to be delivered to policyholders by certain methods; providing an effective date.

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

Section 1. Paragraph (d) of subsection (5) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(5) "General lines agent" means an agent transacting any one or more of the following kinds of insurance:

(d) Health insurance, ~~when transacted by an insurer also represented by the same agent as to property or casualty or surety insurance.~~

Section 2. Paragraph (a) of subsection (4) of section



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57 626.0428, Florida Statutes, is amended to read:

58 626.0428 Agency personnel powers, duties, and limitations.-

59 (4) (a) Each place of business established by an agent or
60 agency, firm, corporation, or association must be in the active
61 full-time charge of a licensed and appointed agent holding the
62 required agent licenses to transact at least two of the lines of
63 insurance being handled at the location. If only one line of
64 insurance is handled at the location, the agent in charge must
65 hold the required agent license to transact that line of
66 insurance.

67 Section 3. Subsection (1) and paragraphs (g) through (l) of
68 subsection (2) of section 626.221, Florida Statutes, are amended
69 to read:

70 626.221 Examination requirement; exemptions.-

71 (1) The department shall not issue any license as agent,
72 ~~customer representative~~, or adjuster to any individual who has
73 not qualified for, taken, and passed to the satisfaction of the
74 department a written examination of the scope prescribed in s.
75 626.241.

76 (2) However, an examination is not necessary for any of the
77 following:

78 (g) An applicant for a license as a life or health agent
79 who has received the designation of chartered life underwriter
80 (CLU) from the American College of Financial Services Life
81 Underwriters and has been engaged in the insurance business
82 within the past 4 years, except that the applicant may be
83 examined on pertinent provisions of this code.

84 (h) An applicant for license as a general lines agent,
85 personal lines agent, or all-lines customer representative, or



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86 adjuster who has received the designation of chartered property
87 and casualty underwriter (CPCU) from the American Institute for
88 Chartered Property Casualty and Liability Underwriters and has
89 been engaged in the insurance business within the past 4 years,
90 except that the applicant may be examined on pertinent
91 provisions of this code.

92 (i) An applicant for license as a general lines agent or an
93 all-lines adjuster who has received a degree in insurance from
94 an accredited institution of higher learning approved by the
95 department, except that the applicant may be examined on
96 pertinent provisions of this code. Qualifying degrees must
97 indicate a minimum of 18 credit hours of insurance instruction,
98 including specific instruction in the areas of property,
99 casualty, health, and commercial insurance customer
100 representative who has earned the designation of Accredited
101 Advisor in Insurance (AAI) from the Insurance Institute of
102 America, the designation of Certified Insurance Counselor (CIC)
103 from the Society of Certified Insurance Service Counselors, the
104 designation of Accredited Customer Service Representative (ACSR)
105 from the Independent Insurance Agents of America, the
106 designation of Certified Professional Service Representative
107 (CPSR) from the National Foundation for Certified Professional
108 Service Representatives, the designation of Certified Insurance
109 Service Representative (CISR) from the Society of Certified
110 Insurance Service Representatives, or the designation of
111 Certified Insurance Representative (CIR) from the National
112 Association of Christian Catastrophe Insurance Adjusters. Also,
113 an applicant for license as a customer representative who has
114 earned an associate degree or bachelor's degree from an



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115 ~~accredited college or university and has completed at least 9~~
116 ~~academic hours of property and casualty insurance curriculum, or~~
117 ~~the equivalent, or has earned the designation of Certified~~
118 ~~Customer Service Representative (CCSR) from the Florida~~
119 ~~Association of Insurance Agents, or the designation of~~
120 ~~Registered Customer Service Representative (RCSR) from a~~
121 ~~regionally accredited postsecondary institution in this state,~~
122 ~~or the designation of Professional Customer Service~~
123 ~~Representative (PCSR) from the Professional Career Institute,~~
124 ~~whose curriculum has been approved by the department and which~~
125 ~~includes comprehensive analysis of basic property and casualty~~
126 ~~lines of insurance and testing at least equal to that of~~
127 ~~standard department testing for the customer representative~~
128 ~~license. The department shall adopt rules establishing standards~~
129 ~~for the approval of curriculum.~~

130 (j) An applicant for license as a personal lines agent who has
131 received a degree from an accredited institution of higher
132 learning approved by the department, except that the applicant
133 may be examined on pertinent provisions of this code. Qualifying
134 degrees must indicate a minimum of 9 credit hours of insurance
135 instruction, including specific instruction in the areas of
136 property, casualty, and inland marine insurance. resident or

137 (k) An applicant for license as an ~~nonresident~~ all-lines
138 adjuster who has the designation of Accredited Claims Adjuster
139 (ACA) from a regionally accredited postsecondary institution in
140 this state, Associate in Claims (AIC) from the Insurance
141 Institute of America, Professional Claims Adjuster (PCA) from
142 the Professional Career Institute, Professional Property
143 Insurance Adjuster (PPIA) from the HurriClaim Training Academy,



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144 Certified Adjuster (CA) from ALL LINES Training, or Certified
145 Claims Adjuster (CCA) from ~~AE21 Incorporated the Association of~~
146 ~~Property and Casualty Claims Professionals~~ whose curriculum has
147 been approved by the department and which includes comprehensive
148 analysis of basic property and casualty lines of insurance and
149 testing at least equal to that of standard department testing
150 for the all-lines adjuster license. The department shall adopt
151 rules establishing standards for the approval of curriculum.

152 (l) An applicant for license as a life agent who has
153 received a degree from an accredited institution of higher
154 learning approved by the department, except that the applicant
155 may be examined on pertinent provisions of this code. Qualifying
156 degrees must indicate a minimum of 9 credit hours of insurance
157 instruction, including specific instruction in the areas of life
158 insurance, annuities, and variable insurance products.

159 (m) An applicant for license as a health agent who has
160 received a degree from an accredited institution of higher
161 learning approved by the department, except that the applicant
162 may be examined on pertinent provisions of this code. Qualifying
163 degrees must indicate a minimum of 9 credit hours of insurance
164 instruction, including specific instruction in the area of
165 health insurance products.

166 (n) ~~(k)~~ An applicant qualifying for a license transfer under
167 s. 626.292 if the applicant:

168 1. Has successfully completed the prelicensing examination
169 requirements in the applicant's previous home state which are
170 substantially equivalent to the examination requirements in this
171 state, as determined by the department;

172 2. Has received the designation of chartered property and



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173 ~~casualty underwriter (CPCU) from the American Institute for~~
174 ~~Property and Liability Underwriters and been engaged in the~~
175 ~~insurance business within the past 4 years if applying to~~
176 ~~transfer a general lines agent license; or~~

177 ~~3. Has received the designation of chartered life~~
178 ~~underwriter (CLU) from the American College of Life Underwriters~~
179 ~~and been engaged in the insurance business within the past 4~~
180 ~~years if applying to transfer a life or health agent license.~~

181 ~~(o)(1) An applicant for a license as a nonresident agent if~~
182 ~~the applicant holds a comparable license in another state with~~
183 ~~similar examination requirements as this state;~~

184 ~~1. Has successfully completed prelicensing examination~~
185 ~~requirements in the applicant's home state which are~~
186 ~~substantially equivalent to the examination requirements in this~~
187 ~~state, as determined by the department, as a requirement for~~
188 ~~obtaining a resident license in his or her home state;~~

189 ~~2. Held a general lines agent license, life agent license,~~
190 ~~or health agent license before a written examination was~~
191 ~~required;~~

192 ~~3. Has received the designation of chartered property and~~
193 ~~casualty underwriter (CPCU) from the American Institute for~~
194 ~~Property and Liability Underwriters and has been engaged in the~~
195 ~~insurance business within the past 4 years, if an applicant for~~
196 ~~a nonresident license as a general lines agent; or~~

197 ~~4. Has received the designation of chartered life~~
198 ~~underwriter (CLU) from the American College of Life Underwriters~~
199 ~~and been in the insurance business within the past 4 years, if~~
200 ~~an applicant for a nonresident license as a life agent or health~~
201 ~~agent.~~



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202 Section 4. Subsections (1), (2), (3), and (8) of section
203 626.241, Florida Statutes, are amended to read:

204 626.241 Scope of examination.—

205 (1) Each examination for a license as an agent, ~~customer~~
206 ~~representative~~, or adjuster shall be of such scope as is deemed
207 by the department to be reasonably necessary to test the
208 applicant's ability and competence and knowledge of the kinds of
209 insurance and transactions to be handled under the license
210 applied for, of the duties and responsibilities of such a
211 licensee, and of the pertinent provisions of the laws of this
212 state.

213 (2) Examinations given applicants for license as a general
214 lines agent ~~or customer representative~~ shall cover all property,
215 casualty, and surety insurances, except as provided in
216 subsection (5) relative to limited licenses.

217 (3) Examinations given applicants for a life agent's
218 license shall cover life insurance, annuities, and variable
219 contracts annuities.

220 (8) An examination for licensure as a personal lines agent
221 ~~shall consist of 100 questions and~~ shall be limited in scope to
222 the kinds of business transacted under such license.

223 Section 5. Section 626.2817, Florida Statutes, is amended
224 to read:

225 626.2817 Regulation of course providers, instructors, and
226 ~~school officials, and monitor groups~~ involved in prelicensure
227 education for insurance agents and other licensees.—

228 (1) Any course provider, instructor, or school official, ~~or~~
229 ~~monitor group~~ must be approved by and registered with the
230 department before offering prelicensure education courses for



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231 insurance agents and other licensees.

232 (2) The department shall adopt rules establishing standards
233 for the approval, registration, discipline, or removal from
234 registration of course providers, instructors, and school
235 officials, ~~and monitor groups~~. The standards must be designed to
236 ensure that such persons have the knowledge, competence, and
237 integrity to fulfill the educational objectives of the
238 prelicensure requirements of this chapter and chapter 648 and to
239 assure that insurance agents and licensees are competent to
240 engage in the activities authorized under the license.

241 (3) A course provider shall not grant completion credit to
242 any student who has not completed at least 75 percent of the
243 required course hours of a department approved prelicensure
244 course.

245 (4) The department shall adopt rules to establish a process
246 for determining compliance with the prelicensure requirements of
247 this chapter and chapter 648. The department shall adopt rules
248 prescribing the forms necessary to administer the prelicensure
249 requirements.

250 Section 6. Subsection (1) of section 626.311, Florida
251 Statutes, is amended to read:

252 626.311 Scope of license.—

253 (1) Except as to personal lines agents and limited
254 licenses, a general lines agent or customer representative shall
255 qualify for all property, marine, casualty, and surety lines
256 except bail bonds which require a separate license under chapter
257 648. The license of a general lines agent ~~may also covers eever~~
258 health insurance ~~if health insurance is included in the agent's~~
259 ~~appointment by an insurer as to which the licensee is also~~



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260 ~~appointed as agent for property or casualty or surety insurance.~~

261 The license of a customer representative shall provide, in
262 substance, that it covers all of such classes of insurance that
263 his or her appointing general lines agent or agency is currently
264 so authorized to transact under the general lines agent's
265 license and appointments. No such license shall be issued
266 limited to particular classes of insurance except for bail bonds
267 which require a separate license under chapter 648 or for
268 personal lines agents. Personal lines agents are limited to
269 transacting business related to property and casualty insurance
270 sold to individuals and families for noncommercial purposes.

271 Section 7. Subsections (1) through (5) of section 626.732,
272 Florida Statutes, are amended to read:

273 626.732 Requirement as to knowledge, experience, or
274 instruction.—

275 (1) Except as provided in subsection (4), an applicant for
276 a license as a general lines agent, except for a chartered
277 property and casualty underwriter (CPCU), may not be qualified
278 or licensed unless, within the 4 years immediately preceding the
279 date the application for license is filed with the department,
280 the applicant has:

281 (a) Taught or successfully completed 200 hours of
282 coursework in property, casualty, surety, health, and marine
283 insurance approved by the department ~~classroom courses in~~
284 ~~insurance~~, 3 hours of which must be on the subject matter of
285 ethics, ~~at a school, college, or extension division thereof,~~
286 ~~approved by the department;~~

287 ~~(b) Completed a correspondence course in insurance, 3 hours~~
288 ~~of which must be on the subject matter of ethics, which is~~



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289 ~~regularly offered by accredited institutions of higher learning~~
290 ~~in this state or extensions thereof and approved by the~~
291 ~~department, and have at least 6 months of responsible insurance~~
292 ~~duties as a substantially full-time bona fide employee in all~~
293 ~~lines of property and casualty insurance set forth in the~~
294 ~~definition of general lines agent under s. 626.015;~~

295 (b)(e) Completed at least 1 year in responsible insurance
296 duties as a substantially full-time bona fide employee in all
297 lines of property and casualty insurance as set forth in the
298 definition of a general lines agent under s. 626.015, but
299 without the education requirement described in paragraph (a) ~~or~~
300 ~~paragraph (b); or~~

301 (c)(d) Completed at least 1 year of responsible insurance
302 duties as a licensed and appointed customer representative,
303 service representative, or personal lines agent or limited
304 customer representative in commercial or personal lines of
305 property and casualty insurance and 40 hours of coursework
306 classroom courses approved by the department covering the areas
307 of property, casualty, surety, health, and marine insurance, ~~or~~

308 ~~(e) Completed at least 1 year of responsible insurance~~
309 ~~duties as a licensed and appointed service representative in~~
310 ~~commercial or personal lines of property and casualty insurance~~
311 ~~and 80 hours of classroom courses approved by the department~~
312 ~~covering the areas of property, casualty, surety, health, and~~
313 ~~marine insurance.~~

314 (2) Except as provided under subsection (4), an applicant
315 for a license as a personal lines agent, except for a chartered
316 property and casualty underwriter (CPCU), may not be qualified
317 or licensed unless, within the 4 years immediately preceding the



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318 date the application for license is filed with the department,
319 the applicant has:

320 (a) Taught or successfully completed 60 hours of coursework
321 in property, casualty, and inland marine insurance approved by
322 the department classroom courses in insurance, 3 hours of which
323 must be on the subject matter of ethics, ~~at a school, college,~~
324 ~~or extension division thereof, approved by the department. To~~
325 ~~qualify for licensure, the applicant must complete a total of 52~~
326 ~~hours of classroom courses in insurance;~~

327 ~~(b) Completed a correspondence course in insurance, 3 hours~~
328 ~~of which must be on the subject matter of ethics, which is~~
329 ~~regularly offered by accredited institutions of higher learning~~
330 ~~in this state or extensions thereof and approved by the~~
331 ~~department, and completed at least 3 months of responsible~~
332 ~~insurance duties as a substantially full-time employee in the~~
333 ~~area of property and casualty insurance sold to individuals and~~
334 ~~families for noncommercial purposes;~~

335 (b)(e) Completed at least 6 months of responsible insurance
336 duties as a substantially full-time employee in the area of
337 property and casualty insurance sold to individuals and families
338 for noncommercial purposes, but without the education
339 requirement described in paragraph (a) ~~or paragraph (b); or~~

340 (c)(d) Completed at least 6 months of responsible insurance
341 duties as a licensed and appointed customer representative, ~~or~~
342 limited customer representative, or service representative in
343 property and casualty insurance sold to individuals and families
344 for noncommercial purposes and 20 hours of classroom courses
345 approved by the department which are related to property and
346 casualty insurance sold to individuals and families for



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347 ~~noncommercial purposes;~~

348 ~~(e) Completed at least 6 months of responsible insurance~~
349 ~~duties as a licensed and appointed service representative in~~
350 ~~property and casualty insurance sold to individuals and families~~
351 ~~for noncommercial purposes and 40 hours of classroom courses~~
352 ~~approved by the department related to property and casualty~~
353 ~~insurance sold to individuals and families for noncommercial~~
354 ~~purposes; or~~

355 ~~(f) Completed at least 3 years of responsible duties as a~~
356 ~~licensed and appointed customer representative in property and~~
357 ~~casualty insurance sold to individuals and families for~~
358 ~~noncommercial purposes.~~

359 (3) If an applicant's qualifications as required under
360 subsection (1) or subsection (2) are based in part upon periods
361 of employment in responsible insurance duties, the applicant
362 shall submit with the license application, ~~on a form prescribed~~
363 ~~by the department,~~ an attestation affidavit of his or her
364 ~~employment~~ employer setting forth the period of such employment,
365 ~~that the employment was substantially full-time,~~ and giving a
366 brief abstract of the nature of the duties performed ~~by the~~
367 applicant.

368 (4) An individual who was or became qualified to sit for an
369 agent's, ~~customer representative's,~~ or adjuster's examination at
370 or during the time he or she was employed by the department or
371 office and who, while so employed, was employed in responsible
372 insurance duties as a full-time bona fide employee may take an
373 examination if application for such examination is made within 4
374 ~~years 90 days~~ after the date of termination of employment with
375 the department or office.



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376 (5) ~~Classroom and correspondence~~ Courses under subsections
377 (1) and (2) must include instruction on the subject matter of
378 unauthorized entities engaging in the business of insurance. ~~The~~
379 ~~scope of the topic of unauthorized entities must include the~~
380 ~~Florida Nonprofit Multiple-Employer Welfare Arrangement Act and~~
381 ~~the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001~~
382 ~~et seq., as it relates to the provision of health insurance by~~
383 ~~employers and the regulation thereof.~~

384 Section 8. Subsections (3) and (7) of section 626.7351,
385 Florida Statutes, are amended to read:

386 626.7351 Qualifications for customer representative's
387 license.—The department shall not grant or issue a license as
388 customer representative to any individual found by it to be
389 untrustworthy or incompetent, or who does not meet each of the
390 following qualifications:

391 (3) Within 4 ~~the 2~~ years ~~next~~ preceding the date that the
392 application for license was filed with the department, the
393 applicant has earned the designation of Accredited Advisor in
394 Insurance (AAI), Associate in General Insurance (AINS), or
395 Accredited Customer Service Representative (ACSR) from the
396 Insurance Institute of America; the designation of Certified
397 Insurance Counselor (CIC) from the Society of Certified
398 Insurance Service Counselors; the designation of Certified
399 Professional Service Representative (CPSR) from the National
400 Foundation for CPSRs; the designation of Certified Insurance
401 Service Representative (CISR) from the Society of Certified
402 Insurance Service Representatives; the designation of Certified
403 Insurance Representative (CIR) from All-Lines Training; the
404 designation of Professional Customer Service Representative



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405 ~~(PCSR) from the Professional Career Institute; the designation~~
406 ~~of Registered Customer Service Representative (RCSR) from a~~
407 ~~regionally accredited postsecondary institution in the state~~
408 ~~whose curriculum is approved by the department and includes~~
409 ~~comprehensive analysis of basic property and casualty lines of~~
410 ~~insurance and testing which demonstrates mastery of the subject;~~
411 ~~or a degree from an accredited institution of higher learning~~
412 ~~approved by the department when the degree includes a minimum of~~
413 ~~9 credit hours of insurance instruction, including specific~~
414 ~~instruction in the areas of property, casualty, and inland~~
415 ~~marine insurance. The department shall adopt rules establishing~~
416 ~~standards for the approval of curriculum completed a course in~~
417 ~~insurance, 3 hours of which shall be on the subject matter of~~
418 ~~ethics, approved by the department or has had at least 6 months'~~
419 ~~experience in responsible insurance duties as a substantially~~
420 ~~full-time employee. Courses must include instruction on the~~
421 ~~subject matter of unauthorized entities engaging in the business~~
422 ~~of insurance. The scope of the topic of unauthorized entities~~
423 ~~shall include the Florida Nonprofit Multiple-Employer Welfare~~
424 ~~Arrangement Act and the Employee Retirement Income Security Act,~~
425 ~~29 U.S.C. ss. 1001 et seq., as such acts relate to the provision~~
426 ~~of health insurance by employers and the regulation of such~~
427 ~~insurance.~~

428 ~~(7) The applicant has passed any required examination for~~
429 ~~license required under s. 626.221.~~

430 Section 9. Section 626.748, Florida Statutes, is amended to
431 read:

432 626.748 Agent's records.—Every agent transacting any
433 insurance policy must maintain in his or her office, or have



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434 readily accessible by electronic or photographic means, for a
435 period of at least 5 years after policy expiration, such records
436 of policies transacted by him or her as to enable the
437 policyholders and department to obtain all necessary
438 information, including daily reports, applications, change
439 endorsements, or documents signed or initialed by the insured
440 concerning such policies.

441 Section 10. Section 626.7851, Florida Statutes, is amended
442 to read:

443 626.7851 Requirement as to knowledge, experience, or
444 instruction.—~~An~~ ~~no~~ applicant for a license as a life agent,
445 except for a chartered life underwriter (CLU), ~~may not shall~~ be
446 qualified or licensed unless, within the 4 years immediately
447 preceding the date the application for a license is filed with
448 the department, ~~the applicant he or she~~ has:

449 (1) Successfully completed 40 hours of coursework approved
450 by the department ~~classroom courses in life insurance,~~
451 annuities, and variable contracts. Such coursework, 3 hours of
452 which shall be on the subject matter of ethics, satisfactory to
453 the department at a school or college, or extension division
454 thereof, or other authorized course of study, approved by the
455 department. Courses must have included include instruction on
456 the subject matter of unauthorized entities engaging in the
457 business of insurance and 3 hours on the subject matter of
458 ethics, to include the Florida Nonprofit Multiple-Employer
459 Welfare Arrangement Act and the Employee Retirement Income
460 Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the
461 provision of life insurance by employers to their employees and
462 the regulation thereof;



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463 (2) Successfully completed at least 60 hours of coursework
464 approved by the department in multiple areas of insurance,
465 including life insurance, annuities, and variable contracts.
466 Such coursework must have included instruction on the subject
467 matter of unauthorized entities engaging in the business of
468 insurance and 3 hours on the subject matter of ethics;
469 (3) Earned or maintained an active designation as a
470 Chartered Financial Consultant (ChFC) from the American College
471 of Financial Services or a Fellow, Life Management Institute
472 (FLMI) from the Life Management Institute a correspondence
473 course in insurance, 3 hours of which shall be on the subject
474 matter of ethics, satisfactory to the department and regularly
475 offered by accredited institutions of higher learning in this
476 state or by independent programs of study, approved by the
477 department. Courses must include instruction on the subject
478 matter of unauthorized entities engaging in the business of
479 insurance, to include the Florida Nonprofit Multiple-Employer
480 Welfare Arrangement Act and the Employee Retirement Income
481 Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the
482 provision of life insurance by employers to their employees and
483 the regulation thereof;
484 (4)(3) Held an active license in life, or life and health,
485 insurance in another state. This provision may not be used
486 utilized unless the other state grants reciprocal treatment to
487 licensees formerly licensed in Florida; or
488 (5)(4) Been employed by the department or office for at
489 least 1 year, full time in life or life and health insurance
490 regulatory matters and who was not terminated for cause, and
491 application for examination is made within 4 years 90 days after



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492 the date of termination of his or her employment with the
493 department or office.
494 Section 11. Section 626.8311, Florida Statutes, is amended
495 to read:
496 626.8311 Requirement as to knowledge, experience, or
497 instruction.—~~An~~ ~~Ne~~ applicant for a license as a health agent,
498 except for a chartered life underwriter (CLU), may not shall be
499 qualified or licensed unless, within the 4 years immediately
500 preceding the date the application for license is filed with the
501 department, the applicant he or she has:
502 (1) Successfully completed 40 hours of coursework approved
503 by the department classroom courses in health insurance, 3 hours
504 of which must have been shall be on the subject matter of
505 ethics, satisfactory to the department at a school or college,
506 or extension division thereof, or other authorized course of
507 study, approved by the department. Such coursework Courses must
508 have included include instruction on the subject matter of
509 unauthorized entities engaging in the business of insurance, to
510 include the Florida Nonprofit Multiple-Employer Welfare
511 Arrangement Act and the Employee Retirement Income Security Act,
512 29 U.S.C. ss. 1001 et seq., as it relates to the provision of
513 health insurance by employers to their employees and the
514 regulation thereof;
515 (2) Successfully completed at least 60 hours of coursework
516 approved by the department in multiple areas of insurance,
517 including health insurance. Such coursework must have included
518 instruction on the subject matter of unauthorized entities
519 engaging in the business of insurance and 3 hours on the subject
520 matter of ethics;



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521 (3) Earned or maintained an active designation as a
522 Registered Health Underwriter (RHU), Chartered Healthcare
523 Consultant (ChHC), or Registered Employee Benefits Consultant
524 (REBC) from the American College of Financial Services; a
525 Certified Employee Benefit Specialist (CEBS) from the Wharton
526 School of the University of Pennsylvania; or a Health Insurance
527 Associate (HIA) from America's Health Insurance Plans; a
528 ~~correspondence course in insurance, 3 hours of which shall be on~~
529 ~~the subject matter of ethics, satisfactory to the department and~~
530 ~~regularly offered by accredited institutions of higher learning~~
531 ~~in this state or by independent programs of study, approved by~~
532 ~~the department. Courses must include instruction on the subject~~
533 ~~matter of unauthorized entities engaging in the business of~~
534 ~~insurance, to include the Florida Nonprofit Multiple Employer~~
535 ~~Welfare Arrangement Act and the Employee Retirement Income~~
536 ~~Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the~~
537 ~~provision of health insurance by employers to their employees~~
538 ~~and the regulation thereof;~~

539 ~~(4)(3) Held an active license in health, or life and~~
540 ~~health, insurance in another state. This provision may not be~~
541 ~~utilized unless the other state grants reciprocal treatment to~~
542 ~~licensees formerly licensed in Florida; or~~

543 ~~(5)(4) Been employed by the department or office for at~~
544 ~~least 1 year, full time in health insurance regulatory matters~~
545 ~~and who was not terminated for cause, and application for~~
546 ~~examination is made within 4 years 90 days after the date of~~
547 ~~termination of his or her employment with the department or~~
548 ~~office.~~

549 Section 12. Section 626.931, Florida Statutes, is amended



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550 to read:

551 626.931 ~~Agent affidavit and~~ Insurer reporting
552 requirements.-

553 ~~(1) Each surplus lines agent shall on or before the 45th~~
554 ~~day following each calendar quarter file with the Florida~~
555 ~~Surplus Lines Service Office an affidavit, on forms as~~
556 ~~prescribed and furnished by the Florida Surplus Lines Service~~
557 ~~Office, stating that all surplus lines insurance transacted by~~
558 ~~him or her during such calendar quarter has been submitted to~~
559 ~~the Florida Surplus Lines Service Office as required.~~

560 ~~(2) The affidavit of the surplus lines agent shall include~~
561 ~~efforts made to place coverages with authorized insurers and the~~
562 ~~results thereof.~~

563 ~~(1)(3) Each foreign insurer accepting premiums shall, on or~~
564 ~~before the end of the month following each calendar quarter,~~
565 ~~file with the Florida Surplus Lines Service Office a verified~~
566 ~~report of all surplus lines insurance transacted by such insurer~~
567 ~~for insurance risks located in this state during such calendar~~
568 ~~quarter.~~

569 ~~(2)(4) Each alien insurer accepting premiums shall, on or~~
570 ~~before June 30 of each year, file with the Florida Surplus Lines~~
571 ~~Service Office a verified report of all surplus lines insurance~~
572 ~~transacted by such insurer for insurance risks located in this~~
573 ~~state during the preceding calendar year.~~

574 ~~(3)(5) The department may waive the filing requirements~~
575 ~~described in subsections (1) and (2) (3) and (4).~~

576 ~~(4)(6) Each insurer's report and supporting information~~
577 ~~shall be in a computer-readable format as determined by the~~
578 ~~Florida Surplus Lines Service Office or shall be submitted on~~



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579 forms prescribed by the Florida Surplus Lines Service Office and
580 shall show for each applicable agent:

581 (a) A listing of all policies, certificates, cover notes,
582 or other forms of confirmation of insurance coverage or any
583 substitutions thereof or endorsements thereto and the
584 identifying number; and

585 (b) Any additional information required by the department
586 or Florida Surplus Lines Service Office.

587 Section 13. Paragraph (a) of subsection (2) of section
588 626.932, Florida Statutes, is amended to read:

589 626.932 Surplus lines tax.—

590 (2)(a) The surplus lines agent shall make payable to the
591 department the tax related to each calendar quarter's business
592 as reported to the Florida Surplus Lines Service Office, and
593 remit the tax to the Florida Surplus Lines Service Office on or
594 before the 45th day following each calendar quarter at the same
595 time as provided for the filing of the quarterly affidavit,
596 under s. 626.931. The Florida Surplus Lines Service Office shall
597 forward to the department the taxes and any interest collected
598 pursuant to paragraph (b), within 10 days of receipt.

599 Section 14. Paragraph (d) of subsection (1) of section
600 626.935, Florida Statutes, is amended, and paragraphs (e)
601 through (i) of that subsection are redesignated as paragraphs
602 (d) through (h), to read:

603 626.935 Suspension, revocation, or refusal of surplus lines
604 agent's license.—

605 (1) The department shall deny an application for, suspend,
606 revoke, or refuse to renew the appointment of a surplus lines
607 agent and all other licenses and appointments held by the



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608 licensee under this code, on any of the following grounds:

609 ~~(d) Failure to make and file his or her affidavit or~~
610 ~~reports when due as required by s. 626.931.~~

611 Section 15. Subsection (1) of section 626.936, Florida
612 Statutes, is amended to read:

613 626.936 Failure to file reports or pay tax or service fee;
614 administrative penalty.—

615 (1) Any licensed surplus lines agent who neglects to file a
616 report ~~or an affidavit~~ in the form and within the time required
617 or provided for in the Surplus Lines Law may be fined up to \$50
618 per day for each day the neglect continues, beginning the day
619 after the report ~~or affidavit~~ was due until the date the report
620 ~~or affidavit~~ is received. All sums collected under this section
621 shall be deposited into the Insurance Regulatory Trust Fund.

622 Section 16. Paragraph (o) of subsection (1) of section
623 626.9541, Florida Statutes, is amended to read:

624 626.9541 Unfair methods of competition and unfair or
625 deceptive acts or practices defined.—

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

629 (o) *Illegal dealings in premiums; excess or reduced charges*
630 *for insurance.*—

631 1. Knowingly collecting any sum as a premium or charge for
632 insurance, which is not then provided, or is not in due course
633 to be provided, subject to acceptance of the risk by the
634 insurer, by an insurance policy issued by an insurer as
635 permitted by this code.

636 2. Knowingly collecting as a premium or charge for



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637 insurance any sum in excess of or less than the premium or
638 charge applicable to such insurance, in accordance with the
639 applicable classifications and rates as filed with and approved
640 by the office, and as specified in the policy; or, in cases when
641 classifications, premiums, or rates are not required by this
642 code to be so filed and approved, premiums and charges collected
643 from a Florida resident in excess of or less than those
644 specified in the policy and as fixed by the insurer.

645 Notwithstanding any other provision of law, this provision shall
646 not be deemed to prohibit the charging and collection, by
647 surplus lines agents licensed under part VIII of this chapter,
648 of the amount of applicable state and federal taxes, or fees as
649 authorized by s. 626.916(4), in addition to the premium required
650 by the insurer or the charging and collection, by licensed
651 agents, of the exact amount of any discount or other such fee
652 charged by a credit card facility in connection with the use of
653 a credit card, as authorized by subparagraph (q)3., in addition
654 to the premium required by the insurer. This subparagraph shall
655 not be construed to prohibit collection of a premium for a
656 universal life or a variable or indeterminate value insurance
657 policy made in accordance with the terms of the contract.

658 3.a. Imposing or requesting an additional premium for a
659 policy of motor vehicle liability, personal injury protection,
660 medical payment, or collision insurance or any combination
661 thereof or refusing to renew the policy solely because the
662 insured was involved in a motor vehicle accident unless the
663 insurer's file contains information from which the insurer in
664 good faith determines that the insured was substantially at
665 fault in the accident.



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666 b. An insurer which imposes and collects such a surcharge
667 or which refuses to renew such policy shall, in conjunction with
668 the notice of premium due or notice of nonrenewal, notify the
669 named insured that he or she is entitled to reimbursement of
670 such amount or renewal of the policy under the conditions listed
671 below and will subsequently reimburse him or her or renew the
672 policy, if the named insured demonstrates that the operator
673 involved in the accident was:

674 (I) Lawfully parked;

675 (II) Reimbursed by, or on behalf of, a person responsible
676 for the accident or has a judgment against such person;

677 (III) Struck in the rear by another vehicle headed in the
678 same direction and was not convicted of a moving traffic
679 violation in connection with the accident;

680 (IV) Hit by a "hit-and-run" driver, if the accident was
681 reported to the proper authorities within 24 hours after
682 discovering the accident;

683 (V) Not convicted of a moving traffic violation in
684 connection with the accident, but the operator of the other
685 automobile involved in such accident was convicted of a moving
686 traffic violation;

687 (VI) Finally adjudicated not to be liable by a court of
688 competent jurisdiction;

689 (VII) In receipt of a traffic citation which was dismissed
690 or nolle prossed; or

691 (VIII) Not at fault as evidenced by a written statement
692 from the insured establishing facts demonstrating lack of fault
693 which are not rebutted by information in the insurer's file from
694 which the insurer in good faith determines that the insured was



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695 substantially at fault.

696 c. In addition to the other provisions of this
697 subparagraph, an insurer may not fail to renew a policy if the
698 insured has had only one accident in which he or she was at
699 fault within the current 3-year period. However, an insurer may
700 nonrenew a policy for reasons other than accidents in accordance
701 with s. 627.728. This subparagraph does not prohibit nonrenewal
702 of a policy under which the insured has had three or more
703 accidents, regardless of fault, during the most recent 3-year
704 period.

705 4. Imposing or requesting an additional premium for, or
706 refusing to renew, a policy for motor vehicle insurance solely
707 because the insured committed a noncriminal traffic infraction
708 as described in s. 318.14 unless the infraction is:

709 a. A second infraction committed within an 18-month period,
710 or a third or subsequent infraction committed within a 36-month
711 period.

712 b. A violation of s. 316.183, when such violation is a
713 result of exceeding the lawful speed limit by more than 15 miles
714 per hour.

715 5. Upon the request of the insured, the insurer and
716 licensed agent shall supply to the insured the complete proof of
717 fault or other criteria which justifies the additional charge or
718 cancellation.

719 6. No insurer shall impose or request an additional premium
720 for motor vehicle insurance, cancel or refuse to issue a policy,
721 or refuse to renew a policy because the insured or the applicant
722 is a handicapped or physically disabled person, so long as such
723 handicap or physical disability does not substantially impair



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724 such person's mechanically assisted driving ability.

725 7. No insurer may cancel or otherwise terminate any
726 insurance contract or coverage, or require execution of a
727 consent to rate endorsement, during the stated policy term for
728 the purpose of offering to issue, or issuing, a similar or
729 identical contract or coverage to the same insured with the same
730 exposure at a higher premium rate or continuing an existing
731 contract or coverage with the same exposure at an increased
732 premium.

733 8. No insurer may issue a nonrenewal notice on any
734 insurance contract or coverage, or require execution of a
735 consent to rate endorsement, for the purpose of offering to
736 issue, or issuing, a similar or identical contract or coverage
737 to the same insured at a higher premium rate or continuing an
738 existing contract or coverage at an increased premium without
739 meeting any applicable notice requirements.

740 9. No insurer shall, with respect to premiums charged for
741 motor vehicle insurance, unfairly discriminate solely on the
742 basis of age, sex, marital status, or scholastic achievement.

743 10. Imposing or requesting an additional premium for motor
744 vehicle comprehensive or uninsured motorist coverage solely
745 because the insured was involved in a motor vehicle accident or
746 was convicted of a moving traffic violation.

747 11. No insurer shall cancel or issue a nonrenewal notice on
748 any insurance policy or contract without complying with any
749 applicable cancellation or nonrenewal provision required under
750 the Florida Insurance Code.

751 12. No insurer shall impose or request an additional
752 premium, cancel a policy, or issue a nonrenewal notice on any



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753 insurance policy or contract because of any traffic infraction
754 when adjudication has been withheld and no points have been
755 assessed pursuant to s. 318.14(9) and (10). However, this
756 subparagraph does not apply to traffic infractions involving
757 accidents in which the insurer has incurred a loss due to the
758 fault of the insured.

759 Section 17. Section 627.4553, Florida Statutes, is amended
760 to read:

761 627.4553 Recommendations to surrender.-

762 (1) If an insurance agent recommends the surrender of an
763 annuity contract or life insurance policy containing a cash
764 value and does not recommend that the proceeds from the
765 surrender be used to fund or purchase another annuity contract
766 or life insurance policy, before execution of the surrender, the
767 insurance agent, or insurance company if no agent is involved,
768 shall provide written , on a form that satisfies the
769 requirements of the rule adopted by the department, information
770 relating to the contract annuity or policy to be surrendered.
771 Such information must shall include, but is not limited to, the
772 amount of any estimated surrender charge, the loss of any
773 minimum interest rate guarantees, the possibility amount of any
774 tax consequences resulting from the transaction, the estimated
775 amount of any forfeited death benefit, and a description of the
776 value of any other investment performance guarantees being
777 forfeited as a result of the transaction. The agent shall
778 maintain a copy of the information and the date that the
779 information was provided to the owner. This section also applies
780 to a person performing insurance agent activities pursuant to an
781 exemption from licensure under this part.



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782 (2) For purposes of this section, the term "surrender"
783 means the voluntary surrender at the request of the owner of the
784 annuity contract or life insurance policy before its maturity
785 date in exchange for the contract's or policy's current cash
786 surrender value which results in the surrender or termination of
787 the contract or policy. The term excludes any involuntary
788 termination that is otherwise required by the terms of the
789 contract or policy and all transactions other than a surrender,
790 such as the maturity of the contract or policy, a contract or
791 policy loan, a lapse for nonpayment of premium, a withdrawal of
792 the contract or policy values, an annuitization, or the exercise
793 of reduced paid-up or extended-term nonforfeiture options.

794 Section 18. Subsection (2) of section 631.341, Florida
795 Statutes, is amended to read:

796 631.341 Notice of insolvency to policyholders by insurer,
797 general agent, or agent.-

798 (2) Unless, within 15 days subsequent to the date of such
799 notice, all agents referred to in subsection (1) have either
800 replaced or reinsured in a solvent authorized insurer the
801 insurance coverages placed by or through such agent in the
802 delinquent insurer, such agents shall then, by registered or
803 certified mail, or by e-mail with delivery receipt required,
804 send to the last known address of any policyholder a written
805 notice of the insolvency of the delinquent insurer.

806 Section 19. This act shall take effect July 1, 2015.

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 Fiscal Policy

BILL: CS/CS/SB 1222

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee of General Government); Banking and Insurance Committee; and Senator Richter

SUBJECT: Division of Insurance Agent and Agency Services

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1222 revises certain insurance agent licensing requirements. Specifically, the bill:

- Repeals a restriction that limits general lines agents to selling health insurance only for companies which also sell property, casualty, or surety insurance;
- Provides that the agent-in-charge of an insurance agency must be licensed to transact at least two of the lines of insurance being handled at an agency location instead of being licensed to handle all lines of insurance;
- Exempts applicants for licensure as general lines agents or all-lines adjusters from certain examination requirements if they have a degree in insurance or designations from various insurance industry organizations;
- Revises the requirements for prelicensure education courses;
- Modifies the licensure requirements for customer representative and repeals the written examination requirement;
- Allows customer representatives to receive commissions as long as the commissions are not the primary source of compensation;
- Requires agents to maintain certain policy records for 5 years after policy expiration;
- Clarifies that licensed agents can charge and collect the “exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card” in addition to the premium charged by insurers;

- Revises the notice requirements for recommending the surrender of an annuity contract or life insurance policy; and
- Permits agents to deliver notices of insolvency by electronic mail with delivery receipt required.
- Repeals a requirement that a surplus lines agent submit a quarterly affidavit with the Florida Surplus Lines Office.

There is no fiscal impact to state funds.

II. Present Situation:

In general, insurance agents transact insurance on behalf of an insurer or insurers. Insurance agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.

Agents in Charge of an Insurance Agency

Section 626.0428(4)(a), F.S., requires each place of business established by an agent or agency, firm, corporation, or association must be in the active full-time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location. The DFS suggests that it is not necessary for the agent-in-charge to be licensed to sell all types of insurance that might be transacted at a particular agency.¹

License Types

General Lines Agent

A general lines agent is authorized to transact, for commercial or noncommercial purposes, one or more of the following kinds of insurance: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.² A general lines agent can only transact health insurance for an insurer if the agent also represents that insurer for property, casualty, or surety insurance.³

In order to be licensed as a general lines agent an applicant must hold a Chartered Property and Casualty Underwriters designation from the American Institute for Property and Liability Underwriters or complete the required prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. The prerequisites include:

- Taught or successfully completed 200 hours of classroom courses on insurance, 3 hours of which must be on the subject matter of ethics;⁴ or

¹ See Department of Financial Services, SB 1222 Bill Analysis (March 25, 2015)(on file with the Senate Committee on Banking and Insurance).

² See s. 626.015(5), F.S.

³ See s. 626.015(5)(d), F.S.

⁴ All classroom courses must be approved by the DFS and must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act

- Completed a correspondence course in insurance, 3 hours of which must be on the subject matter of ethics, and at least 6 months of responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance; or
- Completed at least 1 year in responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance; or
- Completed at least 1 year of responsible insurance duties as a licensed and appointed customer representative or limited customer representative in commercial or personal lines of property and casualty insurance and 40 hours of classroom courses approved by the covering the areas of property, casualty, surety, health, and marine insurance; or
- Completed at least 1 year of responsible insurance duties as a licensed and appointed service representative in commercial or personal lines of property and casualty insurance and 80 hours of classroom courses covering the areas of property, casualty, surety, health, and marine insurance.⁵

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.⁶ In order to be licensed as a personal lines agent an applicant must hold a Chartered Property and Casualty Underwriters designation from the American Institute for Property and Liability Underwriters or complete the required prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. The prerequisites include:

- Taught or successfully completed 52 hours of classroom courses in insurance, 3 hours of which must be on the subject matter of ethics, at a school, college, or extension division thereof; or
- Completed a correspondence course in insurance, 3 hours of which must be on the subject matter of ethics, and completed at least 3 months of responsible insurance duties as a substantially full-time employee in the area of property and casualty insurance sold to individuals and families for noncommercial purposes; or
- Completed at least 6 months of responsible insurance duties as a substantially full-time employee in the area of property and casualty insurance; or
- Completed at least 6 months of responsible duties as a licensed and appointed customer representative or limited customer representative in property and casualty insurance sold to individuals and families for noncommercial purposes and 20 hours of classroom courses related to property and casualty insurance sold to individuals and families for noncommercial purposes; or
- Completed at least 6 months of responsible insurance duties as a licensed and appointed service representative in property and casualty insurance sold to individuals and families for noncommercial purposes and 40 hours of classroom courses related to property and casualty insurance sold to individuals and families for noncommercial purposes; or

and the Employee Retirement Income Security Act as it relates to the provision of health insurance by employers to their employees.

⁵ See s. 626.732(1), F.S. See generally s. 626.171, F.S.

⁶ See s. 626.015(15), F.S.

- Completed at least 3 years of responsible duties as a licensed and appointed customer representative.⁷

Health Agent

A health agent is authorized to transact health insurance.⁸ In order to be licensed an applicant must hold a Chartered Life Underwriters designation from the American College of Life Underwriters or complete the required prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. The prerequisites include:

- Successfully completed 40 hours of classroom courses in insurance, 3 hours of which must be on the subject matter of ethics; or
- Successful completion of a correspondence course in insurance, 3 hours of which shall be on the subject matter of ethics; or
- Employment by the DFS or the Office of Insurance Regulation (OIR) in health regulatory matters for at least 1 year may count as required experience if the application for the examination is made within 90 days after leaving employment and if the employee was not terminated for cause; or
- Hold a valid license in another state.⁹

According to the DFS, persons preparing to take the examination for licensure as a general lines agent or as a health agent study health insurance as part of their required training and the same examination questions on health insurance are used in each examination.¹⁰

Life Agent

A life agent is an individual representing an insurer as to life insurance and annuity contracts.¹¹ In order to be licensed an applicant must hold a Chartered Life Underwriters designation from the American College of Life Underwriters or complete the required prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. The prerequisites include:

- Successfully completed 40 hours of classroom courses in insurance, 3 hours of which shall be on the subject matter of ethics or other authorized course of study; or
- Successfully completed of a correspondence course in insurance, 3 hours of which shall be on the subject matter of ethics; or
- Employment by the DFS or the OIR in life and health regulatory matters for at least 1 year can count as required experience if the application for the examination is made within 90 days after leaving employment and if the employee was not terminated for cause; or

⁷ See s. 626.732(2), F.S. See also Department of Financial Services, *Resident Personal Lines License*, available at <http://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/20-44.htm#.VSvgJE0cS70> (last visited April 13, 2015).

⁸ See s. 626.015(6), F.S.

⁹ See s. 626.8311, F.S. See also Department of Financial Services, *Resident Health License*, available at <http://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/2-40.htm#.VSvgkE0cS70> (last visited April 13, 2015).

¹⁰ Supra note 1.

¹¹ See s. 626.015(10), F.S.

- Holds a valid license in another state.¹²

Customer Representatives

A customer representative is an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.¹³ For example, a customer representative may transact automobile, water craft, home, motorcycle, and pet insurance under the supervision of a licensed and appointed general lines agent. Currently, a customer representative is a salaried employee of an agent or agency and cannot earn commissions. The customer representative license does not cover life insurance.¹⁴

To obtain a customer representative license, an applicant must, within the 2 years before the date the application for license was filed, complete a prerequisite course in insurance,¹⁵ 3 hours of which shall be on the subject matter of ethics, or has had at least 6 months' experience in responsible insurance duties as a substantially full-time employee.¹⁶ An applicant must also pass a licensure examination.¹⁷

Licensure Examination Exemptions

Section 626.221(2), F.S., provides exemptions from licensure examination requirements for some applicants for various insurance licenses. Section 626.221(2)(g), F.S., exempts an applicant from the examination requirement for a life or health agent if the applicant has received the designation Chartered Life Underwriter from the American College of Life Underwriters and has been engaged in the insurance business within the past 4 years, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code.

Applicants for general lines agent licenses, all-lines adjuster licenses, and personal lines agent licenses must pass a state examination even if they have a college degree in insurance.¹⁸ The DFS reports that, unlike Florida, other states grant licenses to applicants with college degrees in insurance or significant college coursework in insurance.¹⁹

Record Retention

Section 626.748, F.S., requires an agent to maintain records of policies transacted by him or her so that the policyholders or the DFS can obtain all necessary information. The current law does not provide a length of time to maintain the records.

¹² See s. 626.7851, F.S. See also Department of Financial Services, *Resident Life Agent License*, available at <http://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/2-14.htm#.VSvgzk0cS70> (last visited April 13, 2015).

¹³ See s. 626.015(4), F.S.

¹⁴ See s. 626.7354(1), F.S. See also Department of Financial Services, *Resident Customer Representative License*, available at <http://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/4-40.htm#.VSvhOU0cS70> (last visited April 13, 2015).

¹⁵ The insurance course must include instruction on the subject of unauthorized entities engaging in the business of insurance. See s. 626.7351(3)

¹⁶ See s. 626.7351(3), F.S.

¹⁷ See s. 626.7351(7), F.S. However, the DFS reports that very few applicants obtain a license via examination, *supra* note 1.

¹⁸ *Supra* note 1.

¹⁹ *Id.*

Surplus Lines Agent Affidavit

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents.²⁰ Section 626.916, F.S., requires the insurance agent to make a diligent effort²¹ to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market. Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or office) within 30 days after the effective date of the transaction.²² They must also transmit service fees to the office each month and must transmit assessment and tax payments to the office quarterly.²³ Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FSLSO.²⁴ The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.²⁵ The FSLSO audits agents on a tri-annual basis to verify accuracy of submitted data with original source documents.²⁶

Credit Card Transactions

Section 501.0117(1), F.S., prohibits a seller from imposing a surcharge on the buyer for electing to use a credit card in lieu of payment by cash or check. Violation of s. 501.0117(1), F.S., is a second degree misdemeanor.²⁷

Section 626.9541(1)(o)2., F.S., provides, in part:

This provision shall not be deemed to prohibit the charging and collection, by licensed agents... of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer.

According to the DFS, there is a conflict between the two statutes. Section 626.9541(1)(o)2., F.S., allows an insurer that accepts payment by credit card to charge customers the exact amount

²⁰ See s. 626.915(3), F.S.

²¹ Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market, unless the cost to replace the property insured is \$1 million or more, in which case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

²² See s. 626.921, F.S. (requiring reports of transactions as required by the FSLSO Plan of Operation); Florida Surplus Lines Office, *Agent's Procedures Manual*, (Jan. 2015) available at <http://www.fslso.com/publications/manuals/Agents.Procedures.Manual.pdf> (requiring reports within 30 days) (last visited April 13, 2015).

²³ See ss. 626.932 and 626.9325, F.S.

²⁴ See s. 626.931(1), F.S.

²⁵ See s. 626.932(2), F.S.

²⁶ E-mail from the FSLSO (on file with the Committee on Banking and Insurance).

²⁷ See s. 501.0117(2), F.S.

of a fee charged by a credit card facility in connection with the use of the card while s. 501.0117, F.S., prohibits such charges.²⁸

Surrender of an Annuity or Life Insurance Policy

Section 627.4553, F.S., requires an insurance agent, insurer, or person performing insurance agent activities under an exemption from licensure who recommends that a consumer surrender an annuity or life insurance policy having a cash value to provide a consumer with information relating to the product being surrendered (before execution of the surrender) if no recommendation to purchase another such policy with the proceeds is made. The information must include the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction.

III. Effect of Proposed Changes:

General Lines Agents and Personal Lines Agents – ss. 626.015, 626.311, 626.732, F.S.

Sections 1 and 6 allow a general lines agent to transact health insurance. The bill repeals the restriction that limits a general lines agent to selling health insurance only for companies which also sell property, casualty, or surety insurance. According to the DFS, this change will reduce redundant training because general lines agents and health agents receive the same training and testing on health insurance.²⁹

Section 7 modifies applicant qualifications for licensure of a general lines agent and a personal lines agent. The bill increases the amount and type of coursework and modifies the types of responsible insurance duties required for licensure of both general line and personal line applicants. The bill repeals obsolete references to correspondence courses. The bill makes technical changes to clarify the method that customer representatives, services representatives, and personal lines agents may upgrade their licenses to a general lines agent license.

The prerequisites for general lines and personal lines agents under the bill include:

- Taught or successfully completed 200 hours of coursework in property, casualty, surety, health, and marine insurance (or 60 hours of coursework, for personal lines agents, in property, casualty, and inland marine insurance), 3 hours of which must be on the subject matter of ethics;
- Completed at least 1 year in responsible insurance duties as a substantially full-time bona fide employee in property and casualty insurance (or 6 months for personal lines agents, selling to individuals and families for noncommercial purposes); or
- Completed at least 1 year responsible insurance duties as a licensed and appointed customer representative, service representative, or personal lines agent and 40 hours of coursework (or 6 months for personal lines agents, in property and casualty insurance without any additional required coursework).

²⁸ Supra note 1.

²⁹ *Id.*

Agents in Charge of an Insurance Agency – s. 626.0428, F.S.

Section 2 provides that the agent-in-charge of an insurance agency must be licensed to transact at least two of the lines of insurance being handled at an agency location instead of being licensed to handle all lines of insurance. If only one line of insurance is sold at an agency, the agent-in-charge must be licensed for that line of insurance.

Customer Representatives – ss. 626.221, 626.7351, 626.7354, and 626.753, F.S.

Sections 3 and 8 repeal the examination requirement for persons seeking licensure as a customer representative. According to the DFS, customer representatives are unique to Florida and most applicants for the license obtain it by completing education requirements and exempting from the examination.³⁰

Section 8 changes the education requirements for the customer representative's license. Instead of completing courses approved by the DFS, the applicant can obtain the license by earning a specific designation or completing college coursework. The bill modifies the time frame within which the applicant must achieve the designation or complete college coursework from 2 years to 4 years before the application for licensure is submitted to the DFS. The required designations or coursework include:

- Accredited Advisor in Insurance, Associate in General Insurance, or Accredited Customer Service Representative from the Insurance Institute of America;
- Certified Insurance Counselor from the Society of Certified Insurance Service Counselors;
- Certified Professional Service Representative from the National Foundation for CPSRs;
- Certified Insurance Service Representative from the Society of Certified Insurance Service Representatives;
- Certified Insurance Representative from All-Lines Training;
- Professional Customer Service Representative from the Professional Career Institute;
- Registered Customer Service Representative from a regionally accredited postsecondary institution in the state whose curriculum is approved by the DFS and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or
- A degree from an accredited institution of higher learning approved by the DFS when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

The bill requires the DFS to adopt rules establishing standards for the approval of curriculum.

Section 9 revises provisions relating to customer representatives compensation to allow for the receipt of commissions, so long as the commissions do not represent the primary source of compensation.

Section 11 makes conforming changes to permit agents to share commissions with customer representatives.

³⁰ *Id.*

Licensure Examinations – s. 626.221, F.S., and s. 626.241, F.S.

Section 3 revises certain exemptions from the licensure examination. The bill:

- Revises the existing exemption from examination for a life or health agent. The bill repeals the requirement that an applicant have been engaged in the insurance business within the past 4 years. Current law is clarified by specifying that the exemption is available if the applicant has received the designation “chartered life underwriter” from the American College of Financial Services.
- Exempts an applicant from the examination requirement for a personal lines agent license or all-lines agent license. The existing exemption applies to an applicant for a general lines agent who has received the designation “chartered property and casualty underwriter” from the American Institute for Chartered Property Casualty Underwriters. The bill repeals the requirement that an applicant have been engaged in the insurance business within the past 4 years. Current law is clarified by specifying that the exemption is available if the applicant has received the designation “chartered property and casualty underwriter” from the American Institute for Chartered Property Casualty Underwriters.
- Exempts an applicant from the examination requirement as general lines agent or an all-lines adjuster if the applicant has a received a degree in insurance³¹ from an accredited institution of higher learning approved by the DFS, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement as personal lines agent if the applicant has a received a degree³² from an accredited institution of higher learning approved by the DFS, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement as all-lines adjuster if the applicant has a designation of Associate in Claims from the Insurance Institute of America or a Certified Claims Adjuster from AE21 Incorporated;
- Exempts an applicant from the examination requirement as a life agent or as a health agent if the applicant has received a degree from an accredited institution³³ of higher learning approved by the DFS, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement if the applicant qualifies for a license transfer from another state. The bill repeals the requirement that an applicant have been engaged in the insurance business within the past 4 years, completed preclicensing exam requirements, and maintain certain designations; and
- Exempts an applicant from the examination requirement for a license as a nonresident agent if the applicant holds a comparable license in another state with similar examination requirements. The bill repeals the requirement that an applicant have been engaged in the insurance business within the past 4 years, completed preclicensing exam requirements, and maintain certain designations.

³¹ The bill requires that the degree indicate a minimum of 18 credit hours of instruction in insurance, including specific instruction in property, casualty, health, and commercial insurance.

³² The bill requires that the degree indicate a minimum of 9 credit hours of instruction in insurance, including specific instruction in property, casualty, and inland marine insurance.

³³ The bill requires that the degree indicate a minimum of 9 credit hours of instruction in life or health insurance products.

The section also makes conforming changes to reflect that applicants for licensure as a customer representative will no longer be required to take a licensure examination.

Section 4 provides that the life insurance examination covers annuities and variable contracts. Currently, the examination covers the subject but the statute does not reflect current practice.³⁴ The bill also repeals the requirement that the personal lines insurance examination consist of 100 questions.

Life and Health Insurance Agents – ss. 626.7851, and 626.8311, F.S.

Sections 12 and 13 revise the qualifications for licensure of life and health agents. Specifically the bill modifies the course work requirements, requires specific designations, and repeals obsolete references to correspondence courses.

The bill modifies general coursework requirements to include 40 hours of department-approved coursework:

- For life agent applicants, the bill requires course work in life insurance, annuities, and variable contracts. Such coursework must include instruction on authorized entities engaging in the business of insurance;
- For health agent applicants, the bill requires course work in health insurance. Such coursework must include instruction on authorized entities engaging in the business of insurance.

The bill also requires applicants to complete 60 hours of coursework approved by the department in multiple areas of insurance including:

- For life agent applicants, life insurance, annuities, and variable contracts;
- For health agent applicants, health insurance.

The bill allows applicants to qualify for licensure if they have earned or maintained the following active designations:

- A Chartered Financial Consultant designation from the American College of Financial Services or a Fellow, Life Management Institute designation for life agents.
- A Registered Health Underwriter, Chartered Healthcare Consultant, or Registered Employee Benefits Consultant designation from the American College of Financial Services, a Certified Employee Benefit Specialist designation from the Wharton School of the University of Pennsylvania, or a Health Insurance Associate designation from America's Health Insurance Plans for health agents.

In addition, an applicant for a life or health agent license that held an active insurance license in another state can qualify for licensure if:

- The life agent applicant held an active license in life insurance in another state; or
- The health agent applicant held an active license in health insurance in another state.

However, the bill repeals the option for these applicants to qualify for licensure in Florida if they held a license in life *and* health insurance from another state.

³⁴ Supra note 1.

The bill also allows former employees of the DFS or the OIR who apply for the examination within 4 years, instead of 90 days, to qualify to take the examination if:

- For a life agent applicant, he or she was employed full time in life insurance regulatory matters and was not terminated for cause; or
- For a health agent applicant, he or she was employed full time in health insurance regulatory matters and was not terminated for cause.

Surplus Lines – 626.931, F.S.

Section 14 repeals s. 626.931(1) and (2), F.S., which require a surplus lines agent to file quarterly reports stating that all surplus lines transactions have been submitted to the FLSO and requiring that such reports include an affidavit of diligent effort. The FLSO reports that the provisions are no longer necessary. The FLSO receives the information relating to the surplus lines transactions from the agents and the insurers and has implemented audit procedures to verify the information.³⁵

Conforming changes are made to in **Section 15** to s. 626.932, F.S., **Section 16** to s. 626.935, F.S., and **Section 17** to s. 626.936, F.S.

Credit Card Transactions – s. 626.9541(1)(o)2., F.S.

Section 18 clarifies that notwithstanding any other provision of law, licensed surplus lines agents can charge and collect the “exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card” in addition to the premium charged by insurers.

Surrender of an Annuity or Life Insurance Policy – s. 627.4553, F.S.

Section 19 amends s. 627.4553, F.S., relating to the recommendation by an agent to surrender an annuity or life insurance policy containing a cash value. Specifically, the bill repeals the requirement that the notice be on a form prescribed by the department. The notice must contain the amount of estimated surrender charge, information relating to the possibility of tax consequences, and the estimated amount of any forfeited death benefit. Currently, the notice is required to contain more specific information related to the surrender such as, the amount of the surrender charge, the amount of tax consequences resulting from the transaction, and the amount of forfeited death benefit. The bill also requires the agent to maintain a copy of the written information provided and the date the information was provided to the owner.

The bill defines “surrender” as the voluntary surrender, at the request of the owner of the annuity contract or life insurance policy, before its maturity date in exchange for the cash surrender value which results in the surrender or termination of the contract or policy. A surrender excludes involuntary termination required by contract or policy terms or any transactions other than a surrender.

³⁵ Supra note 26.

Other Provisions of the Bill

Section 5 amends s. 626.2817, F.S., to provide that prelicensure course providers may not grant credit to students unless the student attends at least 75 percent of the required course hours. Currently, there is no standard in law for course attendance.

The bill also repeals references to “monitor groups” because they have not been in existence for some time. The groups acted as monitors when the licensure examinations were on paper but no longer exist now that the DFS administers examinations by computer.³⁶

Section 10 amends s. 626.748, F.S., to require an agent to maintain records of insurance transactions for at least 5 years after the policy expires. Such records include daily reports, applications, change endorsements, and documents signed or initialed by the insured.

Section 20 amends s. 631.341, F.S., to provide that agents may give notices of insolvency to insureds by electronic mail with delivery receipt required. Current law allows notice by registered or certified mail.

Section 21 of this bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

³⁶ Supra note 1.

C. **Government Sector Impact:**

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 626.015, 626.0428, 626.221, 626.241, 626.2817, 626.311, 626.732, 626.7351, 626.7354, 626.753, 626.748, 626.7851, 626.8311, 626.931, 626.932, 626.935, 626.936, 626.9541, 627.4553, and 631.341.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Fiscal Policy on April 15, 2015.

As recommended by the Appropriations Subcommittee on General Government, the committee substitute:

- Revises the notice requirements an agent must provide when recommending the surrender of an annuity contract or life insurance policy.
- Eliminates the requirement that a surplus lines agent quarterly submit an affidavit attesting that the agent has submitted all surplus lines insurance transactions to the Florida Surplus Lines Service Office and that the required diligent effort was made to place such coverages with admitted insurers.

The CS also allows customer representatives to receive commissions as long as the commissions are not the primary source of compensation.

CS by Banking and Insurance on March 17, 2015:

- Removes provisions from the bill relating to regulation of instruction schools for bail bond agents.
- Removes provisions from the bill relating to prelicensure requirements for all-lines adjusters.
- Exempts an applicant from the examination requirement as a life agent or as a health agent is the applicant has received a degree of higher learning approved by the DFS and has a minimum of nine credit hours of instruction in life or health insurance products.
- Adds experience requirements to allow applicants to qualify to take the examination as a life and health agent.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Richter

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1 A bill to be entitled
 2 An act relating to the Division of Insurance Agent and
 3 Agency Services; amending s. 626.015, F.S.; revising
 4 the definition of "general lines agent," to remove a
 5 restriction with respect to agents transacting health
 6 insurance; limiting the types of health insurance
 7 agents; amending s. 626.0428, F.S.; revising licensure
 8 requirements of certain agents in charge of an
 9 agency's place of business; amending s. 626.221, F.S.;
 10 revising examination requirements and exemptions for
 11 applicants for certain agent and adjuster licenses;
 12 amending s. 626.241, F.S.; revising the scope of
 13 license examinations for agents and adjusters;
 14 amending s. 626.2817, F.S.; revising requirements of
 15 certain prelicensure education courses for insurance
 16 agents and other licensees; amending s. 626.311, F.S.;
 17 conforming provisions to changes made by the act;
 18 amending s. 626.732, F.S.; revising requirements
 19 relating to knowledge, experience, and instruction for
 20 applicants for a license as a general lines or
 21 personal lines agent; amending s. 626.7351, F.S.;
 22 revising qualifications for a customer
 23 representative's license; amending s. 626.748, F.S.;
 24 requiring agents to maintain certain records for a
 25 specified time period after policy expiration;
 26 amending ss. 626.7851 and 626.8311, F.S.; revising
 27 requirements relating to the knowledge, experience, or
 28 instruction for life agents and health agents,
 29 respectively; amending s. 626.9541, F.S.; providing

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30 that certain provisions relating to illegal dealings
 31 in premiums are applicable notwithstanding any other
 32 provision of law; amending s. 627.4553, F.S.;
 33 requiring an insurance agent to provide and retain
 34 certain information upon surrender of an annuity or
 35 life insurance policy under certain circumstances;
 36 amending s. 631.341, F.S.; authorizing certain notices
 37 of insolvency to be delivered to policyholders by
 38 certain methods; providing an effective date.

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

41
 42 Section 1. Paragraph (d) of subsection (5) of section
 43 626.015, Florida Statutes, is amended to read:
 44 626.015 Definitions.—As used in this part:
 45 (5) "General lines agent" means an agent transacting any
 46 one or more of the following kinds of insurance:
 47 (d) Health insurance, ~~when transacted by an insurer also~~
 48 ~~represented by the same agent as to property or casualty or~~
 49 ~~surety insurance.~~
 50 Section 2. Paragraph (a) of subsection (4) of section
 51 626.0428, Florida Statutes, is amended to read:
 52 626.0428 Agency personnel powers, duties, and limitations.—
 53 (4) (a) Each place of business established by an agent or
 54 agency, firm, corporation, or association must be in the active
 55 full-time charge of a licensed and appointed agent holding the
 56 required agent licenses to transact at least two of the lines of
 57 insurance being handled at the location. If only one line of
 58 insurance is handled at the location, the agent in charge must

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59 hold the required agent license to transact that line of
60 insurance.

61 Section 3. Subsection (1) and paragraphs (g) through (l) of
62 subsection (2) of section 626.221, Florida Statutes, are amended
63 to read:

64 626.221 Examination requirement; exemptions.—

65 (1) The department shall not issue any license as agent,
66 ~~customer representative~~, or adjuster to any individual who has
67 not qualified for, taken, and passed to the satisfaction of the
68 department a written examination of the scope prescribed in s.
69 626.241.

70 (2) However, an examination is not necessary for any of the
71 following:

72 (g) An applicant for a license as a life or health agent
73 who has received the designation of chartered life underwriter
74 (CLU) from the American College of Financial Services Life
75 Underwriters and has been engaged in the insurance business
76 within the past 4 years, except that the applicant may be
77 examined on pertinent provisions of this code.

78 (h) An applicant for license as a general lines agent,
79 personal lines agent, or all-lines customer representative, or
80 adjuster who has received the designation of chartered property
81 and casualty underwriter (CPCU) from the American Institute for
82 Chartered Property Casualty and Liability Underwriters and has
83 ~~been engaged in the insurance business within the past 4 years,~~
84 except that the applicant may be examined on pertinent
85 provisions of this code.

86 (i) An applicant for license as a general lines agent or an
87 all-lines adjuster who has received a degree in insurance from

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88 an accredited institution of higher learning approved by the
89 department, except that the applicant may be examined on
90 pertinent provisions of this code. Qualifying degrees must
91 indicate a minimum of 18 credit hours of insurance instruction,
92 including specific instruction in the areas of property,
93 casualty, health, and commercial insurance customer
94 ~~representative who has earned the designation of Accredited~~
95 ~~Advisor in Insurance (AAI) from the Insurance Institute of~~
96 ~~America, the designation of Certified Insurance Counselor (CIC)~~
97 ~~from the Society of Certified Insurance Service Counselors, the~~
98 ~~designation of Accredited Customer Service Representative (ACSR)~~
99 ~~from the Independent Insurance Agents of America, the~~
100 ~~designation of Certified Professional Service Representative~~
101 ~~(CPSR) from the National Foundation for Certified Professional~~
102 ~~Service Representatives, the designation of Certified Insurance~~
103 ~~Service Representative (CISR) from the Society of Certified~~
104 ~~Insurance Service Representatives, or the designation of~~
105 ~~Certified Insurance Representative (CIR) from the National~~
106 ~~Association of Christian Catastrophe Insurance Adjusters. Also,~~
107 ~~an applicant for license as a customer representative who has~~
108 ~~earned an associate degree or bachelor's degree from an~~
109 ~~accredited college or university and has completed at least 9~~
110 ~~academic hours of property and casualty insurance curriculum, or~~
111 ~~the equivalent, or has earned the designation of Certified~~
112 ~~Customer Service Representative (CCSR) from the Florida~~
113 ~~Association of Insurance Agents, or the designation of~~
114 ~~Registered Customer Service Representative (RCSR) from a~~
115 ~~regionally accredited postsecondary institution in this state,~~
116 ~~or the designation of Professional Customer Service~~

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117 ~~Representative (PCSR) from the Professional Career Institute,~~
 118 ~~whose curriculum has been approved by the department and which~~
 119 ~~includes comprehensive analysis of basic property and casualty~~
 120 ~~lines of insurance and testing at least equal to that of~~
 121 ~~standard department testing for the customer representative~~
 122 ~~license. The department shall adopt rules establishing standards~~
 123 ~~for the approval of curriculum.~~

124 (j) An applicant for license as a personal lines agent who has
 125 received a degree from an accredited institution of higher
 126 learning approved by the department, except that the applicant
 127 may be examined on pertinent provisions of this code. Qualifying
 128 degrees must indicate a minimum of 9 credit hours of insurance
 129 instruction, including specific instruction in the areas of
 130 property, casualty, and inland marine insurance. ~~resident or~~

131 (k) An applicant for license as an ~~nonresident~~ all-lines
 132 adjuster who has the designation of Accredited Claims Adjuster
 133 (ACA) from a regionally accredited postsecondary institution in
 134 this state, Associate in Claims (AIC) from the Insurance
 135 Institute of America, Professional Claims Adjuster (PCA) from
 136 the Professional Career Institute, Professional Property
 137 Insurance Adjuster (PPIA) from the HurriClaim Training Academy,
 138 Certified Adjuster (CA) from ALL LINES Training, or Certified
 139 Claims Adjuster (CCA) from ~~AE21 Incorporated the Association of~~
 140 Property and Casualty Claims Professionals whose curriculum has
 141 been approved by the department and which includes comprehensive
 142 analysis of basic property and casualty lines of insurance and
 143 testing at least equal to that of standard department testing
 144 for the all-lines adjuster license. The department shall adopt
 145 rules establishing standards for the approval of curriculum.

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146 (l) An applicant for license as a life agent who has
 147 received a degree from an accredited institution of higher
 148 learning approved by the department, except that the applicant
 149 may be examined on pertinent provisions of this code. Qualifying
 150 degrees must indicate a minimum of 9 credit hours of insurance
 151 instruction, including specific instruction in the areas of life
 152 insurance, annuities, and variable insurance products.

153 (m) An applicant for license as a health agent who has
 154 received a degree from an accredited institution of higher
 155 learning approved by the department, except that the applicant
 156 may be examined on pertinent provisions of this code. Qualifying
 157 degrees must indicate a minimum of 9 credit hours of insurance
 158 instruction, including specific instruction in the area of
 159 health insurance products.

160 (n) ~~(k)~~ An applicant qualifying for a license transfer under
 161 s. 626.292 if the applicant:

162 1. Has successfully completed the prelicensing examination
 163 requirements in the applicant's previous home state which are
 164 substantially equivalent to the examination requirements in this
 165 state, as determined by the department;

166 2. Has received the designation of chartered property and
 167 casualty underwriter (CPCU) from the American Institute for
 168 Property and Liability Underwriters and been engaged in the
 169 insurance business within the past 4 years if applying to
 170 transfer a general lines agent license; or

171 3. Has received the designation of chartered life
 172 underwriter (CLU) from the American College of Life Underwriters
 173 and been engaged in the insurance business within the past 4
 174 years if applying to transfer a life or health agent license.

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175 (o)(1) An applicant for a license as a nonresident agent if
 176 the applicant holds a comparable license in another state with
 177 similar examination requirements as this state.

178 ~~1. Has successfully completed prelicensing examination~~
 179 ~~requirements in the applicant's home state which are~~
 180 ~~substantially equivalent to the examination requirements in this~~
 181 ~~state, as determined by the department, as a requirement for~~
 182 ~~obtaining a resident license in his or her home state;~~

183 ~~2. Held a general lines agent license, life agent license,~~
 184 ~~or health agent license before a written examination was~~
 185 ~~required;~~

186 ~~3. Has received the designation of chartered property and~~
 187 ~~casualty underwriter (CPCU) from the American Institute for~~
 188 ~~Property and Liability Underwriters and has been engaged in the~~
 189 ~~insurance business within the past 4 years, if an applicant for~~
 190 ~~a nonresident license as a general lines agent; or~~

191 ~~4. Has received the designation of chartered life~~
 192 ~~underwriter (CLU) from the American College of Life Underwriters~~
 193 ~~and been in the insurance business within the past 4 years, if~~
 194 ~~an applicant for a nonresident license as a life agent or health~~
 195 ~~agent.~~

196 Section 4. Subsections (1), (2), (3), and (8) of section
 197 626.241, Florida Statutes, are amended to read:

198 626.241 Scope of examination.—

199 (1) Each examination for a license as an agent, ~~customer~~
 200 ~~representative~~, or adjuster shall be of such scope as is deemed
 201 by the department to be reasonably necessary to test the
 202 applicant's ability and competence and knowledge of the kinds of
 203 insurance and transactions to be handled under the license

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204 applied for, of the duties and responsibilities of such a
 205 licensee, and of the pertinent provisions of the laws of this
 206 state.

207 (2) Examinations given applicants for license as a general
 208 lines agent ~~or customer representative~~ shall cover all property,
 209 casualty, and surety insurances, except as provided in
 210 subsection (5) relative to limited licenses.

211 (3) Examinations given applicants for a life agent's
 212 license shall cover life insurance, annuities, and variable
 213 contracts annuities.

214 (8) An examination for licensure as a personal lines agent
 215 ~~shall consist of 100 questions~~ and shall be limited in scope to
 216 the kinds of business transacted under such license.

217 Section 5. Section 626.2817, Florida Statutes, is amended
 218 to read:

219 626.2817 Regulation of course providers, instructors, and
 220 ~~school officials, and monitor groups~~ involved in prelicensure
 221 education for insurance agents and other licensees.—

222 (1) Any course provider, instructor, or school official, ~~or~~
 223 ~~monitor group~~ must be approved by and registered with the
 224 department before offering prelicensure education courses for
 225 insurance agents and other licensees.

226 (2) The department shall adopt rules establishing standards
 227 for the approval, registration, discipline, or removal from
 228 registration of course providers, instructors, and school
 229 ~~officials, and monitor groups~~. The standards must be designed to
 230 ensure that such persons have the knowledge, competence, and
 231 integrity to fulfill the educational objectives of the
 232 prelicensure requirements of this chapter and chapter 648 and to

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233 assure that insurance agents and licensees are competent to
 234 engage in the activities authorized under the license.

235 (3) A course provider shall not grant completion credit to
 236 any student who has not completed at least 75 percent of the
 237 required course hours of a department approved prelicensure
 238 course.

239 (4) The department shall adopt rules to establish a process
 240 for determining compliance with the prelicensure requirements of
 241 this chapter and chapter 648. The department shall adopt rules
 242 prescribing the forms necessary to administer the prelicensure
 243 requirements.

244 Section 6. Subsection (1) of section 626.311, Florida
 245 Statutes, is amended to read:

246 626.311 Scope of license.—

247 (1) Except as to personal lines agents and limited
 248 licenses, a general lines agent or customer representative shall
 249 qualify for all property, marine, casualty, and surety lines
 250 except bail bonds which require a separate license under chapter
 251 648. The license of a general lines agent may also covers eever
 252 health insurance if health insurance is included in the agent's
 253 appointment by an insurer as to which the licensee is also
 254 appointed as agent for property or casualty or surety insurance.
 255 The license of a customer representative shall provide, in
 256 substance, that it covers all of such classes of insurance that
 257 his or her appointing general lines agent or agency is currently
 258 so authorized to transact under the general lines agent's
 259 license and appointments. No such license shall be issued
 260 limited to particular classes of insurance except for bail bonds
 261 which require a separate license under chapter 648 or for

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262 personal lines agents. Personal lines agents are limited to
 263 transacting business related to property and casualty insurance
 264 sold to individuals and families for noncommercial purposes.

265 Section 7. Subsections (1) through (5) of section 626.732,
 266 Florida Statutes, are amended to read:

267 626.732 Requirement as to knowledge, experience, or
 268 instruction.—

269 (1) Except as provided in subsection (4), an applicant for
 270 a license as a general lines agent, except for a chartered
 271 property and casualty underwriter (CPCU), may not be qualified
 272 or licensed unless, within the 4 years immediately preceding the
 273 date the application for license is filed with the department,
 274 the applicant has:

275 (a) Taught or successfully completed 200 hours of
 276 coursework in property, casualty, surety, health, and marine
 277 insurance approved by the department ~~classroom courses in~~
 278 ~~insurance, 3 hours of which must be on the subject matter of~~
 279 ~~ethics, at a school, college, or extension division thereof,~~
 280 ~~approved by the department;~~

281 ~~(b) Completed a correspondence course in insurance, 3 hours~~
 282 ~~of which must be on the subject matter of ethics, which is~~
 283 ~~regularly offered by accredited institutions of higher learning~~
 284 ~~in this state or extensions thereof and approved by the~~
 285 ~~department, and have at least 6 months of responsible insurance~~
 286 ~~duties as a substantially full-time bona fide employee in all~~
 287 ~~lines of property and casualty insurance set forth in the~~
 288 ~~definition of general lines agent under s. 626.015;~~

289 (b)(c) Completed at least 1 year in responsible insurance
 290 duties as a substantially full-time bona fide employee in all

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291 lines of property and casualty insurance as set forth in the
 292 definition of a general lines agent under s. 626.015, but
 293 without the education requirement described in paragraph (a) ~~or~~
 294 ~~paragraph (b); or~~

295 (c)(d) Completed at least 1 year of responsible insurance
 296 duties as a licensed and appointed customer representative,
 297 service representative, or personal lines agent ~~or limited~~
 298 ~~customer representative in commercial or personal lines of~~
 299 ~~property and casualty insurance and 40 hours of coursework~~
 300 classroom courses approved by the department covering the areas
 301 of property, casualty, surety, health, and marine insurance; ~~or~~

302 ~~(e) Completed at least 1 year of responsible insurance~~
 303 ~~duties as a licensed and appointed service representative in~~
 304 ~~commercial or personal lines of property and casualty insurance~~
 305 ~~and 80 hours of classroom courses approved by the department~~
 306 ~~covering the areas of property, casualty, surety, health, and~~
 307 ~~marine insurance.~~

308 (2) Except as provided under subsection (4), an applicant
 309 for a license as a personal lines agent, except for a chartered
 310 property and casualty underwriter (CPCU), may not be qualified
 311 or licensed unless, within the 4 years immediately preceding the
 312 date the application for license is filed with the department,
 313 the applicant has:

314 (a) Taught or successfully completed 60 hours of coursework
 315 in property, casualty, and inland marine insurance approved by
 316 the department ~~classroom courses in insurance~~, 3 hours of which
 317 must be on the subject matter of ethics, ~~at a school, college,~~
 318 ~~or extension division thereof, approved by the department. To~~
 319 ~~qualify for licensure, the applicant must complete a total of 52~~

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320 ~~hours of classroom courses in insurance;~~

321 ~~(b) Completed a correspondence course in insurance, 3 hours~~
 322 ~~of which must be on the subject matter of ethics, which is~~
 323 ~~regularly offered by accredited institutions of higher learning~~
 324 ~~in this state or extensions thereof and approved by the~~
 325 ~~department, and completed at least 3 months of responsible~~
 326 ~~insurance duties as a substantially full-time employee in the~~
 327 ~~area of property and casualty insurance sold to individuals and~~
 328 ~~families for noncommercial purposes;~~

329 (b)(e) Completed at least 6 months of responsible insurance
 330 duties as a substantially full-time employee in the area of
 331 property and casualty insurance sold to individuals and families
 332 for noncommercial purposes, but without the education
 333 requirement described in paragraph (a) ~~or paragraph (b); or~~

334 (c)(d) Completed at least 6 months of responsible insurance
 335 duties as a licensed and appointed customer representative, ~~or~~
 336 limited customer representative, or service representative in
 337 property and casualty insurance sold to individuals and families
 338 for noncommercial purposes and 20 hours of classroom courses
 339 approved by the department which are related to property and
 340 casualty insurance sold to individuals and families for
 341 noncommercial purposes;

342 ~~(e) Completed at least 6 months of responsible insurance~~
 343 ~~duties as a licensed and appointed service representative in~~
 344 ~~property and casualty insurance sold to individuals and families~~
 345 ~~for noncommercial purposes and 40 hours of classroom courses~~
 346 ~~approved by the department related to property and casualty~~
 347 ~~insurance sold to individuals and families for noncommercial~~
 348 ~~purposes; or~~

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349 ~~(f) Completed at least 3 years of responsible duties as a~~
 350 ~~licensed and appointed customer representative in property and~~
 351 ~~casualty insurance sold to individuals and families for~~
 352 ~~noncommercial purposes.~~

353 (3) If an applicant's qualifications as required under
 354 subsection (1) or subsection (2) are based in part upon periods
 355 of employment in responsible insurance duties, the applicant
 356 shall submit with the license application, ~~on a form prescribed~~
 357 ~~by the department,~~ an attestation affidavit of his or her
 358 employment employer setting forth the period of such employment,
 359 ~~that the employment was substantially full-time,~~ and giving a
 360 brief abstract of the nature of the duties performed ~~by the~~
 361 ~~applicant.~~

362 (4) An individual who was or became qualified to sit for an
 363 agent's, ~~customer representative's,~~ or adjuster's examination at
 364 or during the time he or she was employed by the department or
 365 office and who, while so employed, was employed in responsible
 366 insurance duties as a full-time bona fide employee may take an
 367 examination if application for such examination is made within 4
 368 years 90 days after the date of termination of employment with
 369 the department or office.

370 (5) ~~Classroom and correspondence~~ Courses under subsections
 371 (1) and (2) must include instruction on the subject matter of
 372 unauthorized entities engaging in the business of insurance. ~~The~~
 373 ~~scope of the topic of unauthorized entities must include the~~
 374 ~~Florida Nonprofit Multiple-Employer Welfare Arrangement Act and~~
 375 ~~the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001~~
 376 ~~et seq., as it relates to the provision of health insurance by~~
 377 ~~employers and the regulation thereof.~~

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378 Section 8. Subsections (3) and (7) of section 626.7351,
 379 Florida Statutes, are amended to read:

380 626.7351 Qualifications for customer representative's
 381 license.—The department shall not grant or issue a license as
 382 customer representative to any individual found by it to be
 383 untrustworthy or incompetent, or who does not meet each of the
 384 following qualifications:

385 (3) Within 4 ~~the 2~~ years ~~next~~ preceding the date that the
 386 application for license was filed with the department, the
 387 applicant has earned the designation of Accredited Advisor in
 388 Insurance (AAI), Associate in General Insurance (AINS), or
 389 Accredited Customer Service Representative (ACSR) from the
 390 Insurance Institute of America; the designation of Certified
 391 Insurance Counselor (CIC) from the Society of Certified
 392 Insurance Service Counselors; the designation of Certified
 393 Professional Service Representative (CPSR) from the National
 394 Foundation for CPSRs; the designation of Certified Insurance
 395 Service Representative (CISR) from the Society of Certified
 396 Insurance Service Representatives; the designation of Certified
 397 Insurance Representative (CIR) from All-Lines Training; the
 398 designation of Professional Customer Service Representative
 399 (PCSR) from the Professional Career Institute; the designation
 400 of Registered Customer Service Representative (RCSR) from a
 401 regionally accredited postsecondary institution in the state
 402 whose curriculum is approved by the department and includes
 403 comprehensive analysis of basic property and casualty lines of
 404 insurance and testing which demonstrates mastery of the subject;
 405 or a degree from an accredited institution of higher learning
 406 approved by the department when the degree includes a minimum of

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407 9 credit hours of insurance instruction, including specific
 408 instruction in the areas of property, casualty, and inland
 409 marine insurance. The department shall adopt rules establishing
 410 standards for the approval of curriculum completed a course in
 411 insurance, 3 hours of which shall be on the subject matter of
 412 ethics, approved by the department or has had at least 6 months
 413 experience in responsible insurance duties as a substantially
 414 full-time employee. Courses must include instruction on the
 415 subject matter of unauthorized entities engaging in the business
 416 of insurance. The scope of the topic of unauthorized entities
 417 shall include the Florida Nonprofit Multiple-Employer Welfare
 418 Arrangement Act and the Employee Retirement Income Security Act,
 419 29 U.S.C. ss. 1001 et seq., as such acts relate to the provision
 420 of health insurance by employers and the regulation of such
 421 insurance.

422 ~~(7) The applicant has passed any required examination for~~
 423 ~~license required under s. 626.221.~~

424 Section 9. Section 626.748, Florida Statutes, is amended to
 425 read:

426 626.748 Agent's records.—Every agent transacting any
 427 insurance policy must maintain in his or her office, or have
 428 readily accessible by electronic or photographic means, for a
 429 period of at least 5 years after policy expiration, such records
 430 of policies transacted by him or her as to enable the
 431 policyholders and department to obtain all necessary
 432 information, including daily reports, applications, change
 433 endorsements, or documents signed or initialed by the insured
 434 concerning such policies.

435 Section 10. Section 626.7851, Florida Statutes, is amended

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436 to read:
 437 626.7851 Requirement as to knowledge, experience, or
 438 instruction.—~~An~~ ~~he~~ applicant for a license as a life agent,
 439 except for a chartered life underwriter (CLU), may not shall be
 440 qualified or licensed unless, within the 4 years immediately
 441 preceding the date the application for a license is filed with
 442 the department, the applicant he or she has:

443 (1) Successfully completed 40 hours of coursework approved
 444 by the department ~~classroom~~ courses in life insurance,
 445 annuities, and variable contracts. Such coursework, 3 hours of
 446 which shall be on the subject matter of ethics, satisfactory to
 447 the department at a school or college, or extension division
 448 thereof, or other authorized course of study, approved by the
 449 department. Courses must have included include instruction on
 450 the subject matter of unauthorized entities engaging in the
 451 business of insurance and 3 hours on the subject matter of
 452 ethics, to include the Florida Nonprofit Multiple-Employer
 453 Welfare Arrangement Act and the Employee Retirement Income
 454 Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the
 455 provision of life insurance by employers to their employees and
 456 the regulation thereof;

457 (2) Successfully completed at least 60 hours of coursework
 458 approved by the department in multiple areas of insurance,
 459 including life insurance, annuities, and variable contracts.
 460 Such coursework must have included instruction on the subject
 461 matter of unauthorized entities engaging in the business of
 462 insurance and 3 hours on the subject matter of ethics;

463 (3) Earned or maintained an active designation as a
 464 Chartered Financial Consultant (ChFC) from the American College

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465 ~~of Financial Services or a Fellow, Life Management Institute~~
 466 ~~(FLMI) from the Life Management Institute a correspondence~~
 467 ~~course in insurance, 3 hours of which shall be on the subject~~
 468 ~~matter of ethics, satisfactory to the department and regularly~~
 469 ~~offered by accredited institutions of higher learning in this~~
 470 ~~state or by independent programs of study, approved by the~~
 471 ~~department. Courses must include instruction on the subject~~
 472 ~~matter of unauthorized entities engaging in the business of~~
 473 ~~insurance, to include the Florida Nonprofit Multiple-Employer~~
 474 ~~Welfare Arrangement Act and the Employee Retirement Income~~
 475 ~~Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the~~
 476 ~~provision of life insurance by employers to their employees and~~
 477 ~~the regulation thereof;~~

478 ~~(4)(3) Held an active license in life, or life and health,~~
 479 ~~insurance in another state. This provision may not be used~~
 480 ~~utilized unless the other state grants reciprocal treatment to~~
 481 ~~licensees formerly licensed in Florida; or~~

482 ~~(5)(4) Been employed by the department or office for at~~
 483 ~~least 1 year, full time in life or life and health insurance~~
 484 ~~regulatory matters and who was not terminated for cause, and~~
 485 ~~application for examination is made within 4 years 90 days after~~
 486 ~~the date of termination of his or her employment with the~~
 487 ~~department or office.~~

488 Section 11. Section 626.8311, Florida Statutes, is amended
 489 to read:

490 626.8311 Requirement as to knowledge, experience, or
 491 instruction.—~~An~~ ~~no~~ applicant for a license as a health agent,
 492 except for a chartered life underwriter (CLU), may not shall be
 493 qualified or licensed unless, within the 4 years immediately

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494 preceding the date the application for license is filed with the
 495 department, the applicant he or she has:

496 (1) Successfully completed 40 hours of coursework approved
 497 by the department classroom courses in health insurance, 3 hours
 498 of which must have been shall be on the subject matter of
 499 ethics, ~~satisfactory to the department at a school or college,~~
 500 ~~or extension division thereof, or other authorized course of~~
 501 ~~study, approved by the department. Such coursework Courses~~ must
 502 have included include instruction on the subject matter of
 503 unauthorized entities engaging in the business of insurance, to
 504 include the Florida Nonprofit Multiple-Employer Welfare
 505 Arrangement Act and the Employee Retirement Income Security Act,
 506 29 U.S.C. ss. 1001 et seq., as it relates to the provision of
 507 health insurance by employers to their employees and the
 508 regulation thereof;

509 (2) Successfully completed at least 60 hours of coursework
 510 approved by the department in multiple areas of insurance,
 511 including health insurance. Such coursework must have included
 512 instruction on the subject matter of unauthorized entities
 513 engaging in the business of insurance and 3 hours on the subject
 514 matter of ethics;

515 (3) Earned or maintained an active designation as a
 516 Registered Health Underwriter (RHU), Chartered Healthcare
 517 Consultant (ChHC), or Registered Employee Benefits Consultant
 518 (REBC) from the American College of Financial Services; a
 519 Certified Employee Benefit Specialist (CEBS) from the Wharton
 520 School of the University of Pennsylvania; or a Health Insurance
 521 Associate (HIA) from America's Health Insurance Plans; a
 522 ~~correspondence course in insurance, 3 hours of which shall be or~~

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523 ~~the subject matter of ethics, satisfactory to the department and~~
 524 ~~regularly offered by accredited institutions of higher learning~~
 525 ~~in this state or by independent programs of study, approved by~~
 526 ~~the department. Courses must include instruction on the subject~~
 527 ~~matter of unauthorized entities engaging in the business of~~
 528 ~~insurance, to include the Florida Nonprofit Multiple Employer~~
 529 ~~Welfare Arrangement Act and the Employee Retirement Income~~
 530 ~~Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the~~
 531 ~~provision of health insurance by employers to their employees~~
 532 ~~and the regulation thereof;~~

533 ~~(4)(3)~~ Held an active license in health, ~~or life and~~
 534 ~~health,~~ insurance in another state. This provision may not be
 535 utilized unless the other state grants reciprocal treatment to
 536 licensees formerly licensed in Florida; or

537 ~~(5)(4)~~ Been employed by the department or office for at
 538 least 1 year, full time in health insurance regulatory matters
 539 and who was not terminated for cause, and application for
 540 examination is made within 4 years ~~90 days~~ after the date of
 541 termination of his or her employment with the department or
 542 office.

543 Section 12. Paragraph (o) of subsection (1) of section
 544 626.9541, Florida Statutes, is amended to read:

545 626.9541 Unfair methods of competition and unfair or
 546 deceptive acts or practices defined.—

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

550 (o) *Illegal dealings in premiums; excess or reduced charges*
 551 *for insurance.*—

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552 1. Knowingly collecting any sum as a premium or charge for
 553 insurance, which is not then provided, or is not in due course
 554 to be provided, subject to acceptance of the risk by the
 555 insurer, by an insurance policy issued by an insurer as
 556 permitted by this code.

557 2. Knowingly collecting as a premium or charge for
 558 insurance any sum in excess of or less than the premium or
 559 charge applicable to such insurance, in accordance with the
 560 applicable classifications and rates as filed with and approved
 561 by the office, and as specified in the policy; or, in cases when
 562 classifications, premiums, or rates are not required by this
 563 code to be so filed and approved, premiums and charges collected
 564 from a Florida resident in excess of or less than those
 565 specified in the policy and as fixed by the insurer.

566 Notwithstanding any other provision of law, this provision shall
 567 not be deemed to prohibit the charging and collection, by
 568 surplus lines agents licensed under part VIII of this chapter,
 569 of the amount of applicable state and federal taxes, or fees as
 570 authorized by s. 626.916(4), in addition to the premium required
 571 by the insurer or the charging and collection, by licensed
 572 agents, of the exact amount of any discount or other such fee
 573 charged by a credit card facility in connection with the use of
 574 a credit card, as authorized by subparagraph (q)3., in addition
 575 to the premium required by the insurer. This subparagraph shall
 576 not be construed to prohibit collection of a premium for a
 577 universal life or a variable or indeterminate value insurance
 578 policy made in accordance with the terms of the contract.

579 3.a. Imposing or requesting an additional premium for a
 580 policy of motor vehicle liability, personal injury protection,

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581 medical payment, or collision insurance or any combination
 582 thereof or refusing to renew the policy solely because the
 583 insured was involved in a motor vehicle accident unless the
 584 insurer's file contains information from which the insurer in
 585 good faith determines that the insured was substantially at
 586 fault in the accident.

587 b. An insurer which imposes and collects such a surcharge
 588 or which refuses to renew such policy shall, in conjunction with
 589 the notice of premium due or notice of nonrenewal, notify the
 590 named insured that he or she is entitled to reimbursement of
 591 such amount or renewal of the policy under the conditions listed
 592 below and will subsequently reimburse him or her or renew the
 593 policy, if the named insured demonstrates that the operator
 594 involved in the accident was:

595 (I) Lawfully parked;

596 (II) Reimbursed by, or on behalf of, a person responsible
 597 for the accident or has a judgment against such person;

598 (III) Struck in the rear by another vehicle headed in the
 599 same direction and was not convicted of a moving traffic
 600 violation in connection with the accident;

601 (IV) Hit by a "hit-and-run" driver, if the accident was
 602 reported to the proper authorities within 24 hours after
 603 discovering the accident;

604 (V) Not convicted of a moving traffic violation in
 605 connection with the accident, but the operator of the other
 606 automobile involved in such accident was convicted of a moving
 607 traffic violation;

608 (VI) Finally adjudicated not to be liable by a court of
 609 competent jurisdiction;

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610 (VII) In receipt of a traffic citation which was dismissed
 611 or nolle prossed; or

612 (VIII) Not at fault as evidenced by a written statement
 613 from the insured establishing facts demonstrating lack of fault
 614 which are not rebutted by information in the insurer's file from
 615 which the insurer in good faith determines that the insured was
 616 substantially at fault.

617 c. In addition to the other provisions of this
 618 subparagraph, an insurer may not fail to renew a policy if the
 619 insured has had only one accident in which he or she was at
 620 fault within the current 3-year period. However, an insurer may
 621 nonrenew a policy for reasons other than accidents in accordance
 622 with s. 627.728. This subparagraph does not prohibit nonrenewal
 623 of a policy under which the insured has had three or more
 624 accidents, regardless of fault, during the most recent 3-year
 625 period.

626 4. Imposing or requesting an additional premium for, or
 627 refusing to renew, a policy for motor vehicle insurance solely
 628 because the insured committed a noncriminal traffic infraction
 629 as described in s. 318.14 unless the infraction is:

630 a. A second infraction committed within an 18-month period,
 631 or a third or subsequent infraction committed within a 36-month
 632 period.

633 b. A violation of s. 316.183, when such violation is a
 634 result of exceeding the lawful speed limit by more than 15 miles
 635 per hour.

636 5. Upon the request of the insured, the insurer and
 637 licensed agent shall supply to the insured the complete proof of
 638 fault or other criteria which justifies the additional charge or

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639 cancellation.

640 6. No insurer shall impose or request an additional premium
641 for motor vehicle insurance, cancel or refuse to issue a policy,
642 or refuse to renew a policy because the insured or the applicant
643 is a handicapped or physically disabled person, so long as such
644 handicap or physical disability does not substantially impair
645 such person's mechanically assisted driving ability.

646 7. No insurer may cancel or otherwise terminate any
647 insurance contract or coverage, or require execution of a
648 consent to rate endorsement, during the stated policy term for
649 the purpose of offering to issue, or issuing, a similar or
650 identical contract or coverage to the same insured with the same
651 exposure at a higher premium rate or continuing an existing
652 contract or coverage with the same exposure at an increased
653 premium.

654 8. No insurer may issue a nonrenewal notice on any
655 insurance contract or coverage, or require execution of a
656 consent to rate endorsement, for the purpose of offering to
657 issue, or issuing, a similar or identical contract or coverage
658 to the same insured at a higher premium rate or continuing an
659 existing contract or coverage at an increased premium without
660 meeting any applicable notice requirements.

661 9. No insurer shall, with respect to premiums charged for
662 motor vehicle insurance, unfairly discriminate solely on the
663 basis of age, sex, marital status, or scholastic achievement.

664 10. Imposing or requesting an additional premium for motor
665 vehicle comprehensive or uninsured motorist coverage solely
666 because the insured was involved in a motor vehicle accident or
667 was convicted of a moving traffic violation.

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668 11. No insurer shall cancel or issue a nonrenewal notice on
669 any insurance policy or contract without complying with any
670 applicable cancellation or nonrenewal provision required under
671 the Florida Insurance Code.

672 12. No insurer shall impose or request an additional
673 premium, cancel a policy, or issue a nonrenewal notice on any
674 insurance policy or contract because of any traffic infraction
675 when adjudication has been withheld and no points have been
676 assessed pursuant to s. 318.14(9) and (10). However, this
677 subparagraph does not apply to traffic infractions involving
678 accidents in which the insurer has incurred a loss due to the
679 fault of the insured.

680 Section 13. Section 627.4553, Florida Statutes, is amended
681 to read:

682 627.4553 Recommendations to surrender.—If an insurance
683 agent recommends the surrender of an annuity or life insurance
684 policy containing a cash value and does not recommend that the
685 proceeds from the surrender be used to fund or purchase another
686 annuity or life insurance policy, before execution of the
687 surrender, the insurance agent, ~~or insurance company if no agent~~
688 is involved, shall provide written, ~~on a form that satisfies~~
689 ~~the requirements of the rule adopted by the department,~~
690 information relating to the annuity or policy to be surrendered.
691 Such information shall include, but is not limited to, the
692 amount of any surrender charge, the loss of any minimum interest
693 rate guarantees, the possibility ~~amount~~ of ~~any~~ tax consequences
694 ~~resulting from the transaction~~, the amount of any forfeited
695 death benefit, and the value of any other investment performance
696 guarantees being forfeited as a result of the transaction. The

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697 agent shall maintain a copy of the information and the date that
698 the information was provided to the owner. This section also
699 applies to a person performing insurance agent activities
700 pursuant to an exemption from licensure under this part.

701 Section 14. Subsection (2) of section 631.341, Florida
702 Statutes, is amended to read:

703 631.341 Notice of insolvency to policyholders by insurer,
704 general agent, or agent.—

705 (2) Unless, within 15 days subsequent to the date of such
706 notice, all agents referred to in subsection (1) have either
707 replaced or reinsured in a solvent authorized insurer the
708 insurance coverages placed by or through such agent in the
709 delinquent insurer, such agents shall then, by registered or
710 certified mail, or by e-mail with delivery receipt required,
711 send to the last known address of any policyholder a written
712 notice of the insolvency of the delinquent insurer.

713 Section 15. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

1222

Bill Number (if applicable)

442200

Amendment Barcode (if applicable)

Topic INSURANCE AGENTS

Name KYLE ULRICH

Job Title SVP

Address 3159 SHAMROCK S.

Street

Phone 566-4204

TALLAHASSEE

FL

32309

City

State

Zip

Email KULRICH@FAIA.COM

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

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

Representing FL ASSOC. OF INSURANCE AGENTS

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
APPEARANCE RECORD

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

4-15-15

Meeting Date

1222

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N. Monroe St

Phone 413-2863

Street

Tallahassee FL 32399

City

State

Zip

Email Elizabeth.Boyd@myfloridacfo.com

Speaking: For Against Information

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

Representing CFO Atwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/15/15
Meeting Date

1222
Bill Number (if applicable)

Topic INSURANCE AGENTS

Amendment Barcode (if applicable)

Name KYLE ULRICH

Job Title SVP

Address 3159 SHAMROCK S.
Street

Phone 566-4204

TALLAHASSEE FL 32309
City State Zip

Email KULRICH@FAIA.COM

Speaking: For Against Information

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

Representing FL ASSOC. OF INSURANCE AGENTS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 3, 2015

Dear Chair Flores,

I would like to respectfully request that **Senate Bill #1222**, relating to Division of Insurance Agent and Agency Services, be placed on the Fiscal Policy Committee Agenda at your earliest possible convenience. The committee on Fiscal Policy is the third and final committee of reference for Senate Bill #1222.

Any questions regarding this legislation, please do not hesitate to contact me or my staff.

Thank you in advance for your consideration.

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

Senator Garrett Richter
Florida Senate, District 23

cc: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (2), (3), and (7) of section
468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for
certification; additional categories of certification.-

(2) A person may take the examination for certification as
a building code inspector or plans examiner pursuant to this
part if the person:



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- 12 (a) Is at least 18 years of age.
- 13 (b) Is of good moral character.
- 14 (c) Meets eligibility requirements according to one of the
15 following criteria:
- 16 1. Demonstrates 5 years' combined experience in the field
17 of construction or a related field, building code inspection, or
18 plans review corresponding to the certification category sought;
- 19 2. Demonstrates a combination of postsecondary education in
20 the field of construction or a related field and experience
21 which totals 4 years, with at least 1 year of such total being
22 experience in construction, building code inspection, or plans
23 review;
- 24 3. Demonstrates a combination of technical education in the
25 field of construction or a related field and experience which
26 totals 4 years, with at least 1 year of such total being
27 experience in construction, building code inspection, or plans
28 review;
- 29 4. Currently holds a standard certificate ~~as~~ issued by the
30 board, or a firesafety ~~fire safety~~ inspector license issued
31 pursuant to chapter 633, has a minimum of 3 ~~5~~ years' verifiable
32 full-time experience in inspection or plan review, and
33 satisfactorily completes a building code inspector or plans
34 examiner training program that provides at least 100 hours but
35 not more ~~of not less~~ than 200 hours of cross-training in the
36 certification category sought. The board shall establish by rule
37 criteria for the development and implementation of the training
38 programs. The board shall accept all classroom training offered
39 by an approved provider if the content substantially meets the
40 intent of the classroom component of the training program; ~~or~~



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41 5. Demonstrates a combination of the completion of an
42 approved training program in the field of building code
43 inspection or plan review and a minimum of 2 years' experience
44 in the field of building code inspection, plan review, fire code
45 inspections, and fire plans review of new buildings as a
46 firesafety inspector certified under s. 633.216, or
47 construction. The approved training portion of this requirement
48 shall include proof of satisfactory completion of a training
49 program that provides at least 200 hours but not more ~~of not~~
50 ~~less~~ than 300 hours of cross-training which is approved by the
51 board in the chosen category of building code inspection or plan
52 review in the certification category sought with at least ~~not~~
53 ~~less than~~ 20 hours but not more than 30 hours of instruction in
54 state laws, rules, and ethics relating to professional standards
55 of practice, duties, and responsibilities of a
56 certificateholder. The board shall coordinate with the Building
57 Officials Association of Florida, Inc., to establish by rule the
58 development and implementation of the training program. However,
59 the board shall accept all classroom training offered by an
60 approved provider if the content substantially meets the intent
61 of the classroom component of the training program; or

62 6. Currently holds a standard certificate issued by the
63 board or a firesafety inspector license issued pursuant to
64 chapter 633 and:

65 a. Has at least 5 years' verifiable full-time experience as
66 an inspector or plans examiner in a standard certification
67 category currently held or has a minimum of 5 years' verifiable
68 full-time experience as a firesafety inspector licensed pursuant
69 to chapter 633; and



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70 b. Satisfactorily completes a building code inspector or
71 plans examiner classroom training course or program that
72 provides at least 200 but not more than 300 hours in the
73 certification category sought, except for one-family and two-
74 family dwelling training programs that are required to provide
75 at least 500 but not more than 800 hours of training as
76 prescribed by the board. The board shall establish by rule
77 criteria for the development and implementation of classroom
78 training courses and programs in each certification category.

79 (3) A person may take the examination for certification as
80 a building code administrator pursuant to this part if the
81 person:

82 (a) Is at least 18 years of age.

83 (b) Is of good moral character.

84 (c) Meets eligibility requirements according to one of the
85 following criteria:

86 1. Demonstrates 10 years' combined experience as an
87 architect, engineer, plans examiner, building code inspector,
88 registered or certified contractor, or construction
89 superintendent, with at least 5 years of such experience in
90 supervisory positions; or

91 2. Demonstrates a combination of postsecondary education in
92 the field of construction or related field, no more than 5 years
93 of which may be applied, and experience as an architect,
94 engineer, plans examiner, building code inspector, registered or
95 certified contractor, or construction superintendent which
96 totals 10 years, with at least 5 years of such total being
97 experience in supervisory positions. In addition, the applicant
98 must have completed training consisting of at least 20 hours but



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99 not more than 30 hours of instruction in state laws, rules, and
100 ethics relating to professional standards of practice, duties,
101 and responsibilities of a certificateholder.

102 (7) (a) The board shall ~~may~~ provide for the issuance of
103 provisional certificates valid for 1 year, as specified by board
104 rule, to any newly employed or promoted building code inspector
105 or plans examiner who meets the eligibility requirements
106 described in subsection (2) and any newly employed or promoted
107 building code administrator who meets the eligibility
108 requirements described in subsection (3). The provisional
109 license may be renewed by the board for just cause; however, a
110 provisional license is not valid for a period longer than 3
111 years.

112 (b) A ~~No~~ building code administrator, plans examiner, or
113 building code inspector may not have a provisional certificate
114 extended beyond the specified period by renewal or otherwise.

115 (c) The board shall ~~may~~ provide for appropriate levels of
116 provisional certificates and may issue these certificates with
117 such special conditions or requirements relating to the place of
118 employment of the person holding the certificate, the
119 supervision of such person on a consulting or advisory basis, or
120 other matters as the board may deem necessary to protect the
121 public safety and health.

122 (d) A newly employed or hired person may perform the duties
123 of a plans examiner or building code inspector for 120 days if a
124 provisional certificate application has been submitted if such
125 person is under the direct supervision of a certified building
126 code administrator who holds a standard certification and who
127 has found such person qualified for a provisional certificate.



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128 Direct supervision and the determination of qualifications may
129 also be provided by a building code administrator who holds a
130 limited or provisional certificate in a county having a
131 population of fewer than 75,000 and in a municipality located
132 within such county.

133 Section 2. Subsection (5) of section 468.627, Florida
134 Statutes, is amended to read:

135 468.627 Application; examination; renewal; fees.—

136 (5) The certificateholder shall provide proof, in a form
137 established by board rule, that the certificateholder has
138 completed at least 14 classroom hours of at least 50 minutes
139 each of continuing education courses during each biennium since
140 the issuance or renewal of the certificate, including code-
141 related training ~~the specialized or advanced coursework approved~~
142 ~~by the Florida Building Commission,~~ as part of the building code
143 training program established pursuant to s. 553.841, appropriate
144 to the licensing category sought. A minimum of 3 of the required
145 14 classroom hours must be on state law, rules, and ethics
146 relating to professional standards of practice, duties, and
147 responsibilities of the certificateholder. The board shall by
148 rule establish criteria for approval of continuing education
149 courses and providers, and may by rule establish criteria for
150 accepting alternative nonclassroom continuing education on an
151 hour-for-hour basis.

152 Section 3. Section 471.0195, Florida Statutes, is amended
153 to read:

154 471.0195 Florida Building Code training for engineers.—All
155 licensees actively participating in the design of engineering
156 works or systems in connection with buildings, structures, or



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157 facilities and systems covered by the Florida Building Code
158 shall take continuing education courses and submit proof to the
159 board, at such times and in such manner as established by the
160 board by rule, that the licensee has completed any specialized
161 or code-related training ~~advanced courses~~ on any portion of the
162 Florida Building Code applicable to the licensee's area of
163 practice. The board shall record reported continuing education
164 courses on a system easily accessed by code enforcement
165 jurisdictions for evaluation when determining license status for
166 purposes of processing design documents. Local jurisdictions
167 shall be responsible for notifying the board when design
168 documents are submitted for building construction permits by
169 persons who are not in compliance with this section. The board
170 shall take appropriate action as provided by its rules when such
171 noncompliance is determined to exist.

172 Section 4. Subsection (5) of section 481.215, Florida
173 Statutes, is amended to read:

174 481.215 Renewal of license.—

175 (5) The board shall require, by rule adopted pursuant to
176 ss. 120.536(1) and 120.54, a specified number of hours in
177 specialized or code-related training ~~advanced courses, approved~~
178 ~~by the Florida Building Commission,~~ on any portion of the
179 Florida Building Code, adopted pursuant to part IV of chapter
180 553, relating to the licensee's respective area of practice.

181 Section 5. Subsection (5) of section 481.313, Florida
182 Statutes, is amended to read:

183 481.313 Renewal of license.—

184 (5) The board shall require, by rule adopted pursuant to
185 ss. 120.536(1) and 120.54, a specified number of hours in



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186 specialized or code-related training ~~advanced courses, approved~~
187 ~~by the Florida Building Commission,~~ on any portion of the
188 Florida Building Code, adopted pursuant to part IV of chapter
189 553, relating to the licensee's respective area of practice.

190 Section 6. Subsection (23) is added to section 489.103,
191 Florida Statutes, to read:

192 489.103 Exemptions.—This part does not apply to:

193 (23) An employee of an apartment community or apartment
194 community management company who makes minor repairs to existing
195 water heaters or to existing heating, venting, and air-
196 conditioning systems, if:

197 (a) The employee:

198 1. Does not hold himself or herself or his or her employer
199 out to be licensed or qualified by a licensee;

200 2. Does not perform any acts outside the scope of this
201 exemption which constitute contracting;

202 3. Receives compensation from and is under the supervision
203 and control of an employer who regularly deducts the FICA and
204 withholding tax and who provides workers' compensation in the
205 appropriate classification for the work actually performed, as
206 prescribed by law; and

207 4. Prior to performing any work under this exemption, holds
208 a current certificate for apartment maintenance technicians
209 issued by the National Apartment Association and accredited by
210 the American National Standards Institute. Requirements for
211 obtaining such certificate must include at least:

212 a. One year of apartment or rental housing maintenance
213 experience; and

214 b. Successful completion of at least 90 hours of courses or



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215 online content that covers electrical maintenance and repair;
216 plumbing maintenance and repair; heating, venting, or air-
217 conditioning system maintenance and repair; appliance
218 maintenance and repair; and interior and exterior maintenance
219 and repair.

220 (b) The apartment community or apartment community
221 management company indemnifies and holds harmless for any injury
222 or failure of any equipment or system, subject to this
223 exemption, the licensed contractor who performed the
224 installation or any associated maintenance, modification, or
225 repair and the manufacturer of any equipment.

226 (c) The equipment:

227 1. Is already installed on the property owned by the
228 apartment community or managed by the apartment community
229 management company;

230 2. Is not being modified except to replace components
231 necessary to return the equipment to its original condition, and
232 the partial disassembly associated therewith;

233 3. Must be a type of equipment commonly installed in
234 similar locations; and

235 4. Must be repaired with new parts that are functionally
236 identical to the parts being replaced.

237 (d) An individual repair does not involve replacement parts
238 that cost more than \$1,000. An individual repair may not be so
239 extensive as to be a functional replacement of the water heater
240 or the existing heating, venting, or air-conditioning system
241 being repaired.

242 (e) The property owned by the apartment community or
243 managed by the apartment community management company includes



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244 at least 100 apartments.

245 Section 7. Paragraph (m) of subsection (3) of section
246 489.105, Florida Statutes, is amended to read:

247 489.105 Definitions.—As used in this part:

248 (3) "Contractor" means the person who is qualified for, and
249 is only responsible for, the project contracted for and means,
250 except as exempted in this part, the person who, for
251 compensation, undertakes to, submits a bid to, or does himself
252 or herself or by others construct, repair, alter, remodel, add
253 to, demolish, subtract from, or improve any building or
254 structure, including related improvements to real estate, for
255 others or for resale to others; and whose job scope is
256 substantially similar to the job scope described in one of the
257 paragraphs of this subsection. For the purposes of regulation
258 under this part, the term "demolish" applies only to demolition
259 of steel tanks more than 50 feet in height; towers more than 50
260 feet in height; other structures more than 50 feet in height;
261 and all buildings or residences. Contractors are subdivided into
262 two divisions, Division I, consisting of those contractors
263 defined in paragraphs (a)-(c), and Division II, consisting of
264 those contractors defined in paragraphs (d)-(q):

265 (m) "Plumbing contractor" means a contractor whose services
266 are unlimited in the plumbing trade and includes contracting
267 business consisting of the execution of contracts requiring the
268 experience, financial means, knowledge, and skill to install,
269 maintain, repair, alter, extend, or, if not prohibited by law,
270 design plumbing. A plumbing contractor may install, maintain,
271 repair, alter, extend, or, if not prohibited by law, design the
272 following without obtaining an additional local regulatory



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273 license, certificate, or registration: sanitary drainage or
274 storm drainage facilities, water and sewer plants and
275 substations, venting systems, public or private water supply
276 systems, septic tanks, drainage and supply wells, swimming pool
277 piping, irrigation systems, and solar heating water systems and
278 all appurtenances, apparatus, or equipment used in connection
279 therewith, including boilers and pressure process piping and
280 including the installation of water, natural gas, liquefied
281 petroleum gas and related venting, and storm and sanitary sewer
282 lines. The scope of work of the plumbing contractor also
283 includes the design, if not prohibited by law, and installation,
284 maintenance, repair, alteration, or extension of air-piping,
285 vacuum line piping, oxygen line piping, nitrous oxide piping,
286 and all related medical gas systems; fire line standpipes and
287 fire sprinklers if authorized by law; ink and chemical lines;
288 fuel oil and gasoline piping and tank and pump installation,
289 except bulk storage plants; and pneumatic control piping
290 systems, all in a manner that complies with all plans,
291 specifications, codes, laws, and regulations applicable. The
292 scope of work of the plumbing contractor applies to private
293 property and public property, including any excavation work
294 incidental thereto, and includes the work of the specialty
295 plumbing contractor. Such contractor shall subcontract, with a
296 qualified contractor in the field concerned, all other work
297 incidental to the work but which is specified as being the work
298 of a trade other than that of a plumbing contractor. This
299 definition does not limit the scope of work of any specialty
300 contractor certified pursuant to s. 489.113(6), and does not
301 require certification or registration under this part for a



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302 category I liquefied petroleum gas dealer, LP gas installer, or
303 specialty installer who is licensed under chapter 527 or an ~~of~~
304 any authorized employee of a public natural gas utility or of a
305 private natural gas utility regulated by the Public Service
306 Commission when disconnecting and reconnecting water lines in
307 the servicing or replacement of an existing water heater. A
308 plumbing contractor may perform drain cleaning and clearing and
309 install or repair rainwater catchment systems; however, a
310 mandatory licensing requirement is not established for the
311 performance of these specific services.

312 Section 8. Paragraph (b) of subsection (4) of section
313 489.115, Florida Statutes, is amended to read:

314 489.115 Certification and registration; endorsement;
315 reciprocity; renewals; continuing education.—

316 (4)

317 (b)1. Each certificateholder or registrant shall provide
318 proof, in a form established by rule of the board, that the
319 certificateholder or registrant has completed at least 14
320 classroom hours of at least 50 minutes each of continuing
321 education courses during each biennium since the issuance or
322 renewal of the certificate or registration. The board shall
323 establish by rule that a portion of the required 14 hours must
324 deal with the subject of workers' compensation, business
325 practices, workplace safety, and, for applicable licensure
326 categories, wind mitigation methodologies, and 1 hour of which
327 must deal with laws and rules. The board shall by rule establish
328 criteria for the approval of continuing education courses and
329 providers, including requirements relating to the content of
330 courses and standards for approval of providers, and may by rule



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331 establish criteria for accepting alternative nonclassroom
332 continuing education on an hour-for-hour basis. The board shall
333 prescribe by rule the continuing education, if any, which is
334 required during the first biennium of initial licensure. A
335 person who has been licensed for less than an entire biennium
336 must not be required to complete the full 14 hours of continuing
337 education.

338 2. In addition, the board may approve specialized
339 continuing education courses on compliance with the wind
340 resistance provisions for one and two family dwellings contained
341 in the Florida Building Code and any alternate methodologies for
342 providing such wind resistance which have been approved for use
343 by the Florida Building Commission. Division I
344 certificateholders or registrants who demonstrate proficiency
345 upon completion of such specialized courses may certify plans
346 and specifications for one and two family dwellings to be in
347 compliance with the code or alternate methodologies, as
348 appropriate, except for dwellings located in floodways or
349 coastal hazard areas as defined in ss. 60.3D and E of the
350 National Flood Insurance Program.

351 3. The board shall require, by rule adopted pursuant to ss.
352 120.536(1) and 120.54, a specified number of hours in
353 specialized or code-related training ~~advanced module courses,~~
354 ~~approved by the Florida Building Commission,~~ on any portion of
355 the Florida Building Code, adopted pursuant to part IV of
356 chapter 553, relating to the contractor's respective discipline.

357 Section 9. Subsections (2) and (3) of section 489.1401,
358 Florida Statutes, are amended to read:

359 489.1401 Legislative intent.-



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360 (2) It is the intent of the Legislature that the sole
361 purpose of the Florida Homeowners' Construction Recovery Fund is
362 to compensate an ~~any~~ aggrieved claimant who contracted for the
363 construction or improvement of the homeowner's residence located
364 within this state and who has obtained a final judgment in a ~~any~~
365 court of competent jurisdiction, was awarded restitution by the
366 Construction Industry Licensing Board, or received an award in
367 arbitration against a licensee on grounds of financial
368 mismanagement or misconduct, abandoning a construction project,
369 or making a false statement with respect to a project. Such
370 grievance must arise ~~and arising~~ directly out of a ~~any~~
371 transaction conducted when the judgment debtor was licensed and
372 must involve an act performed ~~any of the activities~~ enumerated
373 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence~~.

374 (3) It is the intent of the Legislature that Division I and
375 Division II contractors set apart funds for the specific
376 objective of participating in the fund.

377 Section 10. Paragraphs (d), (i), (k), and (l) of subsection
378 (1) of section 489.1402, Florida Statutes, are amended to read:

379 489.1402 Homeowners' Construction Recovery Fund;
380 definitions.—

381 (1) The following definitions apply to ss. 489.140-489.144:

382 (d) "Contractor" means a Division I or Division II
383 contractor performing his or her respective services described
384 in s. 489.105(3)(a)-(g) ~~s. 489.105(3)(a)-(e)~~.

385 (i) "Residence" means a single-family residence, an
386 individual residential condominium or cooperative unit, or a
387 residential building containing not more than two residential
388 units in which the owner contracting for the improvement is



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389 residing or will reside 6 months or more each calendar year upon
390 completion of the improvement.

391 (k) "Same transaction" means a contract, or a ~~any~~ series of
392 contracts, between a claimant and a contractor or qualified
393 business, when such contract or contracts involve the same
394 property or contiguous properties and are entered into either at
395 one time or serially.

396 (l) "Valid and current license," for the purpose of s.
397 489.141(2) (d), means a ~~any~~ license issued pursuant to this part
398 to a licensee, including a license in an active, inactive,
399 delinquent, or suspended status.

400 Section 11. Subsections (1) and (2) of section 489.141,
401 Florida Statutes, are amended to read:

402 489.141 Conditions for recovery; eligibility.-

403 (1) A ~~Any~~ claimant is eligible to seek recovery from the
404 recovery fund after making ~~having made~~ a claim and exhausting
405 the limits of any available bond, cash bond, surety, guarantee,
406 warranty, letter of credit, or policy of insurance if, ~~provided~~
407 ~~that~~ each of the following conditions is satisfied:

408 (a) The claimant has received a final judgment in a court
409 of competent jurisdiction in this state or has received an award
410 in arbitration or the Construction Industry Licensing Board has
411 issued a final order directing the licensee to pay restitution
412 to the claimant. The board may waive this requirement if:

413 1. The claimant is unable to secure a final judgment
414 against the licensee due to the death of the licensee; or

415 2. The claimant has sought to have assets involving the
416 transaction that gave rise to the claim removed from the
417 bankruptcy proceedings so that the matter might be heard in a



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418 court of competent jurisdiction in this state and, after due
419 diligence, the claimant is precluded by action of the bankruptcy
420 court from securing a final judgment against the licensee.

421 (b) The judgment, award, or restitution is based upon a
422 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

423 (c) The violation was committed by a licensee.

424 (d) The judgment, award, or restitution order specifies the
425 actual damages suffered as a consequence of such violation.

426 (e) The contract was executed and the violation occurred on
427 or after July 1, 1993, and provided that:

428 1. The claimant has caused to be issued a writ of execution
429 upon such judgment, and the officer executing the writ has made
430 a return showing that no personal or real property of the
431 judgment debtor or licensee liable to be levied upon in
432 satisfaction of the judgment can be found or that the amount
433 realized on the sale of the judgment debtor's or licensee's
434 property pursuant to such execution was insufficient to satisfy
435 the judgment;

436 2. If the claimant is unable to comply with subparagraph 1.
437 for a valid reason to be determined by the board, the claimant
438 has made all reasonable searches and inquiries to ascertain
439 whether the judgment debtor or licensee is possessed of real or
440 personal property or other assets subject to being sold or
441 applied in satisfaction of the judgment and by his or her search
442 has discovered no property or assets or has discovered property
443 and assets and has taken all necessary action and proceedings
444 for the application thereof to the judgment but the amount
445 thereby realized was insufficient to satisfy the judgment; and

446 3. The claimant has made a diligent attempt, as defined by



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447 board rule, to collect the restitution awarded by the board.

448 (f) A claim for recovery is made within 1 year after the
449 conclusion of any civil, criminal, or administrative action or
450 award in arbitration based on the act. This paragraph applies to
451 any claim filed with the board after October 1, 1998.

452 (g) Any amounts recovered by the claimant from the judgment
453 debtor or licensee, or from any other source, have been applied
454 to the damages awarded by the court or the amount of restitution
455 ordered by the board.

456 (h) The claimant is not a person who is precluded by this
457 act from making a claim for recovery.

458 (2) A claimant is not qualified to make a claim for
459 recovery from the recovery fund⁷ if:

460 (a) The claimant is the spouse of the judgment debtor or
461 licensee or a personal representative of such spouse;

462 (b) The claimant is a licensee who acted as the contractor
463 in the transaction that ~~which~~ is the subject of the claim;

464 (c) The claim is based upon a construction contract in
465 which the licensee was acting with respect to the property owned
466 or controlled by the licensee;

467 (d) The claim is based upon a construction contract in
468 which the contractor did not hold a valid and current license at
469 the time of the construction contract;

470 (e) The claimant was associated in a business relationship
471 with the licensee other than the contract at issue; or

472 ~~(f) The claimant has suffered damages as the result of~~
473 ~~making improper payments to a contractor as defined in part I of~~
474 ~~chapter 713; or~~

475 (f)(g) The claimant has entered into a contract ~~contracted~~



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476 with a licensee to perform a scope of work described in s.
477 489.105(3)(d)-(g) before July 1, 2015 ~~s. 489.105(3)(d)-(p)~~.

478 Section 12. Subsection (1) of section 489.1425, Florida
479 Statutes, is amended to read:

480 489.1425 Duty of contractor to notify residential property
481 owner of recovery fund.—

482 (1) Each ~~Any~~ agreement or contract for repair, restoration,
483 improvement, or construction to residential real property must
484 contain a written statement explaining the consumer's rights
485 under the recovery fund, except where the value of all labor and
486 materials does not exceed \$2,500. The written statement must be
487 substantially in the following form:

488
489 FLORIDA HOMEOWNERS' CONSTRUCTION
490 RECOVERY FUND

491
492 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE
493 FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY
494 ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS
495 FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED
496 CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A
497 CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD
498 AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

499
500 The statement must ~~shall~~ be immediately followed by the board's
501 address and telephone number as established by board rule.

502 Section 13. Section 489.143, Florida Statutes, is amended
503 to read:

504 489.143 Payment from the fund.—



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505 (1) The fund shall be disbursed as provided in s. 489.141
506 on a final order of the board.

507 (2) A ~~Any~~ claimant who meets all of the conditions
508 prescribed in s. 489.141 may apply to the board to cause payment
509 to be made to a claimant from the recovery fund in an amount
510 equal to the judgment, award, or restitution order or \$25,000,
511 whichever is less, or an amount equal to the unsatisfied portion
512 of such person's judgment, award, or restitution order, but only
513 to the extent and amount of actual damages suffered by the
514 claimant, and only up to the maximum payment allowed for each
515 respective Division I and Division II claim. Payment from the
516 fund for other costs related to or pursuant to civil proceedings
517 such as postjudgment interest, attorney ~~attorney's~~ fees, court
518 costs, medical damages, and punitive damages is prohibited. The
519 recovery fund is not obligated to pay a ~~any~~ judgment, an award,
520 or a restitution order, or any portion thereof, which is not
521 expressly based on one of the grounds for recovery set forth in
522 s. 489.141.

523 (3) Beginning January 1, 2005, for each Division I contract
524 entered into after July 1, 2004, payment from the recovery fund
525 shall be subject to a \$50,000 maximum payment for each Division
526 I claim. Beginning January 1, 2016, for each Division II
527 contract entered into on or after July 1, 2015, payment from the
528 recovery fund is subject to a \$15,000 maximum payment for each
529 Division II claim.

530 (4) ~~(3)~~ Upon receipt by a claimant under subsection (2) of
531 payment from the recovery fund, the claimant shall assign his or
532 her additional right, title, and interest in the judgment,
533 award, or restitution order, to the extent of such payment, to



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534 the board, and thereupon the board shall be subrogated to the
535 right, title, and interest of the claimant; and any amount
536 subsequently recovered on the judgment, award, or restitution
537 order, to the extent of the right, title, and interest of the
538 board therein, shall be for the purpose of reimbursing the
539 recovery fund.

540 (5)-(4) Payments for claims arising out of the same
541 transaction shall be limited, in the aggregate, to the lesser of
542 the judgment, award, or restitution order or the maximum payment
543 allowed for a Division I or Division II claim, regardless of the
544 number of claimants involved in the transaction.

545 (6)-(5) For contracts entered into before July 1, 2004,
546 payments for claims against any one licensee may shall not
547 exceed, in the aggregate, \$100,000 annually, up to a total
548 aggregate of \$250,000. For any claim approved by the board which
549 is in excess of the annual cap, the amount in excess of \$100,000
550 up to the total aggregate cap of \$250,000 is eligible for
551 payment in the next and succeeding fiscal years, but only after
552 all claims for the then-current calendar year have been paid.
553 Payments may not exceed the aggregate annual or per claimant
554 limits under law. Beginning January 1, 2005, for each Division I
555 contract entered into after July 1, 2004, payment from the
556 recovery fund is subject only to a total aggregate cap of
557 \$500,000 for each Division I licensee. Beginning January 1,
558 2016, for each Division II contract entered into on or after
559 July 1, 2015, payment from the recovery fund is subject only to
560 a total aggregate cap of \$150,000 for each Division II licensee.

561 (7)-(6) Claims shall be paid in the order filed, up to the
562 aggregate limits for each transaction and licensee and to the



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563 limits of the amount appropriated to pay claims against the fund
564 ~~for the fiscal year in which the claims were filed.~~ Payments may
565 not exceed the total aggregate cap per license or per claimant
566 limits under this section.

567 (8)~~(7)~~ If the annual appropriation is exhausted with claims
568 pending, such claims shall be carried forward to the next fiscal
569 year. Any moneys in excess of pending claims remaining in the
570 recovery fund at the end of the fiscal year shall be paid as
571 provided in s. 468.631.

572 (9)~~(8)~~ Upon the payment of any amount from the recovery
573 fund in settlement of a claim in satisfaction of a judgment,
574 award, or restitution order against a licensee as described in
575 s. 489.141, the license of such licensee shall be automatically
576 suspended, without further administrative action, upon the date
577 of payment from the fund. The license of such licensee may ~~shall~~
578 not be reinstated until he or she has repaid in full, plus
579 interest, the amount paid from the fund. A discharge of
580 bankruptcy does not relieve a person from the penalties and
581 disabilities provided in this section.

582 (10)~~(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an
583 association, or a ~~any~~ person acting in his or her individual
584 capacity, who aids, abets, solicits, or conspires with another
585 ~~any~~ person to knowingly present or cause to be presented a ~~any~~
586 false or fraudulent claim for the payment of a loss under this
587 act commits ~~is guilty of~~ a third-degree felony, punishable as
588 provided in s. 775.082 or s. 775.084 and by a fine of up to ~~not~~
589 ~~exceeding~~ \$30,000, unless the value of the fraud exceeds that
590 amount, ~~\$30,000~~ in which event the fine may not exceed double
591 the value of the fraud.



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592 ~~(11)(10)~~ Each payment ~~All payments~~ and disbursement
593 ~~disbursements~~ from the recovery fund shall be made by the Chief
594 Financial Officer upon a voucher signed by the secretary of the
595 department or the secretary's designee.

596 Section 14. Subsection (24) is added to section 489.503,
597 Florida Statutes, to read:

598 489.503 Exemptions.—This part does not apply to:

599 (24) A person who installs low-voltage landscape lighting
600 that contains a factory-installed electrical cord with plug and
601 does not require installation, wiring, or modification to the
602 electrical wiring of the structure.

603 Section 15. Subsection (6) of section 489.517, Florida
604 Statutes, is amended to read:

605 489.517 Renewal of certificate or registration; continuing
606 education.—

607 (6) The board shall require, by rule adopted pursuant to
608 ss. 120.536(1) and 120.54, a specialized number of hours in
609 specialized or code-related training ~~advanced module courses,~~
610 ~~approved by the Florida Building Commission,~~ on any portion of
611 the Florida Building Code, adopted pursuant to part IV of
612 chapter 553, relating to the contractor's respective discipline.

613 Section 16. Subsection (3) of section 514.011, Florida
614 Statutes, is amended to read:

615 514.011 Definitions.—As used in this chapter:

616 (3) "Private pool" means a facility used only by an
617 individual, family, or living unit members and their guests
618 which does not serve any type of cooperative housing or joint
619 tenancy of five or more living units. The term includes a
620 portable pool used exclusively for providing swimming lessons or



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621 related instruction in support of an established educational
622 program sponsored or provided by a county school district for
623 the purposes of the exemptions provided under s. 514.0115.

624 Section 17. Subsection (3) of section 514.0115, Florida
625 Statutes, is amended to read:

626 514.0115 Exemptions from supervision or regulation;
627 variances.-

628 (3) A private pool used for instructional purposes in
629 swimming may ~~shall~~ not be regulated as a public pool. A portable
630 pool used for instructional purposes or in furtherance of an
631 approved educational program may not be regulated as a public
632 pool.

633 Section 18. Subsections (2) through (5) of section 514.031,
634 Florida Statutes, are redesignated as subsections (3) through
635 (6), respectively, a new subsection (2) is added to that
636 section, and present subsection (5) of that section is amended,
637 to read:

638 514.031 Permit necessary to operate public swimming pool.-

639 (2) The department shall ensure through inspections that a
640 public swimming pool with an operating permit continues to be
641 operated and maintained in compliance with rules adopted under
642 this section, the original approved plans and specifications or
643 variances, and the Florida Building Code adopted under chapter
644 553 applicable to public pools or public bathing places. The
645 department may adopt and enforce rules to implement this
646 subsection, including provisions for closing those pools and
647 bathing places not in compliance. For purposes of this
648 subsection, the department's jurisdiction includes the pool, the
649 pool deck, the barrier as defined in s. 515.25, and the bathroom



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650 facilities for pool patrons. The local enforcement agency shall
651 permit and inspect repairs or modifications required as a result
652 of the department's inspections and may take enforcement action
653 to ensure compliance. The department shall ensure that the rules
654 enforced by the local enforcement agency under this subsection
655 are consistent with the Florida Building Code adopted under
656 chapter 553.

657 (6)~~(5)~~ An owner or operator of a public swimming pool,
658 including, but not limited to, a spa, wading, or special purpose
659 pool, to which admittance is obtained by membership for a fee
660 shall post in a prominent location within the facility the most
661 recent pool inspection report issued by the department
662 pertaining to the health and safety conditions of such facility.
663 The report shall be legible and readily accessible to members or
664 potential members. The department shall adopt rules to enforce
665 this subsection. A portable pool may not be used as a public
666 pool, unless it is exempt under s. 514.0115.

667 Section 19. Subsections (1), (2), and (5) of section
668 514.05, Florida Statutes, are amended to read:

669 514.05 Denial, suspension, or revocation of permit;
670 administrative fines.—

671 (1) The department may deny an application for an ~~a~~
672 operating permit, suspend or revoke a permit issued to any
673 person or public body, or impose an administrative fine upon the
674 failure of such person or public body to comply with the
675 provisions of this chapter, the original approved plans and
676 specifications or variances, the Florida Building Code adopted
677 under chapter 553 applicable to public pools or public bathing
678 places, or the rules adopted hereunder.



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679 (2) The department may impose an administrative fine, which
680 shall not exceed \$500 for each violation, for the violation of
681 this chapter, the original approved plans and specifications or
682 variances, the Florida Building Code adopted under chapter 553
683 applicable to public pools or public bathing places, or the
684 rules adopted hereunder and for the violation of ~~any of the~~
685 ~~provisions of~~ chapter 386. Notice of intent to impose such fine
686 shall be given by the department to the alleged violator. Each
687 day that a violation continues may constitute a separate
688 violation.

689 (5) Under conditions specified by rule, the department may
690 close a public pool that is not in compliance with this chapter,
691 the original approved plans and specifications or variances, the
692 Florida Building Code adopted under chapter 553 applicable to
693 public pools or public bathing places, or the rules adopted
694 under this chapter.

695 Section 20. Subsection (2) of section 553.512, Florida
696 Statutes, is amended to read:

697 553.512 Modifications and waivers; advisory council.-

698 (2) The Accessibility Advisory Council shall consist of the
699 following seven members, who shall be knowledgeable in the area
700 of accessibility for persons with disabilities. The Secretary of
701 Business and Professional Regulation shall appoint the
702 following: a representative from the Advocacy Center for Persons
703 with Disabilities, Inc.; a representative from the Division of
704 Blind Services; a representative from the Division of Vocational
705 Rehabilitation; a representative from a statewide organization
706 representing the physically handicapped; a representative from
707 the hearing impaired; a representative from Pensacola Pen Wheels



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708 Inc., Employ the Handicapped Council; ~~a representative from the~~
709 ~~President, Florida Council of Handicapped Organizations;~~ and a
710 representative of the Paralyzed Veterans of America. The terms
711 for the first three council members appointed subsequent to
712 October 1, 1991, shall be for 4 years, the terms for the next
713 two council members appointed shall be for 3 years, and the
714 terms for the next two members shall be for 2 years. Thereafter,
715 all council member appointments shall be for terms of 4 years. A
716 ~~No~~ council member may not ~~shall~~ serve more than two 4-year terms
717 subsequent to October 1, 1991. Any member of the council may be
718 replaced by the secretary upon three unexcused absences. Upon
719 application made in the form provided, an individual waiver or
720 modification may be granted by the commission so long as such
721 modification or waiver is not in conflict with more stringent
722 standards provided in another chapter.

723 Section 21. Section 553.721, Florida Statutes, is amended
724 to read:

725 553.721 Surcharge.—In order for the Department of Business
726 and Professional Regulation to administer and carry out the
727 purposes of this part and related activities, there is created a
728 surcharge, to be assessed at the rate of 1.5 percent of the
729 permit fees associated with enforcement of the Florida Building
730 Code as defined by the uniform account criteria and specifically
731 the uniform account code for building permits adopted for local
732 government financial reporting pursuant to s. 218.32. The
733 minimum amount collected on any permit issued shall be \$2. The
734 unit of government responsible for collecting a permit fee
735 pursuant to s. 125.56(4) or s. 166.201 shall collect the
736 surcharge and electronically remit the funds collected to the



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737 department on a quarterly calendar basis for the preceding
738 quarter and continuing each third month thereafter. The unit of
739 government shall retain 10 percent of the surcharge collected to
740 fund the participation of building departments in the national
741 and state building code adoption processes and to provide
742 education related to enforcement of the Florida Building Code.
743 All funds remitted to the department pursuant to this section
744 shall be deposited in the Professional Regulation Trust Fund.
745 Funds collected from the surcharge shall be allocated to fund
746 the Florida Building Commission and the Florida Building Code
747 Compliance and Mitigation Program under s. 553.841. Funds
748 allocated to the Florida Building Code Compliance and Mitigation
749 Program shall be \$925,000 each fiscal year. The Florida Building
750 Code Compliance and Mitigation Program shall fund the
751 recommendations made by the Building Code System Uniform
752 Implementation Evaluation Workgroup, dated April 8, 2013, from
753 existing resources, not to exceed \$30,000 in the 2015-2016
754 fiscal year. Funds collected from the surcharge shall also be
755 used to fund Florida Fire Prevention Code informal
756 interpretations managed by the State Fire Marshal and shall be
757 limited to \$15,000 each fiscal year. The State Fire Marshal
758 shall adopt rules to address the implementation and expenditure
759 of the funds allocated to fund the Florida Fire Prevention Code
760 informal interpretations under this section. The funds collected
761 from the surcharge may not be used to fund research on
762 techniques for mitigation of radon in existing buildings. Funds
763 used by the department as well as funds to be transferred to the
764 Department of Health and the State Fire Marshal shall be as
765 prescribed in the annual General Appropriations Act. The



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766 department shall adopt rules governing the collection and
767 remittance of surcharges pursuant to chapter 120.

768 Section 22. Subsections (11) and (15) of section 553.73,
769 Florida Statutes, are amended, and subsections (19) and (20) are
770 added to that section, to read:

771 553.73 Florida Building Code.—

772 (11) (a) In the event of a conflict between the Florida
773 Building Code and the Florida Fire Prevention Code and the Life
774 Safety Code as applied to a specific project, the conflict shall
775 be resolved by agreement between the local building code
776 enforcement official and the local fire code enforcement
777 official in favor of the requirement of the code which offers
778 the greatest degree of lifesafety or alternatives which would
779 provide an equivalent degree of lifesafety and an equivalent
780 method of construction. Local boards created to address issues
781 arising under the Florida Building Code and the Florida Fire
782 Prevention Code may combine the appeals boards to create a
783 single, local board having jurisdiction over matters arising
784 under either or both codes. The combined local board of appeals
785 has the authority to grant alternatives or modifications through
786 procedures outlined in NFPA 1, Section 1.4, but does not have
787 the authority to waive the requirements of the Florida Fire
788 Prevention Code. In order to meet the quorum requirement to
789 convene the combined appeals board, there must be at least one
790 member of the board who is a fire protection contractor, a fire
791 protection design professional, a fire department operations
792 professional, or a fire code enforcement professional.

793 (b) Any decision made by the local fire official regarding
794 application, interpretation, or enforcement of the Florida Fire



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795 Prevention Code, by and the local building official regarding
796 application, interpretation, or enforcement of the Florida
797 Building Code, or the appropriate application of either or both
798 codes in the case of a conflict between the codes may be
799 appealed to a local administrative board designated by the
800 municipality, county, or special district having firesafety
801 responsibilities. If the decision of the local fire official and
802 the local building official is to apply the provisions of either
803 the Florida Building Code or the Florida Fire Prevention Code
804 and the Life Safety Code, the board may not alter the decision
805 unless the board determines that the application of such code is
806 not reasonable. If the decision of the local fire official and
807 the local building official is to adopt an alternative to the
808 codes, the local administrative board shall give due regard to
809 the decision rendered by the local officials and may modify that
810 decision if the administrative board adopts a better
811 alternative, taking into consideration all relevant
812 circumstances. In any case in which the local administrative
813 board adopts alternatives to the decision rendered by the local
814 fire official and the local building official, such alternatives
815 shall provide an equivalent degree of lifesafety and an
816 equivalent method of construction as the decision rendered by
817 the local officials.

818 (c) If the local building official and the local fire
819 official are unable to agree on a resolution of the conflict
820 between the Florida Building Code and the Florida Fire
821 Prevention Code and the Life Safety Code, the local
822 administrative board shall resolve the conflict in favor of the
823 code which offers the greatest degree of lifesafety or



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824 alternatives which would provide an equivalent degree of
825 lifesafety and an equivalent method of construction.

826 (d) All decisions of the local administrative board, or if
827 none exists, the decisions of the local building official and
828 the local fire official in regard to the application,
829 enforcement, or interpretation of the Florida Fire Prevention
830 Code, or conflicts between the Florida Fire Prevention Code and
831 the Florida Building Code, are subject to review by a joint
832 committee composed of members of the Florida Building Commission
833 and the Fire Code Advisory Council. If the joint committee is
834 unable to resolve conflicts between the codes as applied to a
835 specific project, the matter shall be resolved pursuant to the
836 provisions of paragraph (1) (d). Decisions of the local
837 administrative board solely in regard to the provisions of the
838 Florida Building Code are subject to review as set forth in s.
839 553.775.

840 (e) The local administrative board shall, to the greatest
841 extent possible, be composed of members with expertise in
842 building construction and firesafety standards.

843 (f) All decisions of the local building official and local
844 fire official and all decisions of the administrative board
845 shall be in writing and shall be binding upon a person but do
846 not limit the authority of the State Fire Marshal or the Florida
847 Building Commission pursuant to paragraph (1) (d) and ss. 633.104
848 and 633.228. Decisions of general application shall be indexed
849 by building and fire code sections and shall be available for
850 inspection during normal business hours.

851 (15) An agency or local government may not require that
852 existing mechanical equipment located on or above the surface of



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853 a roof be installed in compliance with the requirements of the
854 Florida Building Code except during roofing when the equipment
855 is being replaced or moved ~~during reroofing~~ and is not in
856 compliance with the provisions of the Florida Building Code
857 relating to roof-mounted mechanical units.

858 (19) In other than one- and two-family detached dwellings,
859 a local enforcing agency that requires a permit to install or
860 replace a water heater shall require that a hard-wired or
861 battery-operated water-level detection device be secured to the
862 drain pan area at a level lower than the drain connection upon
863 installation or replacement of the water heater. The device must
864 include an audible alarm and, if battery-operated, must have a
865 10-year low-battery notification capability.

866 (20) The Florida Building Code may not require more than
867 one fire service access elevator in a residential occupancy if
868 the highest occupiable floor in the residential occupancy is
869 less than 420 feet above the level of fire service access and
870 all remaining elevators are provided with Phase I and Phase II
871 emergency operations. If a fire service access elevator is
872 required, a 1 hour fire-rated fire service access elevator lobby
873 with direct access from the fire service access elevator may not
874 be required if the fire service access elevator opens into an
875 exit access corridor. The exit access corridor must be at least
876 6 feet wide for its entire length of at least 150 square feet
877 with the exception of door openings. The exit access corridor
878 must have a minimum 1 hour fire rating with three quarter hour
879 rated openings. The fire service access elevator must be
880 pressured and have floor-to-floor smoke control in case of a
881 fire. However, if there is a transient residential occupancy at



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882 floor levels more than 420 feet above the level of fire service
883 access, a 1 hour fire-rated fire service access elevator lobby
884 with direct access from the fire service access elevator is
885 required. The requirement for a second fire service access
886 elevator is not considered to be a part of the Florida Building
887 Code, and therefore, does not take effect until July 1, 2016.

888 Section 23. Paragraph (c) of subsection (3) of section
889 553.775, Florida Statutes, is amended to read:

890 553.775 Interpretations.—

891 (3) The following procedures may be invoked regarding
892 interpretations of the Florida Building Code or the Florida
893 Accessibility Code for Building Construction:

894 (c) The commission shall review decisions of local building
895 officials and local enforcement agencies regarding
896 interpretations of the Florida Building Code or the Florida
897 Accessibility Code for Building Construction after the local
898 board of appeals has considered the decision, if such board
899 exists, and if such appeals process is concluded within 25
900 business days.

901 1. The commission shall coordinate with the Building
902 Officials Association of Florida, Inc., to designate a panel
903 ~~panels~~ composed of seven ~~five~~ members to hear requests to review
904 decisions of local building officials. Five ~~The~~ members must be
905 licensed as building code administrators under part XII of
906 chapter 468, one member must be licensed as an architect under
907 chapter 481, and one member must be licensed as an engineer
908 under chapter 471. Each member ~~and~~ must have experience
909 interpreting or ~~and~~ enforcing provisions of the Florida Building
910 Code and the Florida Accessibility Code for Building



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911 Construction.

912 2. Requests to review a decision of a local building
913 official interpreting provisions of the Florida Building Code or
914 the Florida Accessibility Code for Building Construction may be
915 initiated by any substantially affected person, including an
916 owner or builder subject to a decision of a local building
917 official or an association of owners or builders having members
918 who are subject to a decision of a local building official. In
919 order to initiate review, the substantially affected person must
920 file a petition with the commission. The commission shall adopt
921 a form for the petition, which shall be published on the
922 Building Code Information System. The form shall, at a minimum,
923 require the following:

924 a. The name and address of the county or municipality in
925 which provisions of the Florida Building Code or the Florida
926 Accessibility Code for Building Construction are being
927 interpreted.

928 b. The name and address of the local building official who
929 has made the interpretation being appealed.

930 c. The name, address, and telephone number of the
931 petitioner; the name, address, and telephone number of the
932 petitioner's representative, if any; and an explanation of how
933 the petitioner's substantial interests are being affected by the
934 local interpretation of the Florida Building Code or the Florida
935 Accessibility Code for Building Construction.

936 d. A statement of the provisions of the Florida Building
937 Code or the Florida Accessibility Code for Building Construction
938 which are being interpreted by the local building official.

939 e. A statement of the interpretation given to provisions of



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940 the Florida Building Code or the Florida Accessibility Code for
941 Building Construction by the local building official and the
942 manner in which the interpretation was rendered.

943 f. A statement of the interpretation that the petitioner
944 contends should be given to the provisions of the Florida
945 Building Code or the Florida Accessibility Code for Building
946 Construction and a statement supporting the petitioner's
947 interpretation.

948 g. Space for the local building official to respond in
949 writing. The space shall, at a minimum, require the local
950 building official to respond by providing a statement admitting
951 or denying the statements contained in the petition and a
952 statement of the interpretation of the provisions of the Florida
953 Building Code or the Florida Accessibility Code for Building
954 Construction which the local jurisdiction or the local building
955 official contends is correct, including the basis for the
956 interpretation.

957 3. The petitioner shall submit the petition to the local
958 building official, who shall place the date of receipt on the
959 petition. The local building official shall respond to the
960 petition in accordance with the form and shall return the
961 petition along with his or her response to the petitioner within
962 5 days after receipt, exclusive of Saturdays, Sundays, and legal
963 holidays. The petitioner may file the petition with the
964 commission at any time after the local building official
965 provides a response. If no response is provided by the local
966 building official, the petitioner may file the petition with the
967 commission 10 days after submission of the petition to the local
968 building official and shall note that the local building



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969 official did not respond.

970 4. Upon receipt of a petition that meets the requirements
971 of subparagraph 2., the commission shall immediately provide
972 copies of the petition to the a panel, and the commission shall
973 publish the petition, including any response submitted by the
974 local building official, on the Building Code Information System
975 in a manner that allows interested persons to address the issues
976 by posting comments.

977 5. The panel shall conduct proceedings as necessary to
978 resolve the issues; shall give due regard to the petitions, the
979 response, and to comments posed on the Building Code Information
980 System; and shall issue an interpretation regarding the
981 provisions of the Florida Building Code or the Florida
982 Accessibility Code for Building Construction within 21 days
983 after the filing of the petition. The panel shall render a
984 determination based upon the Florida Building Code or the
985 Florida Accessibility Code for Building Construction or, if the
986 code is ambiguous, the intent of the code. The panel's
987 interpretation shall be provided to the commission, which shall
988 publish the interpretation on the Building Code Information
989 System and in the Florida Administrative Register. The
990 interpretation shall be considered an interpretation entered by
991 the commission, and shall be binding upon the parties and upon
992 all jurisdictions subject to the Florida Building Code or the
993 Florida Accessibility Code for Building Construction, unless it
994 is superseded by a declaratory statement issued by the Florida
995 Building Commission or by a final order entered after an appeal
996 proceeding conducted in accordance with subparagraph 7.

997 6. It is the intent of the Legislature that review



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998 proceedings be completed within 21 days after the date that a
999 petition seeking review is filed with the commission, and the
1000 time periods set forth in this paragraph may be waived only upon
1001 consent of all parties.

1002 7. Any substantially affected person may appeal an
1003 interpretation rendered by the ~~a hearing officer~~ panel by filing
1004 a petition with the commission. Such appeals shall be initiated
1005 in accordance with chapter 120 and the uniform rules of
1006 procedure and must be filed within 30 days after publication of
1007 the interpretation on the Building Code Information System or in
1008 the Florida Administrative Register. Hearings shall be conducted
1009 pursuant to chapter 120 and the uniform rules of procedure.
1010 Decisions of the commission are subject to judicial review
1011 pursuant to s. 120.68. The final order of the commission is
1012 binding upon the parties and upon all jurisdictions subject to
1013 the Florida Building Code or the Florida Accessibility Code for
1014 Building Construction.

1015 8. The burden of proof in any proceeding initiated in
1016 accordance with subparagraph 7. is on the party who initiated
1017 the appeal.

1018 9. In any review proceeding initiated in accordance with
1019 this paragraph, including any proceeding initiated in accordance
1020 with subparagraph 7., the fact that an owner or builder has
1021 proceeded with construction may not be grounds for determining
1022 an issue to be moot if the issue is one that is likely to arise
1023 in the future.

1024
1025 This paragraph provides the exclusive remedy for addressing
1026 requests to review local interpretations of the Florida Building



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1027 Code or the Florida Accessibility Code for Building Construction
1028 and appeals from review proceedings.

1029 Section 24. Subsections (6) and (11) of section 553.79,
1030 Florida Statutes, are amended to read:

1031 553.79 Permits; applications; issuance; inspections.-

1032 (6) A permit may not be issued for any building
1033 construction, erection, alteration, modification, repair, or
1034 addition unless the applicant for such permit complies with the
1035 requirements for plan review established by the Florida Building
1036 Commission within the Florida Building Code. However, the code
1037 shall set standards and criteria to authorize preliminary
1038 construction before completion of all building plans review,
1039 including, but not limited to, special permits for the
1040 foundation only, and such standards shall take effect concurrent
1041 with the first effective date of the Florida Building Code.
1042 After submittal of the appropriate construction documents, the
1043 building official may issue a permit for the construction of
1044 foundations or any other part of a building or structure before
1045 the construction documents for the entire building or structure
1046 have been submitted. The holder of such a permit proceeds at the
1047 holder's own risk with the building operation and without
1048 assurance that a permit for the entire structure will be
1049 granted, and may be required to make corrections to meet
1050 technical code requirements.

1051 (11) (a) The local enforcing agency may not issue a building
1052 permit to construct, develop, or modify a public swimming pool
1053 without proof of application, whether complete or incomplete,
1054 for an operating permit pursuant to s. 514.031. A certificate of
1055 completion or occupancy may not be issued until such operating



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1056 permit is issued. The local enforcing agency shall conduct its
1057 review of the building permit application upon filing and in
1058 accordance with this chapter. The local enforcing agency may
1059 confer with the Department of Health, if necessary, but may not
1060 delay the building permit application review while awaiting
1061 comment from the Department of Health.

1062 (b) If the department determines under s. 514.031(2) that a
1063 public pool or a public bathing place is not being operated or
1064 maintained in compliance with the department's rules, the
1065 original approved plans and specifications or variances, and the
1066 Florida Building Code, the local enforcing agency shall permit
1067 and inspect the repairs or modifications required as a result of
1068 the department's inspections and may take enforcement action to
1069 ensure compliance.

1070 Section 25. Subsections (4) and (7) of section 553.841,
1071 Florida Statutes, are amended, to read:

1072 553.841 Building code compliance and mitigation program.—

1073 (4) In administering the Florida Building Code Compliance
1074 and Mitigation Program, the department may ~~shall~~ maintain,
1075 update, develop, or cause to be developed code-related training
1076 and education ~~advanced modules designed~~ for use by each
1077 profession.

1078 ~~(7) The Florida Building Commission shall provide by rule~~
1079 ~~for the accreditation of courses related to the Florida Building~~
1080 ~~Code by accreditors approved by the commission. The commission~~
1081 ~~shall establish qualifications of accreditors and criteria for~~
1082 ~~the accreditation of courses by rule. The commission may revoke~~
1083 ~~the accreditation of a course by an accreditor if the~~
1084 ~~accreditation is demonstrated to violate this part or the rules~~



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1085 ~~of the commission.~~

1086 Section 26. Paragraph (a) of subsection (8) of section
1087 553.842, Florida Statutes, is amended to read:

1088 553.842 Product evaluation and approval.—

1089 (8) The commission may adopt rules to approve the following
1090 types of entities that produce information on which product
1091 approvals are based. All of the following entities, including
1092 engineers and architects, must comply with a nationally
1093 recognized standard demonstrating independence or no conflict of
1094 interest:

1095 (a) Evaluation entities approved pursuant to this
1096 paragraph. The commission shall specifically approve the
1097 National Evaluation Service, the International Association of
1098 Plumbing and Mechanical Officials Evaluation Service, the
1099 International Code Council Evaluation Services, Underwriters
1100 Laboratories, LLC, and the Miami-Dade County Building Code
1101 Compliance Office Product Control Division. Architects and
1102 engineers licensed in this state are also approved to conduct
1103 product evaluations as provided in subsection (5).

1104 Section 27. Section 553.908, Florida Statutes, is amended
1105 to read:

1106 553.908 Inspection.—Before construction or renovation is
1107 completed, the local enforcement agency shall inspect buildings
1108 for compliance with the standards of this part. The local
1109 enforcement agency shall accept duct and air infiltration tests
1110 conducted in accordance with the Florida Building Code-Energy
1111 Conservation by individuals certified in accordance with s.
1112 553.993(5) or (7) or individuals licensed under s.
1113 489.105(3)(f), (g), or (i). The local enforcement agency may



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1114 accept inspections in whole or in part by individuals certified
1115 in accordance with s. 553.993(5) or (7). Notwithstanding any
1116 provision of the Florida Building Code or other provision of
1117 law, mandatory blower door testing and mechanical ventilation
1118 testing for residential buildings or dwelling units takes effect
1119 on April 1, 2016.

1120 Section 28. Subsections (17) and (18) are added to section
1121 633.202, Florida Statutes, to read:

1122 633.202 Florida Fire Prevention Code.—

1123 (17) In all new high-rise and existing high-rise buildings,
1124 minimum radio signal strength for fire department communications
1125 shall be maintained at a level determined by the authority
1126 having jurisdiction. Existing buildings may not be required to
1127 comply with minimum radio strength for fire department
1128 communications and two-way radio system enhancement
1129 communications as required by the Florida Fire Prevention Code
1130 until January 1, 2022. However, by December 31, 2019, an
1131 existing building that is not in compliance with the
1132 requirements for minimum radio strength for fire department
1133 communications must initiate an application for an appropriate
1134 permit for the required installation with the local government
1135 agency having jurisdiction and must demonstrate that the
1136 building will become compliant by January 1, 2022. Existing
1137 apartment buildings may not be required to comply until January
1138 1, 2025. However, existing apartment buildings are required to
1139 initiate the appropriate permit for the required communications
1140 installation by December 31, 2022.

1141 (18) Areas of refuge shall be provided when required by the
1142 Florida Building Code-Accessibility. Required portions of an



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1143 area of refuge shall be accessible from the space they serve by
1144 an accessible means of egress.

1145 Section 29. Subsection (5) is added to section 633.206,
1146 Florida Statutes, to read:

1147 633.206 Uniform firesafety standards—The Legislature hereby
1148 determines that to protect the public health, safety, and
1149 welfare it is necessary to provide for firesafety standards
1150 governing the construction and utilization of certain buildings
1151 and structures. The Legislature further determines that certain
1152 buildings or structures, due to their specialized use or to the
1153 special characteristics of the person utilizing or occupying
1154 these buildings or structures, should be subject to firesafety
1155 standards reflecting these special needs as may be appropriate.

1156 (5) The home environment provisions enumerated in the most
1157 current edition of the codes adopted by the division may be
1158 applied to existing assisted living facilities notwithstanding
1159 the edition of the codes applied at the time of construction.

1160 Section 30. Subsection (5) of section 633.208, Florida
1161 Statutes, is amended to read:

1162 633.208 Minimum firesafety standards.—

1163 (5) With regard to existing buildings, the Legislature
1164 recognizes that it is not always practical to apply any or all
1165 of the provisions of the Florida Fire Prevention Code and that
1166 physical limitations may require disproportionate effort or
1167 expense with little increase in fire or life safety. Prior to
1168 applying the minimum firesafety code to an existing building,
1169 the local fire official shall determine that a threat to
1170 lifesafety or property exists. If a threat to lifesafety or
1171 property exists, the fire official shall apply the applicable



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1172 firesafety code for existing buildings to the extent practical
1173 to assure a reasonable degree of lifesafety and safety of
1174 property or the fire official shall fashion a reasonable
1175 alternative which affords an equivalent degree of lifesafety and
1176 safety of property. The fire official may use the Fire Safety
1177 Evaluation System found in NFPA 101A, Alternative Solutions to
1178 Life Safety, current edition adopted by the State Fire Marshal,
1179 to identify low-cost alternatives to bring the building or
1180 structure into compliance with the minimum standards. It is
1181 acceptable to use the Fire Safety Evaluation System for Board
1182 and Care Facilities prompt evacuation capabilities parameter
1183 values on existing residential high-rise buildings. The decision
1184 of the local fire official may be appealed to the local
1185 administrative board described in s. 553.73.

1186 Section 31. Present subsections (3) and (4) of section
1187 633.336, Florida Statutes, are redesignated as subsections (4)
1188 and (5), respectively, and a new subsection (3) is added to that
1189 section, read:

1190 633.336 Contracting without certificate prohibited;
1191 violations; penalty.—

1192 (3) The Legislature recognizes that special expertise is
1193 required for fire pump control panels and the maintenance of
1194 electric and diesel pump drivers which may make it economically
1195 unfeasible for all contractors to employ a fire protection
1196 contractor full-time, when that person's services may be needed
1197 only on a limited basis. Therefore, a fire protection contractor
1198 properly licensed under chapter 633 may subcontract with
1199 companies providing advanced technical services for installing,
1200 servicing, and maintaining fire pump control panels and fire



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1201 pump drivers. To ensure the integrity of the system and protect
1202 the interests of the property owner, those providing technical
1203 support services for fire pump control panels and drivers must
1204 be under contract with a licensed fire protection contractor.

1205 Section 32. The Calder Sloan Swimming Pool Electrical-
1206 Safety Task Force.—There is established within the Florida
1207 Building Commission the Calder Sloan Swimming Pool Electrical-
1208 Safety Task Force.

1209 (1) The purpose of the task force is to study the adoption
1210 of standards on grounding, bonding, lighting, wiring, and all
1211 electrical aspects for safety in and around public and private
1212 swimming pools. The task force shall focus its study upon
1213 minimizing the risk of electrocutions at swimming pools. The
1214 task force shall submit a report on its findings, including
1215 recommended revisions to the Florida Statutes, if any, to the
1216 Governor, the President of the Senate, and the Speaker of the
1217 House of Representatives by November 1, 2015.

1218 (2) The task force shall consist of the Swimming Pool and
1219 Electrical Technical Advisory Committees of the Florida Building
1220 Commission.

1221 (3) The task force shall be chaired by the Swimming Pool
1222 Contractor appointed to the Florida Building Commission pursuant
1223 to s. 553.74, Florida Statutes.

1224 (4) The Florida Building Commission shall provide such
1225 staff, information, and other assistance as is reasonably
1226 necessary to assist the task force in carrying out its
1227 responsibilities.

1228 (5) Members of the task force shall serve without
1229 compensation.



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1230 (6) The task force shall meet as often as necessary to
1231 fulfill its responsibilities and meetings may be conducted by
1232 conference call, teleconferencing, or similar technology.

1233 (7) This section expires December 31, 2015.

1234 Section 33. This act shall take effect July 1, 2015.

1235
1236 ===== T I T L E A M E N D M E N T =====

1237 And the title is amended as follows:

1238 Delete everything before the enacting clause
1239 and insert:

1240 A bill to be entitled
1241 An act relating to building codes; amending s.
1242 468.609, F.S.; revising the certification examination
1243 requirements for building code inspectors, plans
1244 examiners, and building code administrators; requiring
1245 the Florida Building Code Administrators and
1246 Inspectors Board to provide for issuance of certain
1247 provisional certificates; amending ss. 468.627,
1248 471.0195, 481.215, and 481.313, F.S.; requiring a
1249 licensee or certificateholder to undergo code-related
1250 training as part of his or her continuing education
1251 courses; amending s. 489.103, F.S.; providing an
1252 exemption for a specified employee who makes minor
1253 repairs to existing waters heaters or to existing
1254 heating, venting, and air-conditioning systems in
1255 certain circumstances; amending s. 489.105, F.S.;
1256 revising the term "plumbing contractor"; amending s.
1257 489.115, F.S.; requiring a certificateholder or
1258 registrant to undergo code-related training as part of



1259 his or her continuing education requirements; amending
1260 s. 489.1401, F.S.; revising legislative intent with
1261 respect to the purpose of the Florida Homeowners'
1262 Construction Recovery Fund; providing legislative
1263 intent that Division II contractors set apart funds to
1264 participate in the fund; amending s. 489.1402, F.S.;
1265 revising terms; amending s. 489.141, F.S.; authorizing
1266 certain claimants to make a claim against the recovery
1267 fund for certain contracts entered into before a
1268 specified date; amending s. 489.1425, F.S.; revising a
1269 notification provided by contractors to certain
1270 residential property owners to state that payment from
1271 the recovery fund is limited; amending s. 489.143,
1272 F.S.; revising provisions concerning payments from the
1273 recovery fund; specifying claim amounts for certain
1274 contracts entered into before or after specified
1275 dates; providing aggregate caps for payments; amending
1276 s. 489.503, F.S.; exempting certain low-voltage
1277 landscape lighting from licensed electrical contractor
1278 installation requirements; amending s. 489.517, F.S.;
1279 requiring a certificateholder or registrant to undergo
1280 code-related training as part of his or her continuing
1281 education requirements; amending s. 514.011, F.S.;
1282 revising the term "private pool"; amending s.
1283 514.0115, F.S.; prohibiting a portable pool from being
1284 regulated as a public pool in certain circumstances;
1285 amending s. 514.031, F.S.; requiring the Department of
1286 Health to conduct inspections of certain public pools
1287 with operating permits to ensure continued compliance



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1288 with specified criteria; authorizing the department to
1289 adopt rules; specifying the department's jurisdiction
1290 for purposes of inspecting certain public pools;
1291 specifying duties of local enforcement agencies
1292 regarding modifications and repairs made to certain
1293 public pools as a result of the department's
1294 inspections; requiring the department to ensure that
1295 certain rules enforced by local enforcement agencies
1296 comply with the Florida Building Code; conforming a
1297 provision to changes made by the act; amending s.
1298 514.05, F.S.; specifying that the department may deny,
1299 suspend, or revoke operating permits for certain pools
1300 and bathing places if certain plans, variances, or
1301 requirements of the Florida Building Code are
1302 violated; specifying that the department may assess an
1303 administrative fine for violations by certain public
1304 pools and bathing places if certain plans, variances,
1305 or requirements of the Florida Building Code are
1306 violated; amending 553.512, F.S.; revising the
1307 membership of the Accessibility Advisory Council;
1308 amending s. 553.721, F.S.; directing the Florida
1309 Building Code Compliance and Mitigation Program to
1310 fund, from existing resources, the recommendations
1311 made by the Building Code System Uniform
1312 Implementation Evaluation Workgroup; providing a
1313 limitation; requiring that a specified amount of funds
1314 from the surcharge be used to fund certain Florida
1315 Fire Prevention Code informal interpretations;
1316 requiring the State Fire Marshal to adopt specified



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1317 rules; amending s. 553.73, F.S.; authorizing local
1318 boards created to address specified issues to combine
1319 the appeals boards into a single, local board;
1320 authorizing the local board to grant alternatives or
1321 modifications through specified procedures; requiring
1322 at least one member of a board to be a fire protection
1323 contractor, a fire protection design professional, a
1324 fire department operations professional, or a fire
1325 code enforcement professional in order to meet a
1326 specified quorum requirement; authorizing the appeal
1327 to a local administrative board of specified decisions
1328 made by a local fire official; specifying the
1329 decisions of the local building official and the local
1330 fire official which are subject to review; clarifying
1331 a provision; requiring the permitted installation or
1332 replacement of a water heater in a conditioned or
1333 attic space to include a water-level detection device;
1334 prohibiting the Florida Building Code from requiring
1335 more than one fire service access elevator in certain
1336 buildings; specifying that a 1 hour fire-rated fire
1337 service access elevator lobby may not be required in
1338 certain circumstances; requiring a 1 hour fire-related
1339 fire service access elevator lobby in certain
1340 circumstances; providing that the requirement for a
1341 second fire service access elevator is not considered
1342 to be part of the Florida Building Code; amending s.
1343 553.775, F.S.; requiring the Florida Building
1344 Commission to coordinate with a specified organization
1345 to designate a review panel; providing panel



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1346 membership; requiring each member to have experience
1347 interpreting or enforcing specified provisions;
1348 amending s. 553.79, F.S.; authorizing a building
1349 official to issue a permit for specified construction
1350 before the construction documents for the entire
1351 building or structure have been submitted; providing
1352 that the holder of such permit proceeds at the
1353 holder's own risk; requiring local enforcing agencies
1354 to permit and inspect modifications and repairs made
1355 to certain public pools and public bathing places as a
1356 result of the Department of Business and Professional
1357 Regulation's inspections; amending s. 553.841, F.S.;
1358 authorizing the department to maintain, update,
1359 develop, or cause to be developed code-related
1360 training and education; removing provisions related to
1361 the development of advanced courses with respect to
1362 the Florida Building Code Compliance and Mitigation
1363 Program and the accreditation of courses related to
1364 the Florida Building Code; amending s. 553.842, F.S.;
1365 providing that Underwriters Laboratories, LLC, is an
1366 approved evaluation entity; amending s. 553.908, F.S.;
1367 requiring local enforcement agencies to accept duct
1368 and air infiltration tests conducted in accordance
1369 with certain guidelines by specified individuals;
1370 providing an effective date for mandatory blower door
1371 testing and mechanical ventilation testing; amending
1372 s. 633.202, F.S.; requiring all new high-rise and
1373 existing high-rise buildings to maintain a minimum
1374 radio signal strength for fire department



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1375 communications; providing a transitory period for
1376 compliance; requiring existing buildings and existing
1377 apartment buildings that are not in compliance with
1378 the requirements for minimum radio strength for fire
1379 department communications to initiate an application
1380 for an appropriate permit by a specified date;
1381 requiring areas of refuge to be required as determined
1382 by the Florida Building Code-Accessibility; amending
1383 s. 633.206, F.S.; authorizing the application of
1384 specified home environment provisions to existing
1385 assisted living facilities; amending s. 633.208, F.S.;

1386 authorizing a fire official to use the Fire Safety
1387 Evaluation System to identify low-cost alternatives
1388 for compliance; authorizing the use of the Fire Safety
1389 Evaluation System for Board and Care Facilities on
1390 specified buildings; amending s. 633.336, F.S.;

1391 providing legislative findings; authorizing a
1392 specified fire protection contractor to subcontract
1393 with specified companies; requiring certain persons to
1394 be under contract with a licensed fire protection
1395 contractor; creating the Calder Sloan Swimming Pool
1396 Electrical-Safety Task Force within the Florida
1397 Building Commission; specifying the purpose of the
1398 task force; requiring a report to the Governor and the
1399 Legislature by a specified date; providing for
1400 membership; requiring the Florida Building Commission
1401 to provide staff, information, and other assistance to
1402 the task force; providing that members of the task
1403 force serve without compensation; authorizing the task



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1404 force to meet as often as necessary; providing for
1405 future repeal of the task force; providing an
1406 effective date.



328722

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bean) recommended the following:

Senate Amendment to Amendment (384976)

Delete lines 220 - 242

and insert:

(b) The equipment:

1. Is already installed on the property owned by the apartment community or managed by the apartment community management company;

2. Is not being modified except to replace components necessary to return the equipment to its original condition, and the partial disassembly associated therewith;



328722

12 3. Must be a type of equipment commonly installed in
13 similar locations; and

14 4. Must be repaired with new parts that are functionally
15 identical to the parts being replaced.

16 (c) An individual repair does not involve replacement parts
17 that cost more than \$1,000. An individual repair may not be so
18 extensive as to be a functional replacement of the existing
19 water heater or the existing heating, venting, or air-
20 conditioning system being repaired.

21 (d) The property owned by the apartment community or



487780

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bean) recommended the following:

1 **Senate Amendment to Amendment (384976) (with title**
2 **amendment)**

3
4 Delete lines 866 - 887

5 and insert:

6 (20) The Florida Building Code may not require more than
7 one fire service access elevator in residential occupancies
8 where the highest occupiable floor is less than 420 feet above
9 the level of fire service access and all remaining elevators are
10 provided with Phase I and II emergency operations. Where a fire
11 service access elevator is required, a 1 hour fire-rated fire



487780

12 service access elevator lobby with direct access from the fire
13 service access elevator is not required when the fire service
14 access elevator opens into an exit access corridor which can be
15 no less than six feet wide for its entire length that is a
16 minimum of 150 square feet with the exception of door openings,
17 and has a minimum 1 hour fire rating with three quarter hour
18 fire and smoke rated openings; and during a fire event the fire
19 service access elevator is pressurized and floor-to-floor smoke
20 control is provided. However, where transient residential
21 occupancies occur at floor levels more than 420 feet above the
22 level of fire service access, a 1 hour fire-rated fire service
23 access elevator lobby with direct access from the fire service
24 access elevator is required. The requirement for a second fire
25 service access elevator is not considered to be a part of the
26 Florida Building Code, and therefore, does not take effect until
27 July 1, 2016.

28
29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Delete line 1337

32 and insert:

33 service access elevator lobby is not required in



862830

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bean) recommended the following:

1 **Senate Amendment to Amendment (384976) (with title**
2 **amendment)**

3
4 Delete line 1118
5 and insert:
6 for residential buildings or dwelling units takes effect

7
8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 Delete line 1371
11 and insert:



862830

12

testing and mechanical ventilation; amending

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 Fiscal Policy

BILL: CS/CS/CS/SB 1232

INTRODUCER: Fiscal Policy Committee; Community Affairs Committee; Health Policy Committee; and Senator Simpson

SUBJECT: Building Codes

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1232 amends various sections of the Florida Statutes related to building codes:

- Reduces the experience and training requirements to take the exam for certification as a building code inspector, or plans examiner, and adds a training requirement for certification as a building code administrator;
- Provides exemptions from licensure for certain activities by liquid petroleum gas installers, landscapers installing pre-wired low-voltage landscape lighting, and apartment complex employees;
- Permits claims under the Florida Homeowner's Recovery Fund against Division II contractors and caps payments from the fund for such injuries to \$15,000 per claim and \$150,000 per transaction;
- Exempts any portable pool used for educational programs established by county school districts from the regulatory requirements of a public pool;
- Requires the Department of Health to inspect public swimming pools for their compliance with the Florida Building Code and to deny an operating certificate, impose fines, or close a public pool for code violations;
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force to study and report on standards for all electrical aspects for safety in and around public and private swimming pools to the Governor, President, and Speaker by October 1, 2015;

- Removes provisions regarding the development of advanced courses related to the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the code and instead authorizes the development of code-related training;
- Requires the Florida Building Code Compliance Mitigation Fund to fund, up to \$30,000 in Fiscal Year 2015-2016, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop and to fund, up to \$15,000 annually, the Florida Fire Code informal interpretations managed by the State Fire Marshal;
- Allows building officials to issue phased permits for the construction of parts of a building project;
- Requires the Florida Building Code Administrators and Inspectors Board to provide for appropriate levels of provisional certificates;
- Allows local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board that must include at least one fire professional;
- Requires newly installed or replacement water heaters to have leak detection devices in buildings other than one- and two-family detached single-family dwellings;
- Restricts the Florida Building Code from requiring more than one fire service access elevator in residential buildings of a certain height and requires residential buildings of a certain height to meet specific requirements related to fire service access elevator lobbies and exit access corridors;
- Clarifies that existing mechanical equipment on roofs need not be replaced to conform to the building code, except during re-roofing;
- Adds Underwriters Laboratories, LLC, to the list of entities that are authorized to produce information on which product approvals are based;
- Requires the local enforcement agencies to accept certain duct and air infiltration tests when inspecting for thermal efficiency standards; and
- Amends provisions related to fire prevention and control to:
 - Require new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction. Existing high-rise buildings must comply by 2022 and existing apartment buildings must comply by 2025;
 - Require areas of refuge to be provided when required by the Florida Building Code-Accessibility;
 - Authorize existing assisted living facilities to use the home environment provisions enumerated in the most current edition of the firesafety code;
 - Authorize fire officials to use the Fire Safety Evaluation System to identify low-cost alternatives for compliance; and
 - Require technicians that work on fire pump control panels and drivers to be under contract with a licensed fire protection contractor;
- Changes the composition of the Accessibility Advisory Council by replacing a representative from an obsolete organization; and
- Specifies the membership requirements for the panel that reviews decisions of local building officials.

The bill does not impact the expenditures of the Department of Health, and has various impacts on the Department of Business and Professional Regulation, including the Florida Building Commission. See Section V.

II. Present Situation:

Building Code Administrators, Plans Examiners, and Inspectors Certifications

Building Code Inspector and Plans Examiner

In order to take the examination for building code inspector or plans examiner certification, s. 468.609(2), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

- Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
- Demonstrates a combination of postsecondary education in the field of construction or a related field and experience totaling 4 years, with at least 1 year being experience in construction, building code inspection, or plans review.
- Demonstrates a combination of technical education in the field of construction or a related field and experience totaling 4 years, with at least 1 year being experience in construction, building code inspection, or plans review.
- Currently holds a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (FBCAIB), or a fire safety inspector license issued pursuant to ch. 633, F.S., has a minimum of 5 years' verifiable full-time experience in inspection or plan review, and satisfactorily completes an approved building code inspector or plans examiner training program of not less than 200 hours in the certification category sought.
- Demonstrates a combination of a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector, or construction and the completion of an approved training program in the field of building code inspection or plan review of not less than 300 hours in the certification category sought, with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder.

Building Code Administrator

In order to take the examination for building code administrator certification, s. 468.609(3), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

- Demonstrates 10 years' combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of experience in supervisory positions; or
- Demonstrates a combination of 10 years' experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of experience in supervisory positions, and postsecondary education in the field of construction or related field, of which no more than 5 years may be applied.

Contractors and the Construction Industry Licensing Board

The Construction Industry Licensing Board (CILB), within the Department of Business and Professional Regulation (DBPR), is responsible for licensing and regulating the construction

industry in this state.¹ The CILB is divided into Division I and Division II members based on the definitions of Division I and Division II contractors.

Division I contractors are described under s. 489.105, F.S., as general contractors, building contractors, and residential contractors. Division II contractors are described as sheet metal contractors, roofing contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, pollutant storage systems contractors, and specialty contractors.

Section 489.129, F.S., grants the CILB the authority to take actions against any certificate holder or registrant if the contractor, or a related party, is found guilty of specific acts, including the acts that may qualify a claim to the Florida Homeowner's Construction Fund, which is discussed below.

Liquid Petroleum Gas Water Heater Installation

Currently, a person licensed as a liquid petroleum gas Installer C by the Department of Agriculture and Consumer Services (DACCS) is authorized to install, service, alter, or modify appliances, equipment, piping, or tubing to convey liquefied petroleum gas to appliances or equipment.² A person with such a license is authorized to service or replace a liquid petroleum gas water heater and to hook up the water heater to the source of the gas, however, he or she may not hook the water heater to the home's plumbing without being certified as a plumbing contractor.³ Currently, public and private natural gas utilities are exempt from the requirement to be certified as a plumbing contractor when servicing or replacing a water heater.

Water Heater Leak Detection Devices

Currently water heaters are not required to have leak detection devices with audible alarms attached to the drain pan area.

Low-Voltage Landscape Lighting

Part II of ch. 489, F.S., regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.⁴ Section 489.503, F.S., provides exemptions to licensure for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire protection system contractor, an employee monitoring an alarm system of a business, and a lightning rod or related systems installer.

¹ Section 489.107, F.S. DBPR, *Construction Industry Licensing Board*, available at <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (last visited 4/13/2015).

² Rule 5J-20.012, F.A.C. *See also* ch. 527, F.S.

³ Section 489.105(3)(m), F.S.

⁴ Section 489.501, F.S.

Florida Homeowner's Construction Recovery Fund

The Florida Homeowner's Construction Recovery Fund (fund) was created by the Legislature in 1993 after Hurricane Andrew. The fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor or related party.⁵ A claimant must be a homeowner and the damage must have been caused by a Division I contractor.⁶

A claim must involve an act by a contractor under s. 489.129(1)(g), (j), and (k), F.S., which relate to actions that give rise to disciplinary actions by CILB against a contractor.

- Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Generally, financial mismanagement or misconduct occurs when the contractor fails to remove a valid lien after payment; the contractor has abandoned the job and has been paid for more than is completed; and the customer is made to pay more than the contract price.
- Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, under certain conditions.
- Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a false statement with respect to a project or contract indicating that the work is bonded, subcontractors have been paid, or workers' compensation and public liability insurance are provided.

Duty of Contractor to give Notice of Fund

Section 489.1425, F.S., creates a duty for a contractor to provide notice to a customer of rights under the recovery fund. Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed \$2,500. The written statement must be substantially in the form provided for in the statute.

Requirements to Make a Claim

The claimant must have obtained a final judgment, arbitration award, or CILB issued restitution order against the contractor for damages that are a direct result of a compensable violation. The statute of limitations to make a claim is 1 year after the conclusion of an action or award in arbitration that is based on the misconduct.⁷ Certain claimants may not make claims, including a claimant that contracted with a Division II contractor and a claimant that suffered damages as a result of making improper payments to a contractor under the Florida Construction Lien Law.⁸

⁵ Sections 489.140-489.144, F.S.

⁶ Section 489.1402, F.S.

⁷ Section 489.141(1)(f), F.S.

⁸ The term "contractor" is defined as a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. It includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16), F.S. See s. 713.01(8), F.S.

Limits

Payment to a claimant from the recovery fund will be an amount equal to the judgment, award, or restitution order or \$25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant.⁹ Each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum.¹⁰ For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000 per claimant with a total lifetime aggregate limit of \$250,000 per licensee.¹¹ For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000 with a total lifetime aggregate of \$500,000 per licensee.¹²

Swimming Pools

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. Sanitation and safety standards for public pools have been adopted by rule under Rule 64E-9 of the Florida Administrative Code.

Swimming Pool Inspections

The Florida Building Commission (FBC) and local building entities have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and the DOH has jurisdiction over the operating permits for public swimming pools and public bathing places.¹³ A "public swimming pool" or "public pool" includes recreational water attractions, conventional pools, and spa-type pools.¹⁴ A "public bathing place" can include bathing areas in lakes, ponds, rivers, and beaches and shores of the state.¹⁵

Currently the DOH does not have authority to cite violations of the Florida Building Code during routine inspections of public swimming pools and public bathing places. Local building officials do not perform routine inspections of public swimming pools but can respond to complaints received. The DOH conducts routine inspections to ensure the pools and bathing places continue to be operated and maintained in compliance with their original approval to protect public health and safety. The DOH notes that, from September 2013 through September 2014, the DOH conducted 75,478 inspections of 37,600 public pools in the state and found 127,413 code violations, of which 26,282 were Florida Building Code violations.¹⁶

⁹ Section 489.143(2), F.S.

¹⁰ DBPR, *2015 Legislative Bill Analysis: SB 1232* (March 17, 2015).

¹¹ Section 489.143(2) and (5), F.S.

¹² *Id.*

¹³ Section 514.021, F.S.

¹⁴ Section 514.011(2), F.S.

¹⁵ Section 514.011(4), F.S.

¹⁶ Department of Health, *House Bill 915 Analysis* (February 25, 2015), p. 2.

Swimming Pool Electrical Equipment

Current construction rules for public pools require that written approval must be received from the DOH before construction can begin.¹⁷ Plans are required that show the pool layout, tile markings, size of the pool ladder, gutter heights and if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3. of the Florida Administrative Code, which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.¹⁸

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule are those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. Finally, as part of the plan approval, the electrical contractor or electrical inspector must certify as to a pool's compliance, on the form designated by the DOH.¹⁹

The United States Consumer Product Union issued a Safety Alert in August 2012 recommending the installation of ground-fault circuit interrupter (GFCI) protections for pools, spas, and hot tubs for protection against electrocution hazards involving electrical circuits and underwater lighting circuits in and around pools, spas, and hot tubs.²⁰ The Safety Alert noted that pools older than 30 years may not have the proper GFCI protection. Underwater pool lighting electrical incidents happened more frequently than any other consumer product used in or around pools, spas, or hot tubs.

Several news stories in south Florida in the past year have also highlighted the issue. Three children were shocked in a Hialeah condominium community pool in April 2014. The building inspector's report found that the pool pump was not properly grounded.²¹ During the same month in Miami, a 7 year-old boy, Calder Sloan, was electrocuted in his family's swimming pool from faulty wiring.²²

In October 2014, the Miami-Dade Board of County Commissioners passed the Swimming Pool Light Ordinance 14-95. The ordinance modifies two sections of the Florida Building Code to make requirements for underwater lighting in commercial pools applicable to residential pools.²³ Existing pools will be required to comply with the new low voltage requirements at the time of repair or alteration or to remove the underwater pool light. The county permit to change an

¹⁷ Section 514.03, F.S., and Rule 64E-9.005, F.A.C.

¹⁸ Rules 64E-9.006(1)(i)3. and 64E-9.006(2)(c)3., F.A.C.

¹⁹ Rule 64E-9.006(2)(d), F.A.C.

²⁰ U.S. Consumer Product Safety Commission, *Safety Alert: Install Ground-Fault Circuit-Interrupter Protection for Pools, Spas and Hot Tubs*, CPSC Document #5059, <http://www.cpsc.gov/PageFiles/118868/5039.pdf> (last visited 4/13/2015).

²¹ Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah*, *Policy Say*, Local10.com (May 8, 2014), available at <http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796> (last visited 4/13/2015).

²² Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming*, Local10.com (April 17, 2014), available at <http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944> (last visited 4/13/2015).

²³ Miami-Dade County Regulatory and Economic Resources Department, *Is My Pool Safe?*, available at <http://www.miamidade.gov/permits/library/brochures/swimming-pool-light.pdf> (last visited 4/13/2015).

existing pool light to low voltage light or to remove a light without a replacement in unincorporated Miami-Dade County is \$65.

Building Code Compliance and Mitigation Program

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.²⁴ The program is geared toward persons licensed and employed in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.²⁵ The FBC implemented the accreditation process required by statute through its standard process of gathering input from all affected stakeholders and has continued to regularly modify the process based on concerns identified by its users. To date, the FBC has accredited approximately 300 courses finding that the courses' content to be an accurate reflection of the Florida Building Code or related processes.²⁶

Florida Building

Currently, s. 553.73(11), F.S., requires local building code enforcement officials and local fire code enforcement officials to resolve conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Florida Life Safety Code by agreement as to the code that offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and equivalent method of construction. Additionally, decisions made by local fire officials and the local building officials may be appealed to local administrative boards having firesafety responsibilities. All such decisions are subject to review by a joint committee composed of members of the FBC and the Fire Code Advisory Council.

Building Plan Review

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit from the appropriate enforcing agency. Further, a permit may not be issued for any activity unless the applicant for the permit complies with the requirements for plan review established by the FBC within the Florida Building Code. However, the Florida Building Code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.

Section 105.13 (phased permit approval), of the Florida Building Code provides the following:

After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole

²⁴ Section 553.841(2), F.S.

²⁵ Section 553.841(3), F.S.

²⁶ DBPR, *2015 Legislative Bill Analysis: SB 1232* (March 17, 2015) (on file with Senate Committee on Health Policy).

building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

Product Approval

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the FBC rather than seeking approval in each local jurisdiction where the product is used. One method of obtaining a state approval uses product evaluation reports from an approved evaluation entity. Section 553.842(8)(a), F.S., explicitly names the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, and the Miami-Dade County Building Code Compliance Office Product Control as evaluation entities.

Underwriters Laboratories (UL) is a safety science company established in 1890 which certifies, validates, tests, inspects, audits, advises, and trains. According to their webpage, UL is "dedicated to promoting safe living and working environments, UL helps safeguard people, products and places in important ways, facilitating trade and providing peace of mind."²⁷

Duct and Air Infiltration Tests

On June 30, 2015, the new 5th Edition (2014) Florida Building Code-Energy Conservation, will go into effect. Part of this new code is section R402.4.1.2. According to this section, a home constructed to this code will be required to be tested via a blower door test/air infiltration test to demonstrate specific air infiltration levels.

Section R402.4.1.2 (testing), of the Florida Building Code provides the following:

The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals). Where required by the code official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

Division of the State Fire Marshal

State law on fire prevention and control is provided in ch. 633, F.S. The Chief Financial Officer is designated as the State Fire Marshal, operating through the Division of the State Fire

²⁷ Underwriters Laboratories, *About UL*, available at <http://ul.com/aboutul/> (last visited 4/14/2015).

Marshal.²⁸ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.

The State Fire Marshal is required to adopt the Florida Fire Prevention Code by rule every 3 years. The code contains or references all firesafety laws and rules regarding public and private buildings that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.²⁹

III. Effect of Proposed Changes:

Building Code Administrators, Plans Examiners, and Inspectors Certifications

Section 1 amends s. 468.609, F.S., to modify the training requirements required for building code inspectors, plan examiners, and building code administrators to take the certification exams.

Related to certain training requirements for building code inspectors, the bill:

- For individuals with a standard certificate or firesafety inspector license, reduces the number of years' experience in inspection or plan review from 5 to 3 years and requires the training program to be between 100 and 200 hours;
- For individuals with 2 years' experience in the field, requires the training program to be between 200 and 300 hours and limits the required hours of instruction in state law to between 20 and 30 hours; and
- Creates a new option for individuals who currently hold a standard certificate or a firesafety inspector license to qualify to take the exam, if the person also:
 - Has at least 5 years' verifiable full-time experience under the certificate or license; and
 - Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides between 200 and 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide between 500 and 800 hours of training as prescribed by the FBCAIB.

Related to the training requirements for a building code administrator who is demonstrating a combination of years' experience and education, the bill adds a requirement that the individual must have also completed between 20 and 30 hours training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder.

Contractors

Section 6 amends s. 489.103, F.S., to exempt employees of apartment communities with 100 or more apartments from contractor licensing requirements when they make minor repairs under

²⁸ The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS. s. 633.104, F.S.

²⁹ Section 633.202, F.S.

\$1,000, and meet several criteria. Employees are exempt for minor repairs to existing water heaters or heating, venting, and air-conditioning systems that meet certain criteria.

Liquid Petroleum Gas Water Heater Installation

Section 7 amends s. 489.105, F.S., to clarify that the definition of a “plumbing contractor” does not require a person licensed for the sale of liquefied petroleum gas under ch. 527, F.S., to become certified or registered as a plumbing contractor in order to disconnect or reconnect water lines when servicing or replacing a hot water heater.

Low-Voltage Landscape Lighting

Section 14 amends s. 489.503, F.S., to exempt persons who install certain low-voltage landscape lighting from the requirement to be certified as an electrical contractor. The low-voltage landscape lighting must have a factory-installed electrical cord and plug and not require installation, wiring, or modification to the electrical wiring of a structure.

Florida Homeowner’s Construction Recovery Fund

Sections 9, 10, 11, 12, and 13 amend ss. 489.1401, 489.1402, 489.141, 489.1425, and 489.143, F.S., related to the Florida Homeowners’ Construction Recovery Fund to include Division II contractors within the parameters of the fund. The bill revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2016, for any contract entered into after July 1, 2015. The bill limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum.

The bill also:

- Clarifies that a “residence” includes a single-family residence.
- Repeals the prohibition against paying claims where the damages resulted from payments made in violation of the Florida Construction Lien Law.
- Clarifies that the prohibition against paying claims against Division II contractors applies only to contracts entered into before July 1, 2015.
- Revises the notice that contractors must give to homeowners informing them of their rights under the recovery fund, to advise that payments from the fund are up to a limited amount.

Swimming Pools

Sections 16 and 17 amend ss. 514.011 and 514.0115, F.S., to add portable pools used for educational programs established by county school districts to the definition of “private pool,” and exempt such pools from regulation as a public pool.

Sections 18 and 19 amend ss. 514.031 and 514.05, F.S., related to the operation and maintenance of public pools.

The bill requires the DOH to inspect permitted public swimming pools to ensure that they continue to be operated in compliance with DOH rules, the original plans and specifications for

the pool, and provisions in the Florida Building Code³⁰ applicable to public pools. The DOH is authorized to adopt rules for such inspections. The authority grant to the DOH to inspect extends to the pool, the pool deck, the pool barrier,³¹ and the bathroom facilities for pool patrons. Local enforcement agencies are required to permit and inspect repairs required as the result of DOH inspections and are authorized to take enforcement actions to ensure compliance. The DOH is required to ensure that rules enforced by the local enforcement agency are not inconsistent with the Florida Building Code.

The bill also authorizes the DOH to deny a permit, to impose administrative fines (up to \$500 per violation), or to close a public pool for noncompliance with applicable provisions in the Florida Building Code.

Section 24 amends s. 553.79, F.S., to provide that if the department determines that a public pool or swimming place is not operated in compliance with administrative rules, the original plans and specifications for the pool, and provisions in the Florida Building Code, the local enforcing agency must permit and inspect repairs or modifications done as a result of the inspections and may take enforcement action to ensure compliance.

Section 32 establishes the Calder Sloan Swimming Pool Electrical-Safety Task Force within the FBC. The purpose of the task force is to study and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2015, on recommended revisions to the Florida Statutes concerning standards pertaining to grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools. The task force is comprised of the Swimming Pool and Electrical Technical Advisory Committees of the FBC, and chaired by the Swimming Pool Contractor appointed to the FBC.

The bill requires the FBC to provide staff, information, and other assistance as reasonably necessary to assist the task force in carrying out its responsibilities. Members of the task force serve without compensation³² and are required to meet as often as necessary to fulfill the responsibilities of the task force. Meetings may be conducted by conference call, teleconferencing, or other similar technology. The section expires December 31, 2015.

Building Code Compliance and Mitigation Program

Section 25 amends s. 553.841, F.S, to repeal the requirement that the DBPR develop or update advanced modules designed for use by each profession. Instead the DBPR is authorized to develop or update code-related training for each profession. The bill also repeals the requirement that the FBC provide by rule for the accreditation of courses related to the Florida Building Code.

Sections 2, 3, 4, 5, 8, and 15 amend ss. 468.627, 471.0195, 481.215, 481.313, 489.115, and 489.517, F.S., to clarify that appropriate “code-related training” is required for issuance or renewal of specified licenses.

³⁰ Chapter 533, F.S.

³¹ As defined in s. 515.25, F.S.

³² Members may be reimbursed for per diem and travel expenses. s. 112.061, F.S.

Section 21 amends s. 553.721, F.S., to require the Florida Building Code Compliance Mitigation Fund to:

- Fund up to \$30,000 in Fiscal Year 2015-2016, from existing resources, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop; and
- Fund up to \$15,000 annually, from surcharge collections, the Florida Fire Code informal interpretations managed by the State Fire Marshal. The State Fire Marshal is provided with rule-making authority to implement these changes.

Current law allows a surcharge to be imposed of 1.5 percent of building permit fees, with a minimum of \$2 charged on each permit. Local governments remit the collections to the DBPR, less a 10 percent for specific local uses, for deposit in the Professional Regulation Trust Fund. These monies fund the FBC and the Florida Building Code Compliance Mitigation Program. Annually, the program must be allocated \$925,000 from collections.

Florida Building

Section 22 amends s. 553.73, F.S., related to the Florida Building Code, to:

- Allow local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board to address both codes. The combined board must have representation by at least one fire official at every meeting of the local board. The board can grant alternatives, but may not waive provisions of the Florida Fire Prevention Code. Board decisions may still be reviewed by a joint committee of the FBC and the Fire Code Advisory Council.
- Require that newly installed and replaced water heaters, except those in one- and two-family single-family homes, have hard-wired or battery-operated water-level detection devices secured to the drain pan area at a level lower than the drain connection. The device must have an audible alarm and, if battery operated, a 10-year low-battery notification; and
- Provide that, in residential buildings:
 - With a residential occupiable floor less than 420 feet above the level of fire service access, the Florida Building Code cannot require more than one fire service access elevator; and
 - With a transient residential occupiable floor more than 420 feet above the level of fire service access, specific requirements related to fire service access elevator lobbies and exit access corridors apply.
 - The requirement for a second fire service access elevator is not considered part of the Florida Building Code, and does not take effect until July 1, 2016.
- Clarify that existing mechanical equipment on roofs need not be replaced to conform to the building code, except during re-roofing.

Section 23 amends s. 553.775, F.S., to alter the composition of the FBC panel that reviews decisions of local building code officials. In addition to the five members that must be licensed as building code administrators, the bill adds two new members to the panel. One member must be licensed as an architect, and one member must be licensed as an engineer.

Section 24 amends s. 553.79, F.S., to allow the local building official to issue a phased permit after an applicant submits the appropriate construction documents. The holder of a phased permit may proceed with permitted activities at the holder's own risk and without assurance that a

master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

Product Approval

Section 26 amends s. 553.842, F.S., to add Underwriters Laboratories, LLC, to the list of evaluation entities approved by the FBC.

Duct and Air Infiltration Tests

Section 27 amends s. 553.908, F.S., to require local enforcement agencies to accept duct and air infiltration tests conducted in accordance with the Florida Building Code-Energy Conservation by specified individuals including energy raters and HVAC contractors. The bill provides that mandatory blower door testing and mechanical ventilation testing for residential buildings or dwelling units takes effect on April 1, 2016.

Division of the State Fire Marshal

Sections 28 - 31 amend ss. 633.202, 633.206, 633.208, and 633.336, F.S., related to fire prevention and control, to:

- Require new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction. Existing high-rise buildings must comply by 2022 and existing apartment buildings must comply by 2025;
- Require areas of refuge to be provided when required by the Accessibility portion of the Florida Building Code; and
- Authorize existing assisted living facilities to use the home environment provisions enumerated in the most current edition of the firesafety code;
- Authorize fire officials to identify low-cost alternatives for compliance, by using the Fire Safety Evaluation System found in NFPA 101A, Alternative Solutions to LifeSafety; and
- Require technicians that work on fire pump control panels and drivers to be under contract with a licensed fire protection contractor.

Accessibility Advisory Council

The Accessibility Advisory Council within the FBC consists of seven members who must be knowledgeable in the area of accessibility for persons with disabilities. It reviews applications for waiver to the FBC for granting individual modifications of, or exemptions from, part II, ch. 553, F.S., related to accessibility by handicapped persons. **Section 20** amends s. 553.512, F.S., to replace a representative on the Accessibility Advisory Council, with one from Pensacola Pen Wheels Inc., Employ the Handicapped Council.

Section 33 establishes an effective date of July 1, 2015.

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:

Consumers who have their liquid petroleum gas water heaters serviced or replaced may see an indeterminate positive fiscal impact due to not being required to hire a plumbing contractor to hook the water heater to the water line. Additionally, liquid petroleum gas appliance installers may see an indeterminate positive fiscal impact due to not being required to be certified as a plumbing contractor to hook such water heaters to the water line. Plumbing contractors may see an indeterminate negative fiscal impact due to the loss of such hook-up business.

The requirement for hot water heaters to have leak detection devices may increase the costs when installing or replacing a water heater.

The exemption from the requirement to be certified as an electrical contractor may reduce the costs of installing low-voltage landscape lighting.

Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.

To the extent fire officials become more familiar with their authority to use, and make use of the Fire Safety Evaluation System in NFPA 101A, they may be able to identify low-cost alternatives for compliance that will realize cost savings for builders.

C. Government Sector Impact:

The DOH reports that, "As the violations will be cited during inspections already being done at public swimming pools, the bill does not have a significant fiscal impact on the

Department.”³³ There may be an indeterminate positive impact due to the ability for the DOH to issue fines for violations during inspections (up to \$500 per violation of original plan and specifications or variances and the Florida Building Code).

The DBPR reports that the fiscal impact on the FBC due to the requirement that the FBC support and assist the Calder Sloan Swimming Pool Electrical-Safety Task Force is negative \$39,000.

The DBPR also reports a negative fiscal impact of \$5,000 due to reduced applications and education courses from the various exempted persons under the bill, and an anticipated reduction in service charge transfers to the General Revenue Fund of approximately \$400 per year, due to the revenue reduction. Additionally, the DBPR anticipates a positive fiscal impact of \$22,000 due to reduced expenditures related to the repeal of the requirement of the DBPR to create advanced modules for training under the Building Code Compliance and Mitigation Program.

The impact of permitting claims related to Division II contractors from the Florida Homeowners’ Construction Recovery Fund is indeterminate.

The bill permits the following distributions of funds from the Florida Building Code Compliance Mitigation Program within the Professional Regulation Trust Fund:

- Up to \$30,000 in Fiscal Year 2015-2016, from existing resources, to fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop; and
- Up to \$15,000 annually, from surcharge collections, to fund the Florida Fire Code informal interpretations managed by the State Fire Marshal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DBPR and FBC are granted rulemaking authority related to the various changes in the bill to the Florida Building Code and programs.

The DOH is authorized to adopt rules for inspections of pools.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.609, 468.627, 471.0195, 481.215, 481.313, 489.103, 489.105, 489.115, 489.1401, 489.1402, 489.141, 489.1425, 489.143, 489.503, 489.517, 514.011, 514.0115, 514.031, 514.05, 553.721, 553.73, 553.79, 553.841, 553.842, 553.908, 633.202, 633.206, 633.208, and 633.336.

The bill creates an undesignated section of Florida law.

³³ Department of Health, *House Bill 915 Analysis* (February 25, 2015), p. 2.

IX. Additional Information:

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

CS/CS/CS by Fiscal Policy on April 15, 2015:

The committee substitute amends provisions in the bill to:

- Clarify fire service access elevator requirements;
- Remove the indemnification provisions related to the certification requirements for apartment maintenance technicians;
- Provide a 9-month delay for the mandatory blower door testing and mechanical ventilation provisions;
- Remove a provision related to State Fire Marshal declaratory statements;
- Remove a provision requiring all fire prevention plan reviewers to be certified as Plans Examiners; and
- Clarify that existing mechanical equipment on roofs need not be replaced to conform to the building code, except during re-roofing.

The CS also adds the following new provisions:

- Changes the composition of the Accessibility Advisory Council by replacing a representative from an obsolete organization;
- Specifies the membership requirements for the panel that reviews decisions of local building officials;
- Authorizes existing assisted living facilities to use the home environment provisions enumerated in the most current edition of the firesafety code;
- Authorizes fire officials to use the Fire Safety Evaluation System to identify low-cost alternatives for compliance; and
- Requires technicians that work on fire pump control panels and drivers to be under contract with a licensed fire protection contractor.

CS/CS by Community Affairs on April 7, 2015:

- Lowers the hour requirements for the building inspector training program from 300 to 200 hours;
- Removes a provision that would have added a firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement to become a building code administrator;
- Provides the State Fire Marshal with rule-making authority to address changes made concerning Florida Fire Prevention Code informal interpretations;
- Exempts any portable pool used for certain educational programs established by county school districts from regulatory requirements of a public pool;
- Provides regulations related to fire service access elevators, access elevator lobbies, and exit access corridors, in residential buildings of certain heights, including a provision that would delay a requirement for residential buildings to include a second fire service access elevator until July 1, 2016;
- Requires new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction;

- Removes a requirement that dead-end corridors have a maximum length of 50 feet in apartment buildings protected by automatic sprinklers;
- Removes a provision that State Fire Marshal declaratory statements relating to the Florida Fire Prevention Code are not intended to be an appeal of a decision made by a local fire official or local board;
- Removes a change made to the definition of “use” of real property, as it pertains to fire prevention and control;
- Requires all fire prevention plan reviewers to be certified at minimum as a Plans Examiner Level II, or as an alternative equivalent set in rule by the State Fire Marshal; and
- Provides that the Calder Sloan Electrical Safety Task Force is comprised of the Swimming Pool and Electrical Technical Advisory Committees of the FBC.

CS by Health Policy on March 23, 2015:

- Amends current provisions in the bill to:
 - Exempt one- and two-family homes from the requirement to have a hot water heater leak detection device installed when installing or replacing hot water heaters; and
 - Make conforming changes to provisions related to swimming pool inspections.
- Creates new provisions which:
 - Reduce the requirements for certification as a building code inspector, building code administrator, or a plans examiner and allows for a board certificate or a firesafety inspector license to qualify along with 5 years’ experience and required training.
 - Require the Florida Building Code Administrators and Inspectors Board to provide for appropriate levels of provisional certificates.
 - Apply the requirements of the Florida Homeowner’s Recovery Fund to Division II contractors and makes clarifying and technical changes to those sections related to the recovery fund.
 - Cap payments from the recovery fund for Division II contractors.
 - Exempt landscapers from being certified as an electrical contractor when installing pre-wired low-voltage landscape lighting.
 - Clarify the DOH’s authority to deny, revoke, or fine a public swimming pool permittee.
 - Require the Florida Building Code Compliance Mitigation Fund to fund, up to \$30,000, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop and to fund, up to \$15,000, for Florida Fire Code informal interpretations managed by the State Fire Marshal.
 - Allow local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board.
 - Restrict appeals of decisions made by local fire officials or local building officials.
 - Restrict the Florida Building Code from requiring more than one access elevator in buildings that are Occupancy Group R-2.

- Allow building officials to issue phased permits for the construction of parts of a building project.
- Require the local enforcement agencies to accept certain duct and air infiltration tests when inspecting for thermal efficiency standards.
- Amend provisions related to fire prevention and control to:
 - Revise definitions;
 - Clarify who may require the State Fire Marshal to issue a declaratory statement relating to the Florida Fire Prevention Code and clarify that such process is not intended to be an appeal of a decision made by a local fire official or local board;
 - Require new and, by certain dates, existing high-rise buildings to comply with minimum radio signal strength;
 - Require areas of refuge to be provided under certain circumstances and restrict certain dead-end corridors; and
 - Require fire prevention plan reviewers to be certified.
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force.

B. Amendments:

None.

By the Committees on Community Affairs; and Health Policy; and
Senator Simpson

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1 A bill to be entitled
2 An act relating to building codes; amending s.
3 468.609, F.S.; revising the certification examination
4 requirements for building code inspectors, plans
5 examiners, and building code administrators; requiring
6 the Florida Building Code Administrators and
7 Inspectors Board to provide for issuance of certain
8 provisional certificates; amending ss. 468.627,
9 471.0195, 481.215, and 481.313, F.S.; requiring a
10 licensee or certificateholder to undergo code-related
11 training as part of his or her continuing education
12 courses; amending s. 489.103, F.S.; providing an
13 exemption for a specified employee who makes minor
14 repairs to existing waters heaters or to existing
15 heating, venting, and air-conditioning systems in
16 certain circumstances; amending s. 489.105, F.S.;
17 revising the term "plumbing contractor"; amending s.
18 489.115, F.S.; requiring a certificateholder or
19 registrant to undergo code-related training as part of
20 his or her continuing education requirements; amending
21 s. 489.1401, F.S.; revising legislative intent with
22 respect to the purpose of the Florida Homeowners'
23 Construction Recovery Fund; providing legislative
24 intent that Division II contractors set apart funds to
25 participate in the fund; amending s. 489.1402, F.S.;
26 revising terms; amending s. 489.141, F.S.; authorizing
27 certain claimants to make a claim against the recovery
28 fund for certain contracts entered into before a
29 specified date; amending s. 489.1425, F.S.; revising a

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30 notification provided by contractors to certain
31 residential property owners to state that payment from
32 the recovery fund is limited; amending s. 489.143,
33 F.S.; revising provisions concerning payments from the
34 recovery fund; specifying claim amounts for certain
35 contracts entered into before or after specified
36 dates; providing aggregate caps for payments; amending
37 s. 489.503, F.S.; exempting certain low-voltage
38 landscape lighting from licensed electrical contractor
39 installation requirements; amending s. 489.517, F.S.;
40 requiring a certificateholder or registrant to undergo
41 code-related training as part of his or her continuing
42 education requirements; amending s. 514.011, F.S.;
43 revising the term "private pool"; amending s.
44 514.0115, F.S.; prohibiting a portable pool from being
45 regulated as a public pool in certain circumstances;
46 amending s. 514.031, F.S.; requiring the Department of
47 Health to conduct inspections of certain public pools
48 with operating permits to ensure continued compliance
49 with specified criteria; authorizing the department to
50 adopt rules; specifying the department's jurisdiction
51 for purposes of inspecting certain public pools;
52 specifying duties of local enforcement agencies
53 regarding modifications and repairs made to certain
54 public pools as a result of the department's
55 inspections; requiring the department to ensure that
56 certain rules enforced by local enforcement agencies
57 comply with the Florida Building Code; conforming a
58 provision to changes made by the act; amending s.

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59 514.05, F.S.; specifying that the department may deny,
 60 suspend, or revoke operating permits for certain pools
 61 and bathing places if certain plans, variances, or
 62 requirements of the Florida Building Code are
 63 violated; specifying that the department may assess an
 64 administrative fine for violations by certain public
 65 pools and bathing places if certain plans, variances,
 66 or requirements of the Florida Building Code are
 67 violated; amending s. 553.721, F.S.; directing the
 68 Florida Building Code Compliance and Mitigation
 69 Program to fund, from existing resources, the
 70 recommendations made by the Building Code System
 71 Uniform Implementation Evaluation Workgroup; providing
 72 a limitation; requiring that a specified amount of
 73 funds from the surcharge be used to fund certain
 74 Florida Fire Prevention Code informal interpretations;
 75 requiring the State Fire Marshal to adopt specified
 76 rules; amending s. 553.73, F.S.; authorizing local
 77 boards created to address specified issues to combine
 78 the appeals boards to create a single, local board;
 79 authorizing the local board to grant alternatives or
 80 modifications through specified procedures; requiring
 81 at least one member of a board to be a fire protection
 82 contractor, a fire protection design professional, a
 83 fire department operations professional, or a fire
 84 code enforcement professional in order to meet a
 85 specified quorum requirement; authorizing the appeal
 86 to a local administrative board of specified decisions
 87 made by a local fire official; specifying the

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88 decisions of the local building official and the local
 89 fire official which are subject to review; requiring
 90 the permitted installation or replacement of a water
 91 heater in a conditioned or attic space to include a
 92 water-level detection device; prohibiting the Florida
 93 Building Code from requiring more than one fire access
 94 elevator in certain buildings; prohibiting a 1 hour
 95 fire-rated fire service access elevator lobby from
 96 being required in certain circumstances; requiring a 1
 97 hour fire-related fire service access elevator lobby
 98 in certain circumstances; providing that the
 99 requirement for a second fire service access elevator
 100 is not considered to be part of the Florida Building
 101 Code; amending s. 553.79, F.S.; authorizing a building
 102 official to issue a permit for the construction of the
 103 foundation or any other part of a building or
 104 structure before the construction documents for the
 105 whole building or structure have been submitted;
 106 providing that the holder of such permit shall begin
 107 building at the holder's own risk with the building
 108 operation and without assurance that a permit for the
 109 entire structure will be granted; requiring local
 110 enforcing agencies to permit and inspect modifications
 111 and repairs made to certain public pools and public
 112 bathing places as a result of the Department of
 113 Business and Professional Regulation's inspections;
 114 amending s. 553.841, F.S.; authorizing the department
 115 to maintain, update, develop, or cause to be developed
 116 code-related training and education; removing

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117 provisions related to the development of advanced
 118 courses with respect to the Florida Building Code
 119 Compliance and Mitigation Program and the
 120 accreditation of courses related to the Florida
 121 Building Code; amending s. 553.842, F.S.; providing
 122 that Underwriters Laboratories, LLC, is an approved
 123 evaluation entity; amending s. 553.908, F.S.;

124 requiring local enforcement agencies to accept duct
 125 and air infiltration tests conducted in accordance
 126 with certain guidelines by specified individuals;
 127 amending s. 633.104, F.S.; defining a term; clarifying
 128 intent; amending s. 633.202, F.S.; requiring all new
 129 high-rise and existing high-rise buildings to maintain
 130 a minimum radio signal strength for fire department
 131 communications; providing a transitory period for
 132 compliance; requiring existing buildings and existing
 133 apartment buildings that are not in compliance with
 134 the requirements for minimum radio strength for fire
 135 department communications to initiate an application
 136 for an appropriate permit by a specified date;
 137 requiring areas of refuge to be required as determined
 138 by the Florida Building Code-Accessibility; amending
 139 s. 633.216, F.S.; requiring the State Fire Marshal to
 140 adopt a certification program for specified firesafety
 141 inspectors; requiring newly appointed Fire Code Plans
 142 Examiners and existing Fire Code Plans Examiners to
 143 meet specified certification requirements; requiring
 144 the State Fire Marshall to provide a transitory period
 145 for existing Fire Code Plans Examiners to receive

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146 their certification; authorizing the State Fire
 147 Marshal to determine alternative educational and
 148 experience requirements or certifications; creating
 149 the Calder Sloan Swimming Pool Electrical-Safety Task
 150 Force within the Florida Building Commission;
 151 specifying the purpose of the task force; requiring a
 152 report to the Governor and the Legislature by a
 153 specified date; providing for membership; requiring
 154 the Florida Building Commission to provide staff,
 155 information, and other assistance to the task force;
 156 providing that members of the task force serve without
 157 compensation; authorizing the task force to meet as
 158 often as necessary; providing for future repeal of the
 159 task force; providing an effective date.

160
 161 Be It Enacted by the Legislature of the State of Florida:

162
 163 Section 1. Subsections (2), (3), and (7) of section
 164 468.609, Florida Statutes, are amended to read:

165 468.609 Administration of this part; standards for
 166 certification; additional categories of certification.—

167 (2) A person may take the examination for certification as
 168 a building code inspector or plans examiner pursuant to this
 169 part if the person:

170 (a) Is at least 18 years of age.

171 (b) Is of good moral character.

172 (c) Meets eligibility requirements according to one of the
 173 following criteria:

174 1. Demonstrates 5 years' combined experience in the field

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175 of construction or a related field, building code inspection, or
 176 plans review corresponding to the certification category sought;

177 2. Demonstrates a combination of postsecondary education in
 178 the field of construction or a related field and experience
 179 which totals 4 years, with at least 1 year of such total being
 180 experience in construction, building code inspection, or plans
 181 review;

182 3. Demonstrates a combination of technical education in the
 183 field of construction or a related field and experience which
 184 totals 4 years, with at least 1 year of such total being
 185 experience in construction, building code inspection, or plans
 186 review;

187 4. Currently holds a standard certificate ~~as~~ issued by the
 188 board, or a firesafety ~~fire safety~~ inspector license issued
 189 pursuant to chapter 633, has a minimum of 3 ~~5~~ years' verifiable
 190 full-time experience in inspection or plan review, and
 191 satisfactorily completes a building code inspector or plans
 192 examiner training program that provides at least 100 hours but
 193 not more of not less than 200 hours of cross-training in the
 194 certification category sought. The board shall establish by rule
 195 criteria for the development and implementation of the training
 196 programs. The board shall accept all classroom training offered
 197 by an approved provider if the content substantially meets the
 198 intent of the classroom component of the training program; ~~or~~

199 5. Demonstrates a combination of the completion of an
 200 approved training program in the field of building code
 201 inspection or plan review and a minimum of 2 years' experience
 202 in the field of building code inspection, plan review, fire code
 203 inspections, and fire plans review of new buildings as a

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204 firesafety inspector certified under s. 633.216, or
 205 construction. The approved training portion of this requirement
 206 shall include proof of satisfactory completion of a training
 207 program that provides at least 200 hours but not more of not
 208 ~~less~~ than 300 hours of cross-training which is approved by the
 209 board in the chosen category of building code inspection or plan
 210 review in the certification category sought with at least not
 211 ~~less than~~ 20 hours but not more than 30 hours of instruction in
 212 state laws, rules, and ethics relating to professional standards
 213 of practice, duties, and responsibilities of a
 214 certificateholder. The board shall coordinate with the Building
 215 Officials Association of Florida, Inc., to establish by rule the
 216 development and implementation of the training program. However,
 217 the board shall accept all classroom training offered by an
 218 approved provider if the content substantially meets the intent
 219 of the classroom component of the training program; or

220 6. Currently holds a standard certificate issued by the
 221 board or a firesafety inspector license issued pursuant to
 222 chapter 633 and:

223 a. Has at least 5 years' verifiable full-time experience as
 224 an inspector or plans examiner in a standard certification
 225 category currently held or has a minimum of 5 years' verifiable
 226 full-time experience as a firesafety inspector licensed pursuant
 227 to chapter 633; and

228 b. Satisfactorily completes a building code inspector or
 229 plans examiner classroom training course or program that
 230 provides at least 200 but not more than 300 hours in the
 231 certification category sought, except for one-family and two-
 232 family dwelling training programs that are required to provide

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233 at least 500 but not more than 800 hours of training as
 234 prescribed by the board. The board shall establish by rule
 235 criteria for the development and implementation of classroom
 236 training courses and programs in each certification category.

237 (3) A person may take the examination for certification as
 238 a building code administrator pursuant to this part if the
 239 person:

240 (a) Is at least 18 years of age.

241 (b) Is of good moral character.

242 (c) Meets eligibility requirements according to one of the
 243 following criteria:

244 1. Demonstrates 10 years' combined experience as an
 245 architect, engineer, plans examiner, building code inspector,
 246 registered or certified contractor, or construction
 247 superintendent, with at least 5 years of such experience in
 248 supervisory positions; or

249 2. Demonstrates a combination of postsecondary education in
 250 the field of construction or related field, no more than 5 years
 251 of which may be applied, and experience as an architect,
 252 engineer, plans examiner, building code inspector, registered or
 253 certified contractor, or construction superintendent which
 254 totals 10 years, with at least 5 years of such total being
 255 experience in supervisory positions. In addition, the applicant
 256 must have completed training consisting of at least 20 hours but
 257 not more than 30 hours of instruction in state laws, rules, and
 258 ethics relating to professional standards of practice, duties,
 259 and responsibilities of a certificateholder.

260 (7) (a) The board shall ~~may~~ provide for the issuance of
 261 provisional certificates valid for 1 year, as specified by board

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262 rule, to any newly employed or promoted building code inspector
 263 or plans examiner who meets the eligibility requirements
 264 described in subsection (2) and any newly employed or promoted
 265 building code administrator who meets the eligibility
 266 requirements described in subsection (3). The provisional
 267 license may be renewed by the board for just cause; however, a
 268 provisional license is not valid for a period longer than 3
 269 years.

270 (b) ~~A~~ A building code administrator, plans examiner, or
 271 building code inspector may not have a provisional certificate
 272 extended beyond the specified period by renewal or otherwise.

273 (c) The board shall ~~may~~ provide for appropriate levels of
 274 provisional certificates and may issue these certificates with
 275 such special conditions or requirements relating to the place of
 276 employment of the person holding the certificate, the
 277 supervision of such person on a consulting or advisory basis, or
 278 other matters as the board may deem necessary to protect the
 279 public safety and health.

280 (d) A newly employed or hired person may perform the duties
 281 of a plans examiner or building code inspector for 120 days if a
 282 provisional certificate application has been submitted if such
 283 person is under the direct supervision of a certified building
 284 code administrator who holds a standard certification and who
 285 has found such person qualified for a provisional certificate.
 286 Direct supervision and the determination of qualifications may
 287 also be provided by a building code administrator who holds a
 288 limited or provisional certificate in a county having a
 289 population of fewer than 75,000 and in a municipality located
 290 within such county.

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291 Section 2. Subsection (5) of section 468.627, Florida
292 Statutes, is amended to read:

293 468.627 Application; examination; renewal; fees.—

294 (5) The certificateholder shall provide proof, in a form
295 established by board rule, that the certificateholder has
296 completed at least 14 classroom hours of at least 50 minutes
297 each of continuing education courses during each biennium since
298 the issuance or renewal of the certificate, including code-
299 related training ~~the specialized or advanced coursework approved~~
300 ~~by the Florida Building Commission~~, as part of the building code
301 training program established pursuant to s. 553.841, appropriate
302 to the licensing category sought. A minimum of 3 of the required
303 14 classroom hours must be on state law, rules, and ethics
304 relating to professional standards of practice, duties, and
305 responsibilities of the certificateholder. The board shall by
306 rule establish criteria for approval of continuing education
307 courses and providers, and may by rule establish criteria for
308 accepting alternative nonclassroom continuing education on an
309 hour-for-hour basis.

310 Section 3. Section 471.0195, Florida Statutes, is amended
311 to read:

312 471.0195 Florida Building Code training for engineers.—All
313 licensees actively participating in the design of engineering
314 works or systems in connection with buildings, structures, or
315 facilities and systems covered by the Florida Building Code
316 shall take continuing education courses and submit proof to the
317 board, at such times and in such manner as established by the
318 board by rule, that the licensee has completed any specialized
319 or code-related training ~~advanced courses~~ on any portion of the

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320 Florida Building Code applicable to the licensee's area of
321 practice. The board shall record reported continuing education
322 courses on a system easily accessed by code enforcement
323 jurisdictions for evaluation when determining license status for
324 purposes of processing design documents. Local jurisdictions
325 shall be responsible for notifying the board when design
326 documents are submitted for building construction permits by
327 persons who are not in compliance with this section. The board
328 shall take appropriate action as provided by its rules when such
329 noncompliance is determined to exist.

330 Section 4. Subsection (5) of section 481.215, Florida
331 Statutes, is amended to read:

332 481.215 Renewal of license.—

333 (5) The board shall require, by rule adopted pursuant to
334 ss. 120.536(1) and 120.54, a specified number of hours in
335 specialized or code-related training ~~advanced courses~~, ~~approved~~
336 ~~by the Florida Building Commission~~, on any portion of the
337 Florida Building Code, adopted pursuant to part IV of chapter
338 553, relating to the licensee's respective area of practice.

339 Section 5. Subsection (5) of section 481.313, Florida
340 Statutes, is amended to read:

341 481.313 Renewal of license.—

342 (5) The board shall require, by rule adopted pursuant to
343 ss. 120.536(1) and 120.54, a specified number of hours in
344 specialized or code-related training ~~advanced courses~~, ~~approved~~
345 ~~by the Florida Building Commission~~, on any portion of the
346 Florida Building Code, adopted pursuant to part IV of chapter
347 553, relating to the licensee's respective area of practice.

348 Section 6. Subsection (23) is added to section 489.103,

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349 Florida Statutes, to read:

350 489.103 Exemptions.—This part does not apply to:

351 (23) An employee of an apartment community or apartment
 352 community management company who makes minor repairs to existing
 353 water heaters or to existing heating, venting, and air-
 354 conditioning systems, if:

355 (a) The employee:

356 1. Does not hold himself or herself or his or her employer
 357 out to be licensed or qualified by a licensee;

358 2. Does not perform any acts outside the scope of this
 359 exemption which constitute contracting;

360 3. Receives compensation from and is under the supervision
 361 and control of an employer who regularly deducts the FICA and
 362 withholding tax and who provides workers' compensation, as
 363 prescribed by law; and

364 4. Holds a current certificate for apartment maintenance
 365 technicians issued by the National Apartment Association and
 366 accredited by the American National Standards Institute, or is
 367 under the direct supervision of a person holding such a
 368 certificate. Requirements for obtaining such certificate must
 369 include at least:

370 a. One year of apartment or rental housing maintenance
 371 experience;

372 b. Successful completion of at least 90 hours of courses or
 373 online content that covers electrical maintenance and repair;
 374 plumbing maintenance and repair; heating, venting, or air-
 375 conditioning system maintenance and repair; appliance
 376 maintenance and repair; and interior and exterior maintenance
 377 and repair; and

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378 c. Completion of all examination requirements within 24
 379 months after declaring candidacy for certification.

380 (b) The equipment:

381 1. Is already installed on the property owned by the
 382 apartment community or managed by the apartment community
 383 management company;

384 2. Is not being modified except to replace components
 385 necessary to return the equipment to its original condition, and
 386 the partial disassembly associated therewith;

387 3. Must be a type of equipment commonly installed in
 388 similar locations; and

389 4. Must be repaired with new parts that are functionally
 390 identical to the parts being replaced.

391 (c) An individual repair does not involve replacement parts
 392 that cost more than \$1,000. An individual repair may not be so
 393 extensive as to be a functional replacement of the water heater
 394 or the existing heating, venting, or air-conditioning system
 395 being repaired.

396 (d) The property owned by the apartment community or
 397 managed by the apartment community management company includes
 398 at least 100 apartments.

399 Section 7. Paragraph (m) of subsection (3) of section
 400 489.105, Florida Statutes, is amended to read:

401 489.105 Definitions.—As used in this part:

402 (3) "Contractor" means the person who is qualified for, and
 403 is only responsible for, the project contracted for and means,
 404 except as exempted in this part, the person who, for
 405 compensation, undertakes to, submits a bid to, or does himself
 406 or herself or by others construct, repair, alter, remodel, add

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407 to, demolish, subtract from, or improve any building or
 408 structure, including related improvements to real estate, for
 409 others or for resale to others; and whose job scope is
 410 substantially similar to the job scope described in one of the
 411 paragraphs of this subsection. For the purposes of regulation
 412 under this part, the term "demolish" applies only to demolition
 413 of steel tanks more than 50 feet in height; towers more than 50
 414 feet in height; other structures more than 50 feet in height;
 415 and all buildings or residences. Contractors are subdivided into
 416 two divisions, Division I, consisting of those contractors
 417 defined in paragraphs (a)-(c), and Division II, consisting of
 418 those contractors defined in paragraphs (d)-(q):

419 (m) "Plumbing contractor" means a contractor whose services
 420 are unlimited in the plumbing trade and includes contracting
 421 business consisting of the execution of contracts requiring the
 422 experience, financial means, knowledge, and skill to install,
 423 maintain, repair, alter, extend, or, if not prohibited by law,
 424 design plumbing. A plumbing contractor may install, maintain,
 425 repair, alter, extend, or, if not prohibited by law, design the
 426 following without obtaining an additional local regulatory
 427 license, certificate, or registration: sanitary drainage or
 428 storm drainage facilities, water and sewer plants and
 429 substations, venting systems, public or private water supply
 430 systems, septic tanks, drainage and supply wells, swimming pool
 431 piping, irrigation systems, and solar heating water systems and
 432 all appurtenances, apparatus, or equipment used in connection
 433 therewith, including boilers and pressure process piping and
 434 including the installation of water, natural gas, liquefied
 435 petroleum gas and related venting, and storm and sanitary sewer

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436 lines. The scope of work of the plumbing contractor also
 437 includes the design, if not prohibited by law, and installation,
 438 maintenance, repair, alteration, or extension of air-piping,
 439 vacuum line piping, oxygen line piping, nitrous oxide piping,
 440 and all related medical gas systems; fire line standpipes and
 441 fire sprinklers if authorized by law; ink and chemical lines;
 442 fuel oil and gasoline piping and tank and pump installation,
 443 except bulk storage plants; and pneumatic control piping
 444 systems, all in a manner that complies with all plans,
 445 specifications, codes, laws, and regulations applicable. The
 446 scope of work of the plumbing contractor applies to private
 447 property and public property, including any excavation work
 448 incidental thereto, and includes the work of the specialty
 449 plumbing contractor. Such contractor shall subcontract, with a
 450 qualified contractor in the field concerned, all other work
 451 incidental to the work but which is specified as being the work
 452 of a trade other than that of a plumbing contractor. This
 453 definition does not limit the scope of work of any specialty
 454 contractor certified pursuant to s. 489.113(6)~~7~~ and does not
 455 require certification or registration under this part for a
 456 category I liquefied petroleum gas dealer, LP gas installer, or
 457 specialty installer who is licensed under chapter 527 or an ~~of~~
 458 ~~any~~ authorized employee of a public natural gas utility or of a
 459 private natural gas utility regulated by the Public Service
 460 Commission when disconnecting and reconnecting water lines in
 461 the servicing or replacement of an existing water heater. A
 462 plumbing contractor may perform drain cleaning and clearing and
 463 install or repair rainwater catchment systems; however, a
 464 mandatory licensing requirement is not established for the

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465 performance of these specific services.

466 Section 8. Paragraph (b) of subsection (4) of section
467 489.115, Florida Statutes, is amended to read:

468 489.115 Certification and registration; endorsement;
469 reciprocity; renewals; continuing education.-

470 (4)

471 (b)1. Each certificateholder or registrant shall provide
472 proof, in a form established by rule of the board, that the
473 certificateholder or registrant has completed at least 14
474 classroom hours of at least 50 minutes each of continuing
475 education courses during each biennium since the issuance or
476 renewal of the certificate or registration. The board shall
477 establish by rule that a portion of the required 14 hours must
478 deal with the subject of workers' compensation, business
479 practices, workplace safety, and, for applicable licensure
480 categories, wind mitigation methodologies, and 1 hour of which
481 must deal with laws and rules. The board shall by rule establish
482 criteria for the approval of continuing education courses and
483 providers, including requirements relating to the content of
484 courses and standards for approval of providers, and may by rule
485 establish criteria for accepting alternative nonclassroom
486 continuing education on an hour-for-hour basis. The board shall
487 prescribe by rule the continuing education, if any, which is
488 required during the first biennium of initial licensure. A
489 person who has been licensed for less than an entire biennium
490 must not be required to complete the full 14 hours of continuing
491 education.

492 2. In addition, the board may approve specialized
493 continuing education courses on compliance with the wind

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494 resistance provisions for one and two family dwellings contained
495 in the Florida Building Code and any alternate methodologies for
496 providing such wind resistance which have been approved for use
497 by the Florida Building Commission. Division I
498 certificateholders or registrants who demonstrate proficiency
499 upon completion of such specialized courses may certify plans
500 and specifications for one and two family dwellings to be in
501 compliance with the code or alternate methodologies, as
502 appropriate, except for dwellings located in floodways or
503 coastal hazard areas as defined in ss. 60.3D and E of the
504 National Flood Insurance Program.

505 3. The board shall require, by rule adopted pursuant to ss.
506 120.536(1) and 120.54, a specified number of hours in
507 specialized or code-related training advanced module courses,
508 ~~approved by the Florida Building Commission~~, on any portion of
509 the Florida Building Code, adopted pursuant to part IV of
510 chapter 553, relating to the contractor's respective discipline.

511 Section 9. Subsections (2) and (3) of section 489.1401,
512 Florida Statutes, are amended to read:

513 489.1401 Legislative intent.-

514 (2) It is the intent of the Legislature that the sole
515 purpose of the Florida Homeowners' Construction Recovery Fund is
516 to compensate an ~~any~~ aggrieved claimant who contracted for the
517 construction or improvement of the homeowner's residence located
518 within this state and who has obtained a final judgment in a ~~any~~
519 court of competent jurisdiction, was awarded restitution by the
520 Construction Industry Licensing Board, or received an award in
521 arbitration against a licensee on grounds of financial
522 mismanagement or misconduct, abandoning a construction project,

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523 or making a false statement with respect to a project. Such
 524 grievance must arise ~~and arising~~ directly out of a any
 525 transaction conducted when the judgment debtor was licensed and
 526 must involve an act performed any of the activities enumerated
 527 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence.~~

528 (3) It is the intent of the Legislature that Division I and
 529 Division II contractors set apart funds for the specific
 530 objective of participating in the fund.

531 Section 10. Paragraphs (d), (i), (k), and (l) of subsection
 532 (1) of section 489.1402, Florida Statutes, are amended to read:

533 489.1402 Homeowners' Construction Recovery Fund;
 534 definitions.—

535 (1) The following definitions apply to ss. 489.140-489.144:

536 (d) "Contractor" means a Division I or Division II
 537 contractor performing his or her respective services described
 538 in s. 489.105(3)(a)-(g) ~~s. 489.105(3)(a)-(e).~~

539 (i) "Residence" means a single-family residence, an
 540 individual residential condominium or cooperative unit, or a
 541 residential building containing not more than two residential
 542 units in which the owner contracting for the improvement is
 543 residing or will reside 6 months or more each calendar year upon
 544 completion of the improvement.

545 (k) "Same transaction" means a contract, or a any series of
 546 contracts, between a claimant and a contractor or qualified
 547 business, when such contract or contracts involve the same
 548 property or contiguous properties and are entered into either at
 549 one time or serially.

550 (l) "Valid and current license," for the purpose of s.
 551 489.141(2)(d), means a any license issued pursuant to this part

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552 to a licensee, including a license in an active, inactive,
 553 delinquent, or suspended status.

554 Section 11. Subsections (1) and (2) of section 489.141,
 555 Florida Statutes, are amended to read:

556 489.141 Conditions for recovery; eligibility.—

557 (1) A Any claimant is eligible to seek recovery from the
 558 recovery fund after making ~~having made~~ a claim and exhausting
 559 the limits of any available bond, cash bond, surety, guarantee,
 560 warranty, letter of credit, or policy of insurance if, provided
 561 ~~that~~ each of the following conditions is satisfied:

562 (a) The claimant has received a final judgment in a court
 563 of competent jurisdiction in this state or has received an award
 564 in arbitration or the Construction Industry Licensing Board has
 565 issued a final order directing the licensee to pay restitution
 566 to the claimant. The board may waive this requirement if:

567 1. The claimant is unable to secure a final judgment
 568 against the licensee due to the death of the licensee; or

569 2. The claimant has sought to have assets involving the
 570 transaction that gave rise to the claim removed from the
 571 bankruptcy proceedings so that the matter might be heard in a
 572 court of competent jurisdiction in this state and, after due
 573 diligence, the claimant is precluded by action of the bankruptcy
 574 court from securing a final judgment against the licensee.

575 (b) The judgment, award, or restitution is based upon a
 576 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

577 (c) The violation was committed by a licensee.

578 (d) The judgment, award, or restitution order specifies the
 579 actual damages suffered as a consequence of such violation.

580 (e) The contract was executed and the violation occurred on

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581 or after July 1, 1993, and provided that:

582 1. The claimant has caused to be issued a writ of execution
583 upon such judgment, and the officer executing the writ has made
584 a return showing that no personal or real property of the
585 judgment debtor or licensee liable to be levied upon in
586 satisfaction of the judgment can be found or that the amount
587 realized on the sale of the judgment debtor's or licensee's
588 property pursuant to such execution was insufficient to satisfy
589 the judgment;

590 2. If the claimant is unable to comply with subparagraph 1.
591 for a valid reason to be determined by the board, the claimant
592 has made all reasonable searches and inquiries to ascertain
593 whether the judgment debtor or licensee is possessed of real or
594 personal property or other assets subject to being sold or
595 applied in satisfaction of the judgment and by his or her search
596 has discovered no property or assets or has discovered property
597 and assets and has taken all necessary action and proceedings
598 for the application thereof to the judgment but the amount
599 thereby realized was insufficient to satisfy the judgment; and

600 3. The claimant has made a diligent attempt, as defined by
601 board rule, to collect the restitution awarded by the board.

602 (f) A claim for recovery is made within 1 year after the
603 conclusion of any civil, criminal, or administrative action or
604 award in arbitration based on the act. This paragraph applies to
605 any claim filed with the board after October 1, 1998.

606 (g) Any amounts recovered by the claimant from the judgment
607 debtor or licensee, or from any other source, have been applied
608 to the damages awarded by the court or the amount of restitution
609 ordered by the board.

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610 (h) The claimant is not a person who is precluded by this
611 act from making a claim for recovery.

612 (2) A claimant is not qualified to make a claim for
613 recovery from the recovery fund, if:

614 (a) The claimant is the spouse of the judgment debtor or
615 licensee or a personal representative of such spouse;

616 (b) The claimant is a licensee who acted as the contractor
617 in the transaction that ~~which~~ is the subject of the claim;

618 (c) The claim is based upon a construction contract in
619 which the licensee was acting with respect to the property owned
620 or controlled by the licensee;

621 (d) The claim is based upon a construction contract in
622 which the contractor did not hold a valid and current license at
623 the time of the construction contract;

624 (e) The claimant was associated in a business relationship
625 with the licensee other than the contract at issue; or

626 ~~(f) The claimant has suffered damages as the result of~~
627 ~~making improper payments to a contractor as defined in part I of~~
628 ~~chapter 713; or~~

629 (f)(g) The claimant has entered into a contract contracted
630 with a licensee to perform a scope of work described in s.
631 489.105(3)(d)-(g) before July 1, 2015 s. 489.105(3)(d)-(p).

632 Section 12. Subsection (1) of section 489.1425, Florida
633 Statutes, is amended to read:

634 489.1425 Duty of contractor to notify residential property
635 owner of recovery fund.—

636 (1) Each ~~Any~~ agreement or contract for repair, restoration,
637 improvement, or construction to residential real property must
638 contain a written statement explaining the consumer's rights

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639 under the recovery fund, except where the value of all labor and
640 materials does not exceed \$2,500. The written statement must be
641 substantially in the following form:

642
643 FLORIDA HOMEOWNERS' CONSTRUCTION
644 RECOVERY FUND
645

646 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE
647 FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY
648 ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS
649 FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED
650 CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A
651 CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD
652 AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

653
654 The statement must ~~shall~~ be immediately followed by the board's
655 address and telephone number as established by board rule.

656 Section 13. Section 489.143, Florida Statutes, is amended
657 to read:

658 489.143 Payment from the fund.—

659 (1) The fund shall be disbursed as provided in s. 489.141
660 on a final order of the board.

661 (2) A ~~Any~~ claimant who meets all of the conditions
662 prescribed in s. 489.141 may apply to the board to cause payment
663 to be made to a claimant from the recovery fund in an amount
664 equal to the judgment, award, or restitution order or \$25,000,
665 whichever is less, or an amount equal to the unsatisfied portion
666 of such person's judgment, award, or restitution order, but only
667 to the extent and amount of actual damages suffered by the

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668 claimant, and only up to the maximum payment allowed for each
669 respective Division I and Division II claim. Payment from the
670 fund for other costs related to or pursuant to civil proceedings
671 such as postjudgment interest, ~~attorney~~ attorney's fees, court
672 costs, medical damages, and punitive damages is prohibited. The
673 recovery fund is not obligated to pay a ~~any~~ judgment, an award,
674 or a restitution order, or any portion thereof, which is not
675 expressly based on one of the grounds for recovery set forth in
676 s. 489.141.

677 (3) Beginning January 1, 2005, for each Division I contract
678 entered into after July 1, 2004, payment from the recovery fund
679 shall be subject to a \$50,000 maximum payment for each Division
680 I claim. Beginning January 1, 2016, for each Division II
681 contract entered into on or after July 1, 2015, payment from the
682 recovery fund is subject to a \$15,000 maximum payment for each
683 Division II claim.

684 (4) ~~(3)~~ Upon receipt by a claimant under subsection (2) of
685 payment from the recovery fund, the claimant shall assign his or
686 her additional right, title, and interest in the judgment,
687 award, or restitution order, to the extent of such payment, to
688 the board, and thereupon the board shall be subrogated to the
689 right, title, and interest of the claimant; and any amount
690 subsequently recovered on the judgment, award, or restitution
691 order, to the extent of the right, title, and interest of the
692 board therein, shall be for the purpose of reimbursing the
693 recovery fund.

694 (5) ~~(4)~~ Payments for claims arising out of the same
695 transaction shall be limited, in the aggregate, to the lesser of
696 the judgment, award, or restitution order or the maximum payment

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697 allowed for a Division I or Division II claim, regardless of the
698 number of claimants involved in the transaction.

699 ~~(6)(5)~~ For contracts entered into before July 1, 2004,
700 payments for claims against any one licensee ~~may shall~~ not
701 exceed, in the aggregate, \$100,000 annually, up to a total
702 aggregate of \$250,000. For any claim approved by the board which
703 is in excess of the annual cap, the amount in excess of \$100,000
704 up to the total aggregate cap of \$250,000 is eligible for
705 payment in the next and succeeding fiscal years, but only after
706 all claims for the then-current calendar year have been paid.
707 Payments may not exceed the aggregate annual or per claimant
708 limits under law. Beginning January 1, 2005, for each Division I
709 contract entered into after July 1, 2004, payment from the
710 recovery fund is subject only to a total aggregate cap of
711 \$500,000 for each Division I licensee. Beginning January 1,
712 2016, for each Division II contract entered into on or after
713 July 1, 2015, payment from the recovery fund is subject only to
714 a total aggregate cap of \$150,000 for each Division II licensee.

715 ~~(7)(6)~~ Claims shall be paid in the order filed, up to the
716 aggregate limits for each transaction and licensee and to the
717 limits of the amount appropriated to pay claims against the fund
718 ~~for the fiscal year in which the claims were filed. Payments may~~
719 not exceed the total aggregate cap per license or per claimant
720 limits under this section.

721 ~~(8)(7)~~ If the annual appropriation is exhausted with claims
722 pending, such claims shall be carried forward to the next fiscal
723 year. Any moneys in excess of pending claims remaining in the
724 recovery fund at the end of the fiscal year shall be paid as
725 provided in s. 468.631.

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726 ~~(9)(8)~~ Upon the payment of any amount from the recovery
727 fund in settlement of a claim in satisfaction of a judgment,
728 award, or restitution order against a licensee as described in
729 s. 489.141, the license of such licensee shall be automatically
730 suspended, without further administrative action, upon the date
731 of payment from the fund. The license of such licensee ~~may shall~~
732 not be reinstated until he or she has repaid in full, plus
733 interest, the amount paid from the fund. A discharge of
734 bankruptcy does not relieve a person from the penalties and
735 disabilities provided in this section.

736 ~~(10)(9)~~ A Any firm, a corporation, a partnership, or an
737 association, or a any person acting in his or her individual
738 capacity, who aids, abets, solicits, or conspires with another
739 any person to knowingly present or cause to be presented a any
740 false or fraudulent claim for the payment of a loss under this
741 act commits is guilty of a third-degree felony, punishable as
742 provided in s. 775.082 or s. 775.084 and by a fine of up to not
743 exceeding \$30,000, unless the value of the fraud exceeds that
744 amount, \$30,000 in which event the fine may not exceed double
745 the value of the fraud.

746 ~~(11)(10)~~ Each payment All payments and disbursement
747 disbursements from the recovery fund shall be made by the Chief
748 Financial Officer upon a voucher signed by the secretary of the
749 department or the secretary's designee.

750 Section 14. Subsection (24) is added to section 489.503,
751 Florida Statutes, to read:

752 489.503 Exemptions.—This part does not apply to:

753 (24) A person who installs low-voltage landscape lighting
754 that contains a factory-installed electrical cord and plug and

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755 does not require installation, wiring, or modification to the
 756 electrical wiring of the structure.

757 Section 15. Subsection (6) of section 489.517, Florida
 758 Statutes, is amended to read:

759 489.517 Renewal of certificate or registration; continuing
 760 education.-

761 (6) The board shall require, by rule adopted pursuant to
 762 ss. 120.536(1) and 120.54, a specialized number of hours in
 763 specialized or code-related training advanced module courses,
 764 approved by the Florida Building Commission, on any portion of
 765 the Florida Building Code, adopted pursuant to part IV of
 766 chapter 553, relating to the contractor's respective discipline.

767 Section 16. Subsection (3) of section 514.011, Florida
 768 Statutes, is amended to read:

769 514.011 Definitions.-As used in this chapter:

770 (3) "Private pool" means a facility used only by an
 771 individual, family, or living unit members and their guests
 772 which does not serve any type of cooperative housing or joint
 773 tenancy of five or more living units. The term includes a
 774 portable pool used exclusively for providing swimming lessons or
 775 related instruction in support of an established educational
 776 program sponsored or provided by a county school district for
 777 the purposes of the exemptions provided under s. 514.0115.

778 Section 17. Subsection (3) of section 514.0115, Florida
 779 Statutes, is amended to read:

780 514.0115 Exemptions from supervision or regulation;
 781 variances.-

782 (3) A private pool used for instructional purposes in
 783 swimming may shall not be regulated as a public pool. A portable

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784 pool used for instructional purposes or in furtherance of an
 785 approved educational program may not be regulated as a public
 786 pool.

787 Section 18. Subsections (2) through (5) of section 514.031,
 788 Florida Statutes, are redesignated as subsections (3) through
 789 (6), respectively, a new subsection (2) is added to that
 790 section, and present subsection (5) of that section is amended,
 791 to read:

792 514.031 Permit necessary to operate public swimming pool.-

793 (2) The department shall ensure through inspections that a
 794 public swimming pool with an operating permit continues to be
 795 operated and maintained in compliance with rules adopted under
 796 this section, the original approved plans and specifications or
 797 variances, and the Florida Building Code adopted under chapter
 798 553 applicable to public pools or public bathing places. The
 799 department may adopt and enforce rules to implement this
 800 subsection, including provisions for closing those pools and
 801 bathing places not in compliance. For purposes of this
 802 subsection, the department's jurisdiction includes the pool, the
 803 pool deck, the barrier as defined in s. 515.25, and the bathroom
 804 facilities for pool patrons. The local enforcement agency shall
 805 permit and inspect repairs or modifications required as a result
 806 of the department's inspections and may take enforcement action
 807 to ensure compliance. The department shall ensure that the rules
 808 enforced by the local enforcement agency under this subsection
 809 are consistent with the Florida Building Code adopted under
 810 chapter 553.

811 (6)+(5) An owner or operator of a public swimming pool,
 812 including, but not limited to, a spa, wading, or special purpose

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813 pool, to which admittance is obtained by membership for a fee
 814 shall post in a prominent location within the facility the most
 815 recent pool inspection report issued by the department
 816 pertaining to the health and safety conditions of such facility.
 817 The report shall be legible and readily accessible to members or
 818 potential members. The department shall adopt rules to enforce
 819 this subsection. A portable pool may not be used as a public
 820 pool, unless it is exempt under s. 514.0115.

821 Section 19. Subsections (1), (2), and (5) of section
 822 514.05, Florida Statutes, are amended to read:

823 514.05 Denial, suspension, or revocation of permit;
 824 administrative fines.—

825 (1) The department may deny an application for an a
 826 operating permit, suspend or revoke a permit issued to any
 827 person or public body, or impose an administrative fine upon the
 828 failure of such person or public body to comply with the
 829 provisions of this chapter, the original approved plans and
 830 specifications or variances, the Florida Building Code adopted
 831 under chapter 553 applicable to public pools or public bathing
 832 places, or the rules adopted hereunder.

833 (2) The department may impose an administrative fine, which
 834 shall not exceed \$500 for each violation, for the violation of
 835 this chapter, the original approved plans and specifications or
 836 variances, the Florida Building Code adopted under chapter 553
 837 applicable to public pools or public bathing places, or the
 838 rules adopted hereunder and for the violation of ~~any of the~~
 839 ~~provisions of~~ chapter 386. Notice of intent to impose such fine
 840 shall be given by the department to the alleged violator. Each
 841 day that a violation continues may constitute a separate

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842 violation.

843 (5) Under conditions specified by rule, the department may
 844 close a public pool that is not in compliance with this chapter,
 845 the original approved plans and specifications or variances, the
 846 Florida Building Code adopted under chapter 553 applicable to
 847 public pools or public bathing places, or the rules adopted
 848 under this chapter.

849 Section 20. Section 553.721, Florida Statutes, is amended
 850 to read:

851 553.721 Surcharge.—In order for the Department of Business
 852 and Professional Regulation to administer and carry out the
 853 purposes of this part and related activities, there is created a
 854 surcharge, to be assessed at the rate of 1.5 percent of the
 855 permit fees associated with enforcement of the Florida Building
 856 Code as defined by the uniform account criteria and specifically
 857 the uniform account code for building permits adopted for local
 858 government financial reporting pursuant to s. 218.32. The
 859 minimum amount collected on any permit issued shall be \$2. The
 860 unit of government responsible for collecting a permit fee
 861 pursuant to s. 125.56(4) or s. 166.201 shall collect the
 862 surcharge and electronically remit the funds collected to the
 863 department on a quarterly calendar basis for the preceding
 864 quarter and continuing each third month thereafter. The unit of
 865 government shall retain 10 percent of the surcharge collected to
 866 fund the participation of building departments in the national
 867 and state building code adoption processes and to provide
 868 education related to enforcement of the Florida Building Code.
 869 All funds remitted to the department pursuant to this section
 870 shall be deposited in the Professional Regulation Trust Fund.

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871 Funds collected from the surcharge shall be allocated to fund
 872 the Florida Building Commission and the Florida Building Code
 873 Compliance and Mitigation Program under s. 553.841. Funds
 874 allocated to the Florida Building Code Compliance and Mitigation
 875 Program shall be \$925,000 each fiscal year. The Florida Building
 876 Code Compliance and Mitigation Program shall fund the
 877 recommendations made by the Building Code System Uniform
 878 Implementation Evaluation Workgroup, dated April 8, 2013, from
 879 existing resources, not to exceed \$30,000 in the 2015-2016
 880 fiscal year. Funds collected from the surcharge shall also be
 881 used to fund Florida Fire Prevention Code informal
 882 interpretations managed by the State Fire Marshal and shall be
 883 limited to \$15,000 each fiscal year. The State Fire Marshal
 884 shall adopt rules to address the implementation and expenditure
 885 of the funds allocated to fund the Florida Fire Prevention Code
 886 informal interpretations under this section. The funds collected
 887 from the surcharge may not be used to fund research on
 888 techniques for mitigation of radon in existing buildings. Funds
 889 used by the department as well as funds to be transferred to the
 890 Department of Health and the State Fire Marshal shall be as
 891 prescribed in the annual General Appropriations Act. The
 892 department shall adopt rules governing the collection and
 893 remittance of surcharges pursuant to chapter 120.

894 Section 21. Subsection (11) of section 553.73, Florida
 895 Statutes, is amended, and subsections (19) and (20) are added to
 896 that section, to read:

897 553.73 Florida Building Code.—
 898 (11) (a) In the event of a conflict between the Florida
 899 Building Code and the Florida Fire Prevention Code and the Life

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900 Safety Code as applied to a specific project, the conflict shall
 901 be resolved by agreement between the local building code
 902 enforcement official and the local fire code enforcement
 903 official in favor of the requirement of the code which offers
 904 the greatest degree of lifesafety or alternatives which would
 905 provide an equivalent degree of lifesafety and an equivalent
 906 method of construction. Local boards created to address issues
 907 arising under the Florida Building Code and the Florida Fire
 908 Prevention Code may combine the appeals boards to create a
 909 single, local board having jurisdiction over matters arising
 910 under either or both codes. The combined local board of appeals
 911 has the authority to grant alternatives or modifications through
 912 procedures outlined in NFPA 1, Section 1.4, but does not have
 913 the authority to waive the requirements of the Florida Fire
 914 Prevention Code. In order to meet the quorum requirement to
 915 convene the combined appeals board there must be at least one
 916 member of the board who is a fire protection contractor, a fire
 917 protection design professional, a fire department operations
 918 professional, or a fire code enforcement professional.

919 (b) Any decision made by the local fire official regarding
 920 application, interpretation, or enforcement of the Florida Fire
 921 Prevention Code, and the local building official regarding
 922 application, interpretation, or enforcement of the Florida
 923 Building Code, or the appropriate application of either or both
 924 codes in the case of a conflict between the codes, may be
 925 appealed to a local administrative board designated by the
 926 municipality, county, or special district having firesafety
 927 responsibilities. If the decision of the local fire official and
 928 the local building official is to apply the provisions of either

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929 the Florida Building Code or the Florida Fire Prevention Code
 930 and the Life Safety Code, the board may not alter the decision
 931 unless the board determines that the application of such code is
 932 not reasonable. If the decision of the local fire official and
 933 the local building official is to adopt an alternative to the
 934 codes, the local administrative board shall give due regard to
 935 the decision rendered by the local officials and may modify that
 936 decision if the administrative board adopts a better
 937 alternative, taking into consideration all relevant
 938 circumstances. In any case in which the local administrative
 939 board adopts alternatives to the decision rendered by the local
 940 fire official and the local building official, such alternatives
 941 shall provide an equivalent degree of lifesafety and an
 942 equivalent method of construction as the decision rendered by
 943 the local officials.

944 (c) If the local building official and the local fire
 945 official are unable to agree on a resolution of the conflict
 946 between the Florida Building Code and the Florida Fire
 947 Prevention Code and the Life Safety Code, the local
 948 administrative board shall resolve the conflict in favor of the
 949 code which offers the greatest degree of lifesafety or
 950 alternatives which would provide an equivalent degree of
 951 lifesafety and an equivalent method of construction.

952 (d) All decisions of the local administrative board, or if
 953 none exists, the decisions of the local building official and
 954 the local fire official in regard to the application,
 955 enforcement, or interpretation of the Florida Fire Prevention
 956 Code, or conflicts between the Florida Fire Prevention Code and
 957 the Florida Building Code, are subject to review by a joint

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958 committee composed of members of the Florida Building Commission
 959 and the Fire Code Advisory Council. If the joint committee is
 960 unable to resolve conflicts between the codes as applied to a
 961 specific project, the matter shall be resolved pursuant to the
 962 provisions of paragraph (1)(d). Decisions of the local
 963 administrative board solely in regard to the provisions of the
 964 Florida Building Code are subject to review as set forth in s.
 965 553.775.

966 (e) The local administrative board shall, to the greatest
 967 extent possible, be composed of members with expertise in
 968 building construction and firesafety standards.

969 (f) All decisions of the local building official and local
 970 fire official and all decisions of the administrative board
 971 shall be in writing and shall be binding upon a person but do
 972 not limit the authority of the State Fire Marshal or the Florida
 973 Building Commission pursuant to paragraph (1)(d) and ss. 633.104
 974 and 633.228. Decisions of general application shall be indexed
 975 by building and fire code sections and shall be available for
 976 inspection during normal business hours.

977 (19) In other than one- and two-family detached dwellings,
 978 a local enforcing agency that requires a permit to install or
 979 replace a hot water heater shall require that a hard-wired or
 980 battery-operated water-level detection device be secured to the
 981 drain pan area at a level lower than the drain connection upon
 982 installation or replacement of the hot water heater. The device
 983 must include an audible alarm and, if battery-operated, must
 984 have a 10-year low-battery notification capability.

985 (20) The Florida Building Code may not require more than
 986 one fire service access elevator in a residential occupancy if

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987 the highest occupiable floor in the residential occupancy is
 988 less than 420 feet above the level of fire service access. If a
 989 fire service access elevator is required, a 1 hour fire-rated
 990 fire service access elevator lobby with direct access from the
 991 fire service access elevator may not be required if the fire
 992 service access elevator opens into an exit access corridor. The
 993 exit access corridor must be at least 6 feet wide for its entire
 994 length with the exception of door openings and must have a
 995 minimum 1 hour fire rating with three quarter hour rated
 996 openings. If there is a transient residential occupancy at floor
 997 levels more than 420 feet above the level of fire service
 998 access, a one hour fire-rated fire service access elevator lobby
 999 with direct access from the fire service access elevator is
 1000 required. The requirement for a second fire service access
 1001 elevator is not considered to be a part of the Florida Building
 1002 Code, and therefore, does not take effect until July 1, 2016.

1003 Section 22. Subsections (6) and (11) of section 553.79,
 1004 Florida Statutes, are amended to read:

1005 553.79 Permits; applications; issuance; inspections.-

1006 (6) A permit may not be issued for any building
 1007 construction, erection, alteration, modification, repair, or
 1008 addition unless the applicant for such permit complies with the
 1009 requirements for plan review established by the Florida Building
 1010 Commission within the Florida Building Code. However, the code
 1011 shall set standards and criteria to authorize preliminary
 1012 construction before completion of all building plans review,
 1013 including, but not limited to, special permits for the
 1014 foundation only, and such standards shall take effect concurrent
 1015 with the first effective date of the Florida Building Code.

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1016 After submittal of the appropriate construction documents, the
 1017 building official is authorized to issue a permit for the
 1018 construction of foundations or any other part of a building or
 1019 structure before the construction documents for the whole
 1020 building or structure have been submitted. No other agency
 1021 review or approval may be required before the issuance of a
 1022 phased permit due to the fact that the project will need all the
 1023 necessary outside agencies' reviews and approvals before the
 1024 issuance of a master building permit. The holder of such permit
 1025 for the foundation or other parts of a building or structure
 1026 shall proceed at the holder's own risk with the building
 1027 operation and without assurance that a permit for the entire
 1028 structure will be granted. Corrections may be required to meet
 1029 the requirements of the technical codes.

1030 (11) (a) The local enforcing agency may not issue a building
 1031 permit to construct, develop, or modify a public swimming pool
 1032 without proof of application, whether complete or incomplete,
 1033 for an operating permit pursuant to s. 514.031. A certificate of
 1034 completion or occupancy may not be issued until such operating
 1035 permit is issued. The local enforcing agency shall conduct its
 1036 review of the building permit application upon filing and in
 1037 accordance with this chapter. The local enforcing agency may
 1038 confer with the Department of Health, if necessary, but may not
 1039 delay the building permit application review while awaiting
 1040 comment from the Department of Health.

1041 (b) If the department determines under s. 514.031(2) that a
 1042 public pool or a public bathing place is not being operated or
 1043 maintained in compliance with department's rules, the original
 1044 approved plans and specifications or variances, and the Florida

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1045 Building Code, the local enforcing agency shall permit and
 1046 inspect the repairs or modifications required as a result of the
 1047 department's inspections and may take enforcement action to
 1048 ensure compliance.

1049 Section 23. Subsections (4) and (7) of section 553.841,
 1050 Florida Statutes, are amended, to read:

1051 553.841 Building code compliance and mitigation program.—

1052 (4) In administering the Florida Building Code Compliance
 1053 and Mitigation Program, the department may shall maintain,
 1054 update, develop, or cause to be developed code-related training
 1055 and education advanced modules designed for use by each
 1056 profession.

1057 ~~(7) The Florida Building Commission shall provide by rule~~
 1058 ~~for the accreditation of courses related to the Florida Building~~
 1059 ~~Code by accreditors approved by the commission. The commission~~
 1060 ~~shall establish qualifications of accreditors and criteria for~~
 1061 ~~the accreditation of courses by rule. The commission may revoke~~
 1062 ~~the accreditation of a course by an accreditor if the~~
 1063 ~~accreditation is demonstrated to violate this part or the rules~~
 1064 ~~of the commission.~~

1065 Section 24. Paragraph (a) of subsection (8) of section
 1066 553.842, Florida Statutes, is amended to read:

1067 553.842 Product evaluation and approval.—

1068 (8) The commission may adopt rules to approve the following
 1069 types of entities that produce information on which product
 1070 approvals are based. All of the following entities, including
 1071 engineers and architects, must comply with a nationally
 1072 recognized standard demonstrating independence or no conflict of
 1073 interest:

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1074 (a) Evaluation entities approved pursuant to this
 1075 paragraph. The commission shall specifically approve the
 1076 National Evaluation Service, the International Association of
 1077 Plumbing and Mechanical Officials Evaluation Service, the
 1078 International Code Council Evaluation Services, Underwriters
 1079 Laboratories, LLC, and the Miami-Dade County Building Code
 1080 Compliance Office Product Control Division. Architects and
 1081 engineers licensed in this state are also approved to conduct
 1082 product evaluations as provided in subsection (5).

1083 Section 25. Section 553.908, Florida Statutes, is amended
 1084 to read:

1085 553.908 Inspection.—Before construction or renovation is
 1086 completed, the local enforcement agency shall inspect buildings
 1087 for compliance with the standards of this part. The local
 1088 enforcement agency shall accept duct and air infiltration tests
 1089 conducted in accordance with the Florida Building Code-Energy
 1090 Conservation by individuals certified in accordance with s.
 1091 553.993(5) or (7) or individuals licensed under s.
 1092 489.105(3) (f), (g), or (i). The local enforcement agency may
 1093 accept inspections in whole or in part by individuals certified
 1094 in accordance with s. 553.993(5) or (7).

1095 Section 26. Subsection (6) of section 633.104, Florida
 1096 Statutes, is amended to read:

1097 633.104 State Fire Marshal; authority; duties; rules.—

1098 (6) Only the State Fire Marshal may issue, and, when
 1099 requested in writing by any substantially affected person or a
 1100 local enforcing agency, the State Fire Marshal shall issue
 1101 declaratory statements pursuant to s. 120.565 relating to the
 1102 Florida Fire Prevention Code. For the purposes of this section,

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1103 the term "substantially affected person" means a person who,
 1104 will be, or may be affected by the application of the Florida
 1105 Fire Prevention Code to a property or building that the person
 1106 owns, controls, or is, or is considering purchasing, selling,
 1107 designing, constructing, or altering.

1108 Section 27. Subsections (17) and (18) are added to section
 1109 633.202, Florida Statutes, to read:

1110 633.202 Florida Fire Prevention Code.—

1111 (17) In all new high-rise and existing high-rise buildings,
 1112 minimum radio signal strength for fire department communications
 1113 shall be maintained at a level determined by the authority
 1114 having jurisdiction. Existing buildings may not be required to
 1115 comply with minimum radio strength for fire department
 1116 communications and two-way radio system enhancement
 1117 communications as required by the Florida Fire Prevention Code
 1118 until January 1, 2022. However, by December 31, 2019, an
 1119 existing building that is not in compliance with the
 1120 requirements for minimum radio strength for fire department
 1121 communications must initiate an application for an appropriate
 1122 permit for the required installation with the local government
 1123 agency having jurisdiction and must demonstrate that the
 1124 building will become compliant by January 1, 2022. Existing
 1125 apartment buildings may not be required to comply until January
 1126 1, 2025. However, existing apartment buildings are required to
 1127 initiate the appropriate permit for the required communications
 1128 installation by December 31, 2022.

1129 (18) Areas of refuge shall be provided when required by the
 1130 Florida Building Code-Accessibility. Required portions of an
 1131 area of refuge shall be accessible from the space they serve by

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1132 an accessible means of egress.

1133 Section 28. Subsection (10) is added to section 633.216,
 1134 Florida Statutes, to read:

1135 633.216 Inspection of buildings and equipment; orders;
 1136 firesafety inspection training requirements; certification;
 1137 disciplinary action.—The State Fire Marshal and her or his
 1138 agents or persons authorized to enforce laws and rules of the
 1139 State Fire Marshal shall, at any reasonable hour, when the State
 1140 Fire Marshal has reasonable cause to believe that a violation of
 1141 this chapter or s. 509.215, or a rule adopted thereunder, or a
 1142 minimum firesafety code adopted by the State Fire Marshal or a
 1143 local authority, may exist, inspect any and all buildings and
 1144 structures which are subject to the requirements of this chapter
 1145 or s. 509.215 and rules adopted thereunder. The authority to
 1146 inspect shall extend to all equipment, vehicles, and chemicals
 1147 which are located on or within the premises of any such building
 1148 or structure.

1149 (10) In addition to any other requirements that may be
 1150 imposed by the Florida Statutes, the State Fire Marshal shall
 1151 adopt, by rule, a certification program for firesafety
 1152 inspectors who perform fire plan review activities to determine
 1153 compliance with the Florida Fire Prevention Code. The
 1154 certification program shall incorporate the knowledge and skills
 1155 contained in NFPA 1031 Plan Examiner Level II at a minimum and
 1156 shall be Pro Board Accredited. All newly appointed Fire Code
 1157 Plans Examiners shall, after 24 months from the effective date
 1158 of this statute, be certified, at a minimum, as NFPA 1031 Plans
 1159 Examiner Level II by the State Fire Marshal at the time of their
 1160 appointment to conduct Fire Code plans reviews. The State Fire

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1161 Marshal shall incorporate provisions by rule for existing Fire
 1162 Code Plans Examiners to continue to practice in their current
 1163 employment while actively obtaining the additional certification
 1164 and shall adopt, by rule, a limited time frame for existing Fire
 1165 Code Plans Examiners to achieve the required certification. The
 1166 State Fire Marshal may, by rule, determine alternative
 1167 educational and experience requirements or certifications as
 1168 equivalent as long as such equivalence achieve Pro Board
 1169 Accreditation.

1170 Section 29. The Calder Sloan Swimming Pool Electrical-
 1171 Safety Task Force.—There is established within the Florida
 1172 Building Commission the Calder Sloan Swimming Pool Electrical-
 1173 Safety Task Force.

1174 (1) The primary purpose of the task force is to study and
 1175 report to the Governor, the President of the Senate, and the
 1176 Speaker of the House of Representatives on recommended revisions
 1177 to the Florida Statutes concerning standards on grounding,
 1178 bonding, lighting, wiring, and all electrical aspects for safety
 1179 in and around public and private swimming pools. The task force
 1180 report is due by October 1, 2015.

1181 (2) The task force shall consist of the Swimming Pool and
 1182 Electrical Technical Advisory Committees of the Florida Building
 1183 Commission.

1184 (3) The task force shall be chaired by the Swimming Pool
 1185 Contractor appointed to the Florida Building Commission pursuant
 1186 to s. 553.74, Florida Statutes.

1187 (4) The Florida Building Commission shall provide such
 1188 staff, information, and other assistance as is reasonably
 1189 necessary to assist the task force in carrying out its

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1190 responsibilities.

1191 (5) Members of the task force shall serve without
 1192 compensation.

1193 (6) The task force shall meet as often as necessary to
 1194 fulfill its responsibilities and meetings may be conducted by
 1195 conference call, teleconferencing, or similar technology.

1196 (7) This section expires December 31, 2015.

1197 Section 30. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-14 Meeting Date

CS/CS/SB 1232 Bill Number (if applicable)

Topic BUILDING CODES - APARTMENT MAINTENANCE

Am 328722 Amendment Barcode (if applicable)

Name CAM FENIRISS

EXEMPTION

Job Title LOBBYIST

Address 1400 VILLAGE SQ NBR 3-243

Phone 850-222-2772

Street TALL City State Zip 32312

Email CFENIRISS@AOL.COM

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

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

Representing FLORIDA REFRIGERATION & AC CONTRACTORS FLA ASSN PLUMBING HEATING COOLING CONTRACTORS

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

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1232
Bill Number (if applicable)

384976
Amendment Barcode (if applicable)

Topic _____

Name Shad Hasford

Job Title CEO

Address 2447 Millcreek Ct.

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850.383.1159

Email shadh@flamaa1.org

Speaking: For Against Information

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

Representing Florida Assisted Living Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-14

Meeting Date

CS/BS/SB 1232

Bill Number (if applicable)

Topic BUILDING CODES - WATER HEATERS

AM 384976

Amendment Barcode (if applicable)

Name CAM FENTRISS

Job Title LOBBYIST

Address 1400 VILLAGE SQ # 3243

Phone 850-222-2772

TALL 32312

Email CFENTRISS@AOL.COM

Speaking: For Against Information

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

Representing FLA ASSN PLUMBING HEATING COOLING CONTRACTORS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4-15-15

Meeting Date

1232

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title _____

Address PO Box 11026

Phone 950 681 0496

Street

Tallahassee FL 32302

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Propane Gas Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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4-15-15
Meeting Date

CS/CS/SB 1232
Bill Number (if applicable)

Topic Building Code

Amendment Barcode (if applicable)

Name Buddy Dewar

Job Title Vice President

Address 200 W. College Ave

Phone _____

Street

Tallahassee

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing National Fire Sprinkler 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

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4/15/15

Meeting Date

1232

Bill Number (if applicable)

Topic Building Codes

Amendment Barcode (if applicable)

Name Jennifer Hatfield

Job Title

Address 729 Ocean Inlet Dr. Street

Phone 941-345-3263

Boynton Beach FL 33435 City State Zip

Email jeh@jhatfieldandassociates.com

Speaking: [] For [] Against [] Information

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

Representing FL Swimming Pool Association

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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THE FLORIDA SENATE

APPEARANCE RECORD

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4 / 16 / 2015

Meeting Date

Topic _____

Bill Number 1232

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/15/15
Meeting Date

SB 1232
Bill Number (if applicable)

Topic Bldg. Code

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title

Address 231 West Bay Ave
Street
Longwood FL 32750
City State Zip

Phone 407 830 1892

Email BKershner@att.net

Speaking: For Against Information

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

Representing United Pool & Spa Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

1232

Bill Number (if applicable)

Topic Building Codes

Amendment Barcode (if applicable)

Name Richard Watson

Job Title Legislative Counsel

Address P.O. Box 10038

Phone 857.222.0000

Street

Tallahassee

City

State

FL 32302

Zip

Email rick@watsonandassociates.com

Speaking: For Against Information

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

Representing Associated Builders & Contractors of FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4-15-15

Meeting Date

SB 1232

Bill Number (if applicable)

Topic BUILDING CODE

Amendment Barcode (if applicable)

Name KARI HEBRANK

Job Title

Address 113 COLLEGE AVE. #200

Phone 850-566-7824

Street

TALLAHASSEE FL 32301

Email khebrank@wilsonmgt.com

City

State

Zip

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

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

Representing FLORIDA HOME BUILDERS, LLC

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

1232

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Shad Haston

Job Title CEO Florida Assisted Living Assoc.

Address _____

Phone 850.383.1159

Street

Tallahassee FL

City

State

Zip

Email shadh@falmail.org

Speaking: For Against Information

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

Representing Florida Assisted Living Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Environmental Preservation and Conservation,
Vice Chair
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON

18th District

April 7, 2015

Honorable Anitere Flores
Committee on Fiscal Policy
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairwoman Flores,

Please place Senate Bill 1232 relating to Building Codes, on the next Committee on Fiscal Policy agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
Senator, 18th District

CC: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



801430

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment (with title amendment)

Between lines 12 and 13

insert:

Section 2. Subsection (4) of section 741.31, Florida Statutes, is amended to read:

741.31 Violation of an injunction for protection against domestic violence.—

(4) (a) A person who willfully violates an injunction for protection against domestic violence issued pursuant to s.



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11 741.30, or a foreign protection order accorded full faith and
12 credit pursuant to s. 741.315, by:

13 1. Refusing to vacate the dwelling that the parties share;
14 2. Going to, or being within 500 feet of, the petitioner's
15 residence, school, place of employment, or a specified place
16 frequented regularly by the petitioner and any named family or
17 household member;

18 3. Committing an act of domestic violence against the
19 petitioner;

20 4. Committing any other violation of the injunction through
21 an intentional unlawful threat, word, or act to do violence to
22 the petitioner;

23 5. Telephoning, contacting, or otherwise communicating with
24 the petitioner directly or indirectly, unless the injunction
25 specifically allows indirect contact through a third party;

26 6. Knowingly and intentionally coming within 100 feet of
27 the petitioner's motor vehicle, whether or not that vehicle is
28 occupied;

29 7. Defacing or destroying the petitioner's personal
30 property, including the petitioner's motor vehicle; or

31 8. Refusing to surrender firearms or ammunition if ordered
32 to do so by the court

33

34 commits a misdemeanor of the first degree, punishable as
35 provided in s. 775.082 or s. 775.083, except as provided in
36 paragraph (c).

37 (b)1. It is a violation of s. 790.233, and a misdemeanor of
38 the first degree, punishable as provided in s. 775.082 or s.
39 775.083, for a person to violate a final injunction for



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40 protection against domestic violence by having in his or her
41 care, custody, possession, or control any firearm or ammunition.

42 2. It is the intent of the Legislature that the
43 disabilities regarding possession of firearms and ammunition are
44 consistent with federal law. Accordingly, this paragraph shall
45 not apply to a state or local officer as defined in s.
46 943.10(14), holding an active certification, who receives or
47 possesses a firearm or ammunition for use in performing official
48 duties on behalf of the officer's employing agency, unless
49 otherwise prohibited by the employing agency.

50 (c) A person who has two or more prior convictions for
51 violation of an injunction and who commits any third or
52 subsequent violation commits a felony of the third degree,
53 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
54 For purposes of this paragraph, the term "conviction" means a
55 determination of guilt that is the result of a plea or a trial,
56 regardless of whether adjudication is withheld or a plea of nolo
57 contendere is entered.

58 Section 3. Section 784.047, Florida Statutes, is amended to
59 read:

60 784.047 Penalties for violating protective injunction
61 against violators.-

62 (1) A person who willfully violates an injunction for
63 protection against repeat violence, sexual violence, or dating
64 violence, issued pursuant to s. 784.046, or a foreign protection
65 order accorded full faith and credit pursuant to s. 741.315 by:

66 (a) ~~(1)~~ Refusing to vacate the dwelling that the parties
67 share;

68 (b) ~~(2)~~ Going to, or being within 500 feet of, the



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69 petitioner's residence, school, place of employment, or a
70 specified place frequented regularly by the petitioner and any
71 named family or household member;

72 (c)~~(3)~~ Committing an act of repeat violence, sexual
73 violence, or dating violence against the petitioner;

74 (d)~~(4)~~ Committing any other violation of the injunction
75 through an intentional unlawful threat, word, or act to do
76 violence to the petitioner;

77 (e)~~(5)~~ Telephoning, contacting, or otherwise communicating
78 with the petitioner directly or indirectly, unless the
79 injunction specifically allows indirect contact through a third
80 party;

81 (f)~~(6)~~ Knowingly and intentionally coming within 100 feet
82 of the petitioner's motor vehicle, whether or not that vehicle
83 is occupied;

84 (g)~~(7)~~ Defacing or destroying the petitioner's personal
85 property, including the petitioner's motor vehicle; or

86 (h)~~(8)~~ Refusing to surrender firearms or ammunition if
87 ordered to do so by the court,

88
89 commits a misdemeanor of the first degree, punishable as
90 provided in s. 775.082 or s. 775.083, except as provided in
91 subsection (2).

92 (2) A person who has two or more prior convictions for
93 violation of an injunction and who commits any third or
94 subsequent violation commits a felony of the third degree,
95 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
96 For purposes of this subsection, the term "conviction" means a
97 determination of guilt that is the result of a plea or a trial,



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98 regardless of whether adjudication is withheld or a plea of nolo
99 contendere is entered.

100 Section 4. Subsection (4) of section 784.0487, Florida
101 Statutes, is amended to read:

102 784.0487 Violation of an injunction for protection against
103 stalking or cyberstalking.—

104 (4) (a) A person who willfully violates an injunction for
105 protection against stalking or cyberstalking issued pursuant to
106 s. 784.0485, or a foreign protection order accorded full faith
107 and credit pursuant to s. 741.315, by:

108 1.-(a) Going to, or being within 500 feet of, the
109 petitioner's residence, school, place of employment, or a
110 specified place frequented regularly by the petitioner and any
111 named family members or individuals closely associated with the
112 petitioner;

113 2.-(b) Committing an act of stalking against the petitioner;

114 3.-(c) Committing any other violation of the injunction
115 through an intentional unlawful threat, word, or act to do
116 violence to the petitioner;

117 4.-(d) Telephoning, contacting, or otherwise communicating
118 with the petitioner, directly or indirectly, unless the
119 injunction specifically allows indirect contact through a third
120 party;

121 5.-(e) Knowingly and intentionally coming within 100 feet of
122 the petitioner's motor vehicle, whether or not that vehicle is
123 occupied;

124 6.-(f) Defacing or destroying the petitioner's personal
125 property, including the petitioner's motor vehicle; or

126 7.-(g) Refusing to surrender firearms or ammunition if



801430

127 ordered to do so by the court,
128
129 commits a misdemeanor of the first degree, punishable as
130 provided in s. 775.082 or s. 775.083, except as provided in
131 paragraph (b).

132 (b) A person who has two or more prior convictions for
133 violation of an injunction and who commits any third or
134 subsequent violation commits a felony of the third degree,
135 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
136 For purposes of this paragraph, the term "conviction" means a
137 determination of guilt that is the result of a plea or a trial,
138 regardless of whether adjudication is withheld or a plea of nolo
139 contendere is entered.

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

142 And the title is amended as follows:

143 Delete lines 2 - 3

144 and insert:

145 An act relating to criminal justice; providing a short
146 title; amending ss. 741.31, 784.047, and 784.0487,
147 F.S.; providing enhanced criminal penalties for a
148 third or subsequent violation of an injunction for
149 protection against specified acts of violence or a
150 foreign protection order issued under specified
151 provisions; amending s. 775.15, F.S.; revising time



154194

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment (with title amendment)

Between lines 40 and 41

insert:

Section 3. Subsection (1) of section 948.11, Florida Statutes, is amended to read:

948.11 Electronic monitoring devices.—

(1) The Department of Corrections or a local law enforcement agency may, ~~at its discretion,~~ electronically monitor an offender sentenced to community control or ordered to



154194

11 comply with house arrest who is wearing electronic monitoring
12 equipment as a condition of bond or pretrial release or who is
13 otherwise wearing electronic monitoring equipment pursuant to a
14 court order for a protective injunction issued for domestic
15 violence as defined in s. 741.30; repeat violence, sexual
16 violence, or dating violence, as defined in s. 784.046; or a
17 stalking injunction as defined in s. 784.048.

18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete lines 2 - 6

22 and insert:

23 An act relating to criminal justice; providing a short
24 title; amending s. 775.15, F.S.; revising time
25 limitations for the criminal prosecution of specified
26 sexual battery offenses if the victim is 16 years of
27 age or older; providing applicability; amending s.
28 948.11, F.S.; authorizing the Department of
29 Corrections or a local law enforcement agency to
30 electronically monitor an offender under specified
31 circumstances; providing an



624990

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment (with title amendment)

Between lines 40 and 41

insert:

Section 3. Subsections (3) and (5) of section 847.0141, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

847.0141 Sexting; prohibited acts; penalties.—

(3) A minor who violates subsection (1):

(a) Commits a noncriminal violation for a first violation



624990

11 ~~punishable by 8 hours of community service or, if ordered by the~~
12 ~~court in lieu of community service, a \$60 fine. The court may~~
13 ~~also order the minor to participate in suitable training or~~
14 ~~instruction in lieu of, or in addition to, community service or~~
15 ~~a fine. The minor must sign and accept a citation indicating a~~
16 promise to appear before the juvenile court. In lieu of
17 appearing in court, the minor may complete 8 hours of community
18 service work, pay a \$60 civil penalty, or participate in a
19 cyber-safety program if such a program is locally available. The
20 minor must satisfy any penalty within 30 days after receipt of
21 the citation.

22 1. A citation issued to a minor under this subsection must
23 be in a form prescribed by the issuing law enforcement agency,
24 must be signed by the minor, and must contain all of the
25 following:

26 a. The date and time of issuance.

27 b. The name and address of the minor to whom the citation
28 is issued.

29 c. A thumbprint of the minor to whom the citation is
30 issued.

31 d. Identification of the noncriminal violation and the time
32 it was committed.

33 e. The facts constituting reasonable cause.

34 f. The specific section of law violated.

35 g. The name and authority of the citing officer.

36 h. The procedures that the minor must follow to contest the
37 citation, perform the required community service, pay the civil
38 penalty, and participate in a cyber-safety program.

39 2. If the citation is contested and the court determines



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40 that the minor committed a noncriminal violation under this
41 section, the court may order the minor to perform 8 hours of
42 community service, pay a \$60 civil penalty, or participate in a
43 cyber-safety program, or any combination thereof.

44 3. A minor who fails to comply with the citation waives his
45 or her right to contest it, and the court may impose any of the
46 penalties identified in subparagraph 2. or issue an order to
47 show cause. Upon a finding of contempt, the court may impose
48 additional age-appropriate penalties, which may include issuance
49 of an order to the Department of Highway Safety and Motor
50 Vehicles to withhold issuance of, or suspend the driver license
51 or driving privilege of, the minor for 30 consecutive days.
52 However, the court may not impose incarceration.

53 4. All court records and information obtained or produced
54 under this paragraph shall be afforded the same level of
55 confidentiality provided under ss. 985.04 and 985.045. All
56 noncriminal violations for sexting that occurred on or after
57 October 1, 2011, are considered confidential.

58 (b) Commits a misdemeanor of the first degree for a
59 violation that occurs after the minor has been ~~being~~ found to
60 have committed a noncriminal violation for sexting or has
61 satisfied the penalty imposed in lieu of a court appearance as
62 provided in paragraph (a), punishable as provided in s. 775.082
63 or s. 775.083, unless a law enforcement officer elects to issue
64 a civil citation as provided in paragraph (3) (a).

65 (c) Commits a felony of the third degree for a violation
66 that occurs after the minor has been ~~being~~ found to have
67 committed a misdemeanor of the first degree for sexting,
68 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



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69 (5) As used in this section, the term "found to have
70 committed" means a determination of guilt that is the result of
71 a plea or trial, or a finding of delinquency that is the result
72 of a plea or an adjudicatory hearing, regardless of whether
73 adjudication is withheld.

74 (6) Eighty percent of all civil penalties received by a
75 juvenile court pursuant to this section shall be remitted by the
76 clerk of the court to the county commission to provide training
77 on cyber-safety for minors. The remaining 20 percent shall
78 remain with the clerk of the court to defray administrative
79 costs.

80 Section 4. Subsection (1) of section 985.0301, Florida
81 Statutes, is amended to read:

82 985.0301 Jurisdiction.—

83 (1) The circuit court has exclusive original jurisdiction
84 of proceedings in which a child is alleged to have committed:

85 (a) ~~to have committed~~ A delinquent act or violation of law.

86 (b) A noncriminal violation that has been assigned to
87 juvenile court by law.

88
89 ===== T I T L E A M E N D M E N T =====

90 And the title is amended as follows:

91 Delete line 6

92 and insert:

93 age or older; providing applicability; amending s.
94 847.0141, F.S.; removing the court's discretion to
95 impose a specified penalty for a first violation of
96 sexting; requiring a minor cited for a first violation
97 to sign and accept a citation to appear before



624990

98 juvenile court or, in lieu of appearing in court, to
99 complete community service work, pay a civil penalty,
100 or participate in a cyber-safety program within a
101 certain period of time, if such program is locally
102 available; requiring the citation to be in a form
103 prescribed by the issuing law enforcement agency;
104 requiring such citation to include certain
105 information; authorizing a court to order certain
106 penalties under certain circumstances; authorizing a
107 court to order specified additional penalties in
108 certain circumstances; authorizing a law enforcement
109 officer to issue a civil citation in lieu of criminal
110 penalties; prohibiting the court from imposing
111 incarceration; specifying that all court records and
112 any information obtained or produced are confidential;
113 providing retroactive application of confidentiality
114 provisions for certain violations; conforming
115 provisions to changes made by the act; requiring that
116 a specified percentage of civil penalties received by
117 a juvenile court be remitted by the clerk of court to
118 the county commission to provide cyber-safety training
119 for minors; requiring that the remaining percentage
120 remain with the clerk of the court to cover
121 administrative costs; amending s. 985.0301, F.S.;
122 creating exclusive original jurisdiction in the
123 circuit court when a child is alleged to have
124 committed a noncriminal violation that is assigned to
125 juvenile court; providing an

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 Fiscal Policy

BILL: PCS/SB 1270 (554152)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Soto

SUBJECT: Sexual Offenses

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1270 amends s. 775.15, F.S., by extending the current statute of limitations for a first or second degree felony sexual battery when the victim is 16 years of age or older and does not report the crime within 72 hours. The bill provides a statute of limitation of 6 years for these offenses instead of the previous 3 or 4 year time period.

The bill creates an insignificant fiscal impact to the General Revenue Fund not to exceed \$450,000 annually (see Section V).

II. Present Situation:

Statutes of Limitation in Criminal Cases

Historical Perspective

At common law, there was no time limit restriction under which a criminal charge was barred from prosecution. Time limitations, or statutes of limitation, for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the sovereign.¹

¹ *State v. Hickman*, 189 So. 2d 254, 261 (Fla. 2d DCA 1966).

In *State v. Hickman*, the court stated:

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.²

Since the creation of statutes of limitation, courts have held that:

- Generally, the statute of limitation that was in effect when a crime was committed controls.³
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.⁴
- The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution⁵ if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.⁶

Existing Provisions

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred.

The statute of limitation for prosecuting a criminal case begins to run on the day after the offense is committed.⁷ An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.⁸

Section 775.15, F.S., provides the following time limitations for initiating a criminal prosecution for a felony offense:

- There is no time limitation for prosecuting a capital felony, a life felony, a felony resulting in death,⁹ any sexual battery on a victim younger than 16,¹⁰ a first degree felony sexual battery on a victim younger than 18,¹¹ or a first or second degree felony sexual battery when the victim reports the crime to law enforcement within 72 hours.¹²

² *Id.*

³ *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

⁴ *Id.*

⁵ FLA. CONST. art. I, s.10.

⁶ *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

⁷ Section 775.15(3), F.S.

⁸ *Id.*

⁹ Section 775.15(1), F.S.

¹⁰ Section 775.15(13)(c), F.S.

¹¹ Section 775.15(13)(b), F.S.

¹² Section 775.15(13) and (14), F.S.

- A 10-year time limitation applies to prosecutions for any felony that results in injury to a person when the felony arises from the use of a destructive device.¹³
- A 4-year time limitation applies to prosecutions for a first degree felony.¹⁴
- A 3-year time limitation applies to prosecutions for any other felony.¹⁵

In addition to these enumerated time periods, the offenses of sexual battery, lewd or lascivious acts, and certain other felony offenses¹⁶ may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.¹⁷

There is also an extension of time if a victim of sexual battery, lewd or lascivious behavior, incest, "statutory rape" under former s. 794.05, F.S., or computer pornography where the victim is under the age of 18. In these cases, the applicable period of limitation does not begin to run until the victim reaches the age of 18 or the violation is reported to a law enforcement or governmental agency, whichever occurs first.¹⁸ There is no limitation period for victims of a first degree felony sexual battery who are under 18 or victims of any sexual battery who are under 16 regardless of whether they report the crime.¹⁹

If a 16 or 17 year old who is a victim of a second degree felony sexual battery does not report the crime within 72 hours, the applicable time period to bring a prosecution is 3 years.²⁰ There is also no limitation period if such a victim reports within 72 hours of being a victim of second degree felony sexual battery.²¹

If a victim 18 years or older reports a first or second degree felony sexual battery within 72 hours of the crime, there is no statute of limitation. However, if the victim does not report the crime within this time period, the statute of limitation is 4 years for a first degree felony sexual battery²² and 3 years for a second degree felony sexual battery.²³

¹³ Section 775.15(7), F.S.

¹⁴ Section 775.15(2)(a), F.S.

¹⁵ Section 775.15(2)(b), F.S.

¹⁶ These other felony offenses include aggravated battery or any felony battery offense under ch. 784, F.S., kidnapping or false imprisonment, sexual battery, lewd or lascivious offense, burglary, robbery, carjacking, and aggravated child abuse.

¹⁷ Section 775.15(16)(a), F.S.

¹⁸ Section 775.15(13)(a), F.S.

¹⁹ Section 775.15(13)(b), F.S.

²⁰ The three year limitation does not commence until the earlier of the date that the victim turns 18 or the crime is reported. Section 775.15(13)(a), F.S.

²¹ Section 775.15(13)(a), F.S.

²² Section 775.15(14), F.S. First degree felony sexual battery is a non-consensual sexual battery under certain enumerated circumstances, including in part, when the victim is physically helpless to resist, the victim is threatened, the victim is physically or mentally incapacitated, or the offender is in law enforcement. s. 794.011(4), F.S.

²³ Section 775.15(14), F.S. Second degree felony sexual battery is a non-consensual sexual battery without the use of physical force or violence likely to cause serious personal injury. s. 794.011(5)(b), F.S.

III. Effect of Proposed Changes:

The bill amends s. 775.15, F.S., by extending the current statute of limitations for a first or second degree felony sexual battery when the victim is 16 years of age or older and does not report the crime within 72 hours. The bill provides a statute of limitation of 6 years for these offenses instead of the previous 3 or 4 year time period.

The bill does not change the provision that provides that is no statute of limitation in cases where a 16 year old or older victim of *second* degree felony sexual battery or an 18 year old or older victim of *first* degree felony sexual battery reports the crime within 72 hours.

The bill applies to any such offense except one already time-barred on or before July 1, 2015 (meaning it applies retroactively to previously committed offenses as long as the statute of limitation has not run on these offenses prior to July 1, 2015).

The bill also provides that this act may be cited as the “43 Days Initiative Act.”

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not affect counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution²⁴ if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.²⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁴ FLA. CONST. art. I, s.10.

²⁵ *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) met February 27, 2015, and determined that SB 1270 would have a positive moderate impact on state prison beds (meaning the CJIC estimates that it may increase the prison population by more than 10 but less than 25 inmates annually). Accordingly, the projected prison bed impact would create an insignificant fiscal impact to the General Revenue Fund not to exceed \$450,000, which the Department of Corrections could absorb within existing resources. No additional fixed capital outlay costs are anticipated for these additional prison beds because the prison population is below the capacity of the correctional system.

The committee substitute proposed by the Appropriations Subcommittee on Criminal and Civil Justice on April 7, 2015, reduced the statute of limitations in the bill from 10 years to 6 years, which “would likely lower the effect and bring the moderate [prison bed] effect closer to insignificant.”²⁶ While the committee substitute reduces the prison bed impact, it does not further reduce the bill’s already insignificant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.15 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.)

Recommended CS Barcode 554152 by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute changes the statute of limitations from 10 years to 6 years.

²⁶ Email from Matthew Hasbrouck, Office of Economic and Demographic Research, The Florida Legislature (April 6, 2015) (on file with the Senate Appropriations Subcommittee on Civil and Criminal Justice).

B. Amendments:

None.

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



594-03730-15

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to sexual offenses; providing a short title; amending s. 775.15, F.S.; revising time limitations for the criminal prosecution of specified sexual battery offenses if the victim is 16 years of age or older; providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "43 Days Initiative Act."

Section 2. Paragraph (b) of subsection (13) of section 775.15, Florida Statutes, is republished, and subsection (14) of that section is amended, to read:

775.15 Time limitations; general time limitations; exceptions.—

(13)

(b) If the offense is a first degree felony violation of s. 794.011 and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2003.

(14) (a) A prosecution for a first or second degree felony violation of s. 794.011, if the victim is 16 ~~18~~ years of age or older at the time of the offense and the offense is reported to



594-03730-15

~~a law enforcement agency within 72 hours after commission of the offense, may be commenced at any time. If the offense is not reported within 72 hours after the commission of the offense, the prosecution must be commenced within the time periods prescribed in subsection (2).~~

(b) Except as provided in paragraph (a) or paragraph (13) (b), a prosecution for a first or second degree felony violation of s. 794.011, if the victim is 16 years of age or older at the time of the offense, must be commenced within 6 years after the violation is committed. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2015.

Section 3. This act shall take effect July 1, 2015.

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 Fiscal Policy

BILL: CS/SB 1270

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Soto

SUBJECT: Sexual Offenses

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1270 amends multiple statutes relating to criminal law. Specifically the bill:

- Increases the penalty for third or subsequent violations of an injunction for protection to a third degree felony if a person has two or more prior convictions for the same offense;
- Expands who the Department of Corrections or local law enforcement agency are permitted to electronically monitor;
- Amends punishment schedule in s. 847.0141, F.S., by including the issuance of a citation for first violation for the crime of sexting;
- Provides requirements for the sexting citation;
- Provides all court records and information obtained or produced in relation to a noncriminal sexting violation to be afforded the same level of confidentiality provided under ss. 985.04 and 985.045, F.S., and all noncriminal sexting violations that occurred on or after October 1, 2011, are confidential; and
- Reduces the statute of limitations from 10 years to 6 years.

Please see Section V for the bill's fiscal impact.

II. Present Situation:

Violations of Injunctions

It is a first degree misdemeanor¹ to violate the terms of an injunction for the protection against:

- Domestic violence;²
- Repeat violence, sexual violence or dating violence;³ or
- Stalking or cyberstalking.⁴

It is a first degree misdemeanor regardless of how many times a person is convicted of this offense.

Electronic Monitoring

Section 948.11, F.S., provides that the Department of Corrections may, at its discretion, electronically monitor an offender sentenced to community control. Community Control is a form of intensive supervised “house arrest” including weekends and holidays.

Sexting

Sexting occurs when a minor knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in s. 847.001(9), F.S., and is harmful to minors, as defined in s. 847.0016, F.S.

Following is the graduated punishment schedule for a violation of sexting:

- A first sexting violation is a noncriminal violation, punishable by eight hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. The court may also order the minor to participate in suitable training or instruction in lieu of, or in addition to, the community service or fine.
- A sexting violation that occurs after being found to have committed a noncriminal violation for sexting is a first-degree misdemeanor. A first-degree misdemeanor is punishable by a jail term of not more than one year and may include a fine of not more than \$1,000.
- A sexting violation that occurs after being found to have committed a first-degree misdemeanor violation for sexting is an unranked third-degree felony. A third-degree felony is punishable by state imprisonment for not more than five years and may include a fine of not more than \$5,000. However, because the felony is unranked, the offender may be sentenced to a term of probation under supervision by the Department of Corrections.

The sexting provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. See ss. 775.082, and 775.083, F.S.

² Issued pursuant to s. 741.30, F.S.

³ Issued pursuant to s. 784.046, F.S.

⁴ Issued pursuant to s. 784.0484, F.S.

State v. C.M.

In January 2015, Florida’s Fourth District Court of Appeal (DCA) decided *State v. C.M.*,⁵ which involved a minor who was charged via a delinquency petition with committing a first-time violation of the sexting statute – a noncriminal violation. At trial, the defense filed a motion to dismiss arguing that because the minor did not commit a delinquent act, she could not be subject to prosecution through a petition for delinquency. The trial court agreed and granted the motion.

On appeal, the Fourth DCA recognized that under the delinquency statutes, the state attorney files a petition for delinquency to obtain a finding that a child has committed a delinquent act or violation of law. The court held that because a first offense of sexting (a noncriminal violation) does not fit within the definition of “delinquent act” or “violation of law,” a petition for delinquency was not the proper method to prosecute such offense.⁶

The state argued that the trial court’s dismissal left them without a remedy, and asserted that the court should authorize the use of a petition for delinquency. The Fourth DCA disagreed reasoning that courts “are not at liberty to add words to statutes that were not placed there by the Legislature.” The court went on to state:

[O]nly the legislature can add to the sexting statute to set out the procedure for the prosecution and determination if there has been a violation of the first offense. Until that is effectuated by the legislature, we are bound to the letter of the law and “must apply a statute as [we] find it, leaving to the legislature the correction of assorted inconsistencies and inequalities in its operation.”⁷

Statutes of Limitations***Historical Perspective***

At common law, there was no time limit restriction under which a criminal charge was barred from prosecution. Time limitations, or statutes of limitation, for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the sovereign.⁸

In *State v. Hickman*, the court stated:

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop,

⁵ *State v. C.M.*, 154 So. 3d 1177 (Fla. 4th DCA 2015).

⁶ *Id.*

⁷ *Id.*

⁸ *State v. Hickman*, 189 So. 2d 254, 261 (Fla. 2d DCA 1966).

which could conceivably defeat, or at least hamper, an otherwise good defense.⁹

Since the creation of statutes of limitation, courts have held that:

- Generally, the statute of limitation that was in effect when a crime was committed controls.¹⁰
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.¹¹
- The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution¹² if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.¹³

Existing Provisions

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred.

The statute of limitation for prosecuting a criminal case begins to run on the day after the offense is committed.¹⁴ An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.¹⁵

Section 775.15, F.S., provides the following time limitations for initiating a criminal prosecution for a felony offense:

- There is no time limitation for prosecuting a capital felony, a life felony, a felony resulting in death,¹⁶ any sexual battery on a victim younger than 16,¹⁷ a first degree felony sexual battery on a victim younger than 18,¹⁸ or a first or second degree felony sexual battery when the victim reports the crime to law enforcement within 72 hours.¹⁹
- A 10-year time limitation applies to prosecutions for any felony that results in injury to a person when the felony arises from the use of a destructive device.²⁰
- A 4-year time limitation applies to prosecutions for a first degree felony.²¹
- A 3-year time limitation applies to prosecutions for any other felony.²²

⁹ *Id.*

¹⁰ *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

¹¹ *Id.*

¹² FLA. CONST. art. I, s.10.

¹³ *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

¹⁴ Section 775.15(3), F.S.

¹⁵ *Id.*

¹⁶ Section 775.15(1), F.S.

¹⁷ Section 775.15(13)(c), F.S.

¹⁸ Section 775.15(13)(b), F.S.

¹⁹ Section 775.15(13) and (14), F.S.

²⁰ Section 775.15(7), F.S.

²¹ Section 775.15(2)(a), F.S.

²² Section 775.15(2)(b), F.S.

In addition to these enumerated time periods, the offenses of sexual battery, lewd or lascivious acts, and certain other felony offenses²³ may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.²⁴

There is also an extension of time if a victim of sexual battery, lewd or lascivious behavior, incest, "statutory rape" under former s. 794.05, F.S., or computer pornography where the victim is under the age of 18. In these cases, the applicable period of limitation does not begin to run until the victim reaches the age of 18 or the violation is reported to a law enforcement or governmental agency, whichever occurs first.²⁵ There is no limitation period for victims of a first degree felony sexual battery who are under 18 or victims of any sexual battery who are under 16 regardless of whether they report the crime.²⁶

If a 16 or 17 year old who is a victim of a second degree felony sexual battery does not report the crime within 72 hours, the applicable time period to bring a prosecution is 3 years.²⁷ There is also no limitation period if such a victim reports within 72 hours of being a victim of second degree felony sexual battery.²⁸

If a victim 18 years or older reports a first or second degree felony sexual battery within 72 hours of the crime, there is no statute of limitation. However, if the victim does not report the crime within this time period, the statute of limitation is 4 years for a first degree felony sexual battery²⁹ and 3 years for a second degree felony sexual battery.³⁰

III. Effect of Proposed Changes:

Violations of Injunctions

The bill amends s. 741.31(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection³¹ to a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

²³ These other felony offenses include aggravated battery or any felony battery offense under ch. 784, F.S., kidnapping or false imprisonment, sexual battery, lewd or lascivious offense, burglary, robbery, carjacking, and aggravated child abuse.

²⁴ Section 775.15(16)(a), F.S.

²⁵ Section 775.15(13)(a), F.S.

²⁶ Section 775.15(13)(b), F.S.

²⁷ The 3 year limitation does not commence until the earlier of the date that the victim turns 18 or the crime is reported.

Section 775.15(13)(a), F.S.

²⁸ Section 775.15(13)(a), F.S.

²⁹ Section 775.15(14), F.S. First degree felony sexual battery is a non-consensual sexual battery under certain enumerated circumstances, including in part, when the victim is physically helpless to resist, the victim is threatened, the victim is physically or mentally incapacitated, or the offender is in law enforcement. s. 794.011(4), F.S.

³⁰ Section 775.15(14), F.S. Second degree felony sexual battery is a non-consensual sexual battery without the use of physical force or violence likely to cause serious personal injury. s. 794.011(5)(b), F.S.

³¹ Issued pursuant to ss. 741.30, 784.046, and 784.0484, F.S.

Electronic Monitoring

The bill expands who the Department of Corrections or local law enforcement agency are permitted to electronically monitor. In addition to an offender sentenced to community control the bill allows electronic monitoring of an offender:

- Ordered to comply with house arrest who is wearing electronic monitoring equipment as a condition of bond or pretrial release or
- Who is otherwise wearing electronic monitoring equipment pursuant to a court order for a protective injunction issued for domestic violence; repeat violence, sexual violence, or dating violence; or stalking.

Sexting

The bill amends the punishment schedule in s. 847.0141, F.S., by including the issuance of a citation for first violations. The bill specifies that for a first violation of sexting the minor must sign and accept a citation indicating a promise to appear before the juvenile court. In lieu of appearing in court, the minor may complete 8 hours of community service work, pay a \$60 civil penalty, or participate in a cyber-safety program, if such a program is locally available. The minor must satisfy any penalty within 30 days after receipt of the citation.

The citation must be in a form prescribed by the issuing law enforcement agency, must be signed by the minor, and must contain:

- The date and time of issuance;
- The name and address of the minor to whom the citation is issued;
- A thumbprint of the minor to whom the citation is issued;
- Identification of the noncriminal violation and the time it was committed;
- The facts constituting reasonable cause;
- The specific section of law violated;
- The name and authority of the citing officer; and
- The procedures that the minor must follow to contest the citation, perform the required community service, pay the civil penalty, and participate in a cyber-safety program.

If the citation is contested and the court determines that the minor committed a noncriminal violation under this section, the court may order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program, or any combination thereof.

A minor who fails to comply with the citation waives the right to contest it and the court may impose any of the stated penalties or issue an order to show cause. Upon a finding of contempt, the court may impose additional age-appropriate penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The court may not impose incarceration.

The bill provides that a minor commits a first degree misdemeanor for a violation that occurs after the minor has been found to have committed a noncriminal violation or has satisfied the

penalty imposed in lieu of a court appearance unless a law enforcement officer elects to issue a civil citation as provided in this section.

The bill requires all court records and information obtained or produced in relation to a noncriminal sexting violation to be afforded the same level of confidentiality provided under ss. 985.04 and 985.045, F.S. All noncriminal sexting violations that occurred on or after October 1, 2011, are considered confidential.

The bill also requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors. The remaining 20 percent must remain with the clerk of the court to defray administrative costs.

The bill specifically addresses the holding in *State v. C.M.*³² by amending s. 985.0301, F.S., to provide that the circuit court has exclusive original jurisdiction of proceeding in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by law.

Statute of Limitations

The bill amends s. 775.15, F.S., by extending the current statute of limitations for a first or second degree felony sexual battery when the victim is 16 years of age or older and does not report the crime within 72 hours. The bill provides a statute of limitation of 6 years for these offenses instead of the previous 3 or 4 year time period.

The bill does not change the provision that provides that is no statute of limitation in cases where a 16 year old or older victim of *second* degree felony sexual battery or an 18 year old or older victim of *first* degree felony sexual battery reports the crime within 72 hours.

The bill applies to any such offense except one already time-barred on or before July 1, 2015 (meaning it applies retroactively to previously committed offenses as long as the statute of limitation has not run on these offenses prior to July 1, 2015).

The bill also provides that this act may be cited as the “43 Days Initiative Act.”

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

³² *State v. C.M.*, 154 So. 3d 1177 (Fla. 4th DCA 2015).

B. Public Records/Open Meetings Issues:

The bill requires all court records and information obtained or produced in relation to a noncriminal sexting violation to be afforded the same level of confidentiality provided under ss. 985.04 and 985.045, F.S. All noncriminal sexting violations that occurred on or after October 1, 2011, are considered confidential. Art. 1, s. 24 of the Florida Constitution permits the Legislature to enact exemptions from public records requirements, provided they meet certain conditions. However, laws creating exemptions may contain only exemptions from public records requirements and must relate to one subject. Bills that are filed that contain substantive provisions and a public records exemption violate the Constitution.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution³³ if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.³⁴

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**Violations of Injunctions**

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and gave a recommended estimate of positive indeterminate (an increase in prison beds). The Florida Department of Law Enforcement reported that in FY 2013-2014, there were 183 guilty/convicted counts and 6 adjudication withheld counts for repeat offenders violating s. 741.31, F.S. It is unknown what number of these repeat offenses were third or subsequent violations.

Electronic Monitoring

The bill expands who the Department of Corrections and local law enforcement agencies can electronically monitor and has an indeterminate fiscal impact.

³³ FLA. CONST. art. I, s.10.

³⁴ *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

Sexting

The bill requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors.

Statute of Limitations

The CJIC met February 27, 2015, and determined that SB 1270 would have a positive moderate impact on state prison beds (meaning the CJIC estimates that it may increase the prison population by more than 10 but less than 25 inmates annually). Accordingly, the projected prison bed impact would create an insignificant fiscal impact to the General Revenue Fund not to exceed \$450,000, which the Department of Corrections could absorb within existing resources. No additional fixed capital outlay costs are anticipated for these additional prison beds because the prison population is below the capacity of the correctional system.

The bill was amended reduced the statute of limitations in the bill from 10 years to 6 years, which “would likely lower the effect and bring the moderate [prison bed] effect closer to insignificant.”³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Typically bills relating to criminal law have an effective date of October 1. The bill is currently effective July 1, 2015.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.31, 775.15, 784.047, 784.0487, 847.0141, 948.11, and 985.0301.

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 Fiscal Policy on April 15, 2015:

The committee substitute:

- Increases the penalty for third or subsequent violations of an injunction for protection to a third degree felony if a person has two or more prior convictions for the same offense.
- Expands who the Department of Corrections or local law enforcement agency are permitted to electronically monitor.

³⁵ Email from Matthew Hasbrouck, Office of Economic and Demographic Research, The Florida Legislature (April 6, 2015) (on file with the Senate Appropriations Subcommittee on Civil and Criminal Justice).

- Amends punishment schedule in s. 847.0141, F.S., by including the issuance of a citation for first violation for the crime of sexting.
- Provides requirements for the sexting citation.
- Provides all court records and information obtained or produced in relation to a noncriminal sexting violation to be afforded the same level of confidentiality provided under ss. 985.04 and 985.045, F.S., and all noncriminal sexting violations that occurred on or after October 1, 2011, are confidential.
- Reduces the statute of limitations from 10 years to 6 years.

B. Amendments:

None.

By Senator Soto

14-00557B-15

20151270__

A bill to be entitled

An act relating to sexual offenses; providing a short title; amending s. 775.15, F.S.; revising time limitations for the criminal prosecution of specified sexual battery offenses if the victim is 16 years of age or older; providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "43 Days Initiative Act."

Section 2. Paragraph (b) of subsection (13) of section 775.15, Florida Statutes, is republished, and subsection (14) of that section is amended, to read:

775.15 Time limitations; general time limitations; exceptions.—

(13)

(b) If the offense is a first degree felony violation of s. 794.011 and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2003.

(14) (a) A prosecution for a first or second degree felony violation of s. 794.011, if the victim is 16 ~~18~~ years of age or older at the time of the offense and the offense is reported to a law enforcement agency within 72 hours after commission of the offense, may be commenced at any time. ~~If the offense is not~~

Page 1 of 2

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

14-00557B-15

20151270__

~~reported within 72 hours after the commission of the offense, the prosecution must be commenced within the time periods prescribed in subsection (2).~~

(b) Except as provided in paragraph (a) or paragraph (13) (b), a prosecution for a first or second degree felony violation of s. 794.011, if the victim is 16 years of age or older at the time of the offense, must be commenced within 10 years after the violation is committed. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2015.

Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

1270

Bill Number (if applicable)

Topic Sexual Offenses

Amendment Barcode (if applicable)

Name Danielle Sullivan

Job Title Founder - 43 Days Initiative

Address 687 Mourning Dove Circle

Street

Phone 407-340-5104

Lake Mary

FL

32746

Email info@43daysinitiative.org

City

State

Zip

Speaking: For Against Information

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

Representing 43 Days Initiative

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 15, 2015

Meeting Date

1270

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRYAN BARWAN

Job Title _____

Address 2617 Mahan Drive
Street

Phone 850-877-2165

Tallahassee FL 32308
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/15
Meeting Date

1270
Bill Number (if applicable)

Topic Sexual Offenses

Amendment Barcode (if applicable)

Name Theresa Prichard

Job Title Director of Advocacy and Legal Assistance

Address 1820 E. PARK AVE., Suite 100
Street

Phone 850/297-2000

TALLAHASSEE FL 32301
City State Zip

Email tprichard@fcesv.org

Speaking: For Against Information

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

Representing FLORIDA COUNCIL AGAINST SEXUAL VIOLENCE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/15/15

Meeting Date

1270

Bill Number (if applicable)

Topic Sexual offenses

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

City

Fl.

State

33773

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Families

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/2015

Meeting Date

1270

Bill Number (if applicable)

Latefiled

Amendment Barcode (if applicable)

Topic _____

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave E
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO

Democratic Caucus Rules Chair
14th District

April 10, 2015

The Honorable Anitere Flores
Committee on Fiscal Policy
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Flores,

I respectfully request that Senate Bill 1270, Sexual Offenses, be placed on the agenda as soon as possible. Senate Bill 1270 creates the "43 Days Initiative Act," which extends the statute of limitations for victims of rape to 6 years after the violation is committed.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



891510

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 62 - 102
and insert:
executive director of the Office of Early Learning, and the
Chief Justice of the State Supreme Court.

(b) "Entities contracting with the state" means for-profit
and not-for-profit organizations or businesses that have a legal
existence, such as corporations or partnerships, as opposed to
natural persons, which have entered into a relationship with a
state agency to provide for consideration certain goods or



891510

12 services to the state agency or on behalf of the state agency.
13 The relationship may be evidenced by payment by warrant or
14 purchasing card, contract, purchase order, provider agreement,
15 or other such mutually agreed upon relationship. The term does
16 not apply to entities that are the subject of audits or
17 investigations conducted pursuant to ss. 112.3187-112.31895 or
18 s. 409.913 or which are otherwise confidential and exempt under
19 s. 119.07.

20 (c) "Individuals substantially affected" means natural
21 persons who have established a real and sufficiently immediate
22 injury in fact due to the findings, conclusions, or
23 recommendations of a final report of a state agency inspector
24 general, who are the subject of the audit or investigation, and
25 who do not have or are not currently afforded an existing right
26 to an independent review process. The term does not apply to
27 employees of the state, including career service, probationary,
28 other personal service, Selected Exempt Service, and Senior
29 Management Service employees; former employees of the state if
30 the final report of the state agency inspector general relates
31 to matters arising during a former employee's term of state
32 employment; or persons who are the subject of audits or
33 investigations conducted pursuant to ss. 112.3187-112.31895 or
34 s. 409.913 or which are otherwise confidential and exempt under
35 s. 119.07.

36 (d) "State agency" means each department created pursuant
37 to this chapter and the Executive Office of the Governor, the
38 Department of Military Affairs, the Fish and Wildlife
39 Conservation Commission, the Office of Insurance Regulation of
40 the Financial Services Commission, the Office of Financial



891510

41 Regulation of the Financial Services Commission, the Public
42 Service Commission, the Board of Governors of the State
43 University System, the Florida Housing Finance Corporation, the
44 Agency for State Technology,

45

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

47 And the title is amended as follows:

48 Delete lines 8 - 9

49 and insert:

50 agency" to include the Office of Early Learning of the
51 Department of



567240

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hays) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 275 - 391
and insert:

(5) It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing conducted pursuant to this section. Beginning July 1, 2015, each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or



567240

12 person understands and will comply with this subsection.

13

14 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

15 And the directory clause is amended as follows:

16 Delete lines 48 - 52

17 and insert:

18 Section 2. Subsections (1) through (4) of section 20.055,
19 Florida Statutes, are amended, present subsections (5) through
20 (9) are redesignated as subsections (6) through (10),
21 respectively, and a new subsection (5) is added to that section,
22 to read:

23

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

25 And the title is amended as follows:

26 Delete lines 13 - 15

27 and insert:

28 inspector general; establishing the duty of specified

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 Fiscal Policy

BILL: PCS/CS/SB 1304 (560970)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Governmental Oversight and Accountability Committee; and Senator Latvala

SUBJECT: Inspectors General

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1304 amends s. 14.32, F.S., to authorize the Chief Inspector General or designee to hire or retain legal counsel and issue and enforce subpoenas under certain circumstances. The bill amends s. 20.055, F.S., related to agency inspectors general, to specifically include the State Board of Administration and the Office of Early Learning of the Department of Education. The bill prescribes additional hiring requirements, employment qualifications, and terms of employment for inspectors general and employees of the office of inspector general.

Also, the bill requires that records must be accessible to an agency inspector general during an audit or investigation. The bill requires specified personnel to cooperate with requests of an agency inspector general during investigations, audits, inspections, reviews and hearings.

In addition, the bill requires, beginning July 1, 2015, certain language be included in state contracts, bids, and proposals.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.¹ The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.² Some of the duties of the Chief Inspector General include:

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigate and examine records of any agency under the direct supervision of the Governor, and coordinate complaint-handling activities with the agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conduct special investigations and management reviews at the request of the Governor.³

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.⁴

Agency Inspectors General

Duties

Section 20.055, F.S., requires each state agency of state government to have an inspector general office (OIG).⁵ The OIG is created to provide a focal point of accountability efforts within the agency.⁶ The responsibilities of each OIG include:⁷

- Advising in the development, assessment, and review of performance measures, standards, internal controls, and procedures for evaluation of state agency programs and related rules.
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency.
- Informing, reporting, and recommending corrective action to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General about fraud,

¹ Section 14.32(1), F.S.

² *Id.*

³ Section 14.32(2), F.S.

⁴ Section 14.32(3), F.S.

⁵ Section 20.055(1)(d), F.S., defines the term "state agency" as "each department created pursuant to this chapter and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, and the state courts system."

⁶ Section 20.055(2), F.S.

⁷ *Id.*

abuses, and deficiencies relating to programs and operations administered or financed by the state agency.

- Coordinating agency audit, investigative, and other accountability activities, and outside the agency with the Auditor General, federal auditors, and other governmental entities, to avoid duplication and maximize effectiveness.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.
- Conducting investigations pursuant to the Whistle-blower's Act.⁸
- Developing long-term and annual audit plans based on the findings of periodic risk assessments.⁹ Plans, where appropriate, should include post-audit samplings of payments and accounts.

In carrying out the investigative duties and responsibilities, the inspector general initiates, conducts, supervises, and coordinates investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.¹⁰

Each inspector general must submit an annual report on its activities to the agency head,¹¹ and provide any written complaints about the operations of the inspector general.¹² Audit plans and reports are submitted to the Auditor General.¹³

Appointment

For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the Chief Inspector General. The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general at least 7 days prior to an offer of employment. Inspectors general are appointed without regard to political affiliation.¹⁴

Removal

Inspectors general may be removed by the agency head for agencies under the jurisdiction of the Governor and Cabinet. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove an inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the

⁸ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

⁹ Section 20.055(5)(i), F.S.

¹⁰ Section 20.055(6), F.S.

¹¹ Section 20.055(7), F.S.

¹² Section 20.055(8), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.

¹³ Section 20.055(5)(f)-(i), F.S.

¹⁴ Section 20.055(3)(a), F.S.

removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.¹⁵

Qualifications

To ensure that state agency audits are performed in accordance with applicable auditing standards, that the inspector general or the director of auditing within the inspector general's office must have at least one of the following qualifications:

- A bachelor's degree from an accredited college or university with a major in accounting or business with a minimum of five accounting courses, and 5 years' experience; or
- A master's degree in accounting, business administration, or public administration from an accredited college or university, and 4 years of experience; or
- A certified public accountant license, or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience.¹⁶

The experience must be as an internal auditor, independent postauditor, electronic data processing auditor, accountant, or any combination thereof, and, at a minimum consist of audits of units of government or private business enterprises.

Elected Office/Political Office Restrictions

There are no current restrictions on inspectors general or OIG staff regarding holding elective office, holding office in a political party or political committee, participating in a political campaign of any candidate for public office, making campaign contributions, or making campaign endorsements, while serving in the office of inspector general.

Subpoenas

The Chief Inspector General and agency inspectors general do not currently have the authority to issue subpoenas.

Internal Audits

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹⁷ The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings.¹⁸ If the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 14.32, F.S., to authorize the Chief Inspector General or his or her designee to hire or retain legal counsel and to issue and serve subpoenas, for agencies under the

¹⁵ Section 20.055(3)(c), F.S.

¹⁶ Section 20.055(4), F.S.

¹⁷ Section 20.055(5), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

jurisdiction of the Governor, to compel attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

For noncompliance with issuance of a subpoena or subpoena duces tecum, the Chief Inspector General is authorized to petition the circuit court of the county where the person resides or has a principal place of business to obtain an order requiring the person to appear and testify or produce the requested documents.

The Chief Inspector General is also authorized to require a person to file a statement in writing, under oath or otherwise, as to facts and circumstances to be audited, examined, or investigated.

Section 2 amends s. 20.055, F.S., to revise definitions of the terms “agency head” and “state agency” to include the State Board of Administration (SBA) and Office of Early Learning (OEL). All agencies identified under s. 20.055, F.S., must establish an OIG and comply with the requirements of s. 20.055, F.S. These two agencies currently have OIGs.

Appointment

The bill requires an agency head, or for agencies under the jurisdiction of the Governor, the Chief Inspector General, to conduct a national search for a new inspector general within 60 days after a vacancy or anticipated vacancy and to set the salary of the inspector general. The bill allows an interim inspector general to be appointed from other office of inspector general management personnel until a successor is appointed.

The bill prohibits an elected official from being appointed as inspector general within 5 years after the end of the individual’s term of service. However, this restriction does not prohibit the reappointment of a current inspector general.

The bill clarifies that for state agencies under the jurisdiction of the Governor, the inspector general is under the general supervision of the agency head for administrative purposes.

Qualifications

For agencies under the Governor, the inspector general shall be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field.

This bill requires the following qualifications, certifications, training, experience, education, and other criteria for inspectors general:

- An inspector general must possess at appointment or obtain within the first year after appointment, a certification from the Association of Inspectors General as a certified inspector general.
- An inspector general shall have at least one other related professional certification, such as certified inspector general investigator, certified inspector general auditor, certified public

accountant, certified internal auditor, certified governmental financial manager, certified fraud examiner, certified financial crimes investigator, or be a licensed attorney.

- An inspector general is subject to level 2 background screening under ch. 435, F.S.
- A candidate for inspector general must have a 4-year degree from an accredited institution of higher learning or have at least 5 years of experience in at least one of the following areas:
 - Inspector general;
 - Local, state, or federal law enforcement officer;
 - Local, state or federal court judge;
 - Administration and management of complex audits and investigations;
 - Senior-level auditor or comptroller;
 - Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general;
 - Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or organizations; or
 - An advanced degree in law, accounting, public administration, or other relevant field may substitute for 1 year of required experience.

Political Office/Party Restrictions

The bill prohibits an inspector general or employee of an OIG from holding office, or being a candidate for an elective office with the state or any municipality, county, or other political subdivision of the state while serving as an inspector general or an employee of an OIG. The bill also prohibits such individuals from holding office in a political party or political committee.

Access to Agency Records

The bill requires the inspector general and staff to have access to any records, data, and other information of the state agency that the inspector general deems necessary to carry out his or her duties. The inspector general is also required to have access to a building or facility that is owned, operated, or leased by a department, agency, board, or commission, or a property held in trust to the state that the inspector general deems necessary to carry out his or her duties.

The bill authorizes the inspector general, to request information or assistance that may be necessary from a federal, state, or local governmental entity.

Duty to Cooperate

The bill requires every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

Required Statement for Contract/Bid Proposals

Beginning July 1, 2015, the bill requires that each contract, bid, proposal, and application or solicitation for a contract to contain a statement that the corporation, partnership, or person understands and will abide by the duty to cooperate.

Section 3 provides an effective date of July 1, 2015.

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

The mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires certain local government entities to cooperate with an inspector general and provide specific assistance. However, the bill may be exempt because the fiscal impact will likely be insignificant.

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 requires, beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract contain a statement that the entity or individual seeking to contract with the state will comply and cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. The bill requires a national search when hiring an inspector general, which could be more costly than a typical search.

Authorizing inspectors general to obtain outside legal counsel has an indeterminate fiscal impact. It is unknown how often counsel would be obtained and the cost associated with such counsel.

The bill provides that every state officer, employee, agency, special district, board, commission, contractor, and subcontractor must cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. Depending on the nature of the inspection or audit, local government may be required to cooperate and assist an inspector general. As a result, there may be an indeterminate negative fiscal impact on local governments. These costs are expected to be minimal.

VI. Technical Deficiencies:

The bill (lines 290-294) requires that “each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will abide by this section.” This provision might be more appropriately codified in the state’s procurement statutes.

VII. Related Issues:

The bill permits that an agency head or Chief Inspector General may appoint an interim inspector general from current OIG staff. It is unclear if this provision is intended to limit the appointment of an interim inspector general only to current staff or is permissive to allow the appointment of an interim inspector general. If it is intended to limit the pool of available interim appointments, then such provision may create undue hardship on agencies with smaller OIG. The Department of Financial Services notes that there are currently 11 OIGs that have 3 or less employees, including the inspector general, and 4 of those offices are only staffed by the inspector general himself or herself.²⁰ Other agencies also cited this concern.²¹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 14.32 and 20.055.

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

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:

The committee substitute:

- Clarifies the authorization to issue and serve subpoenas and subpoenas duces tecum only pertain to the Chief Inspector General or his or her designee for agencies under the jurisdiction of the Governor;
- Removes provisions relating to the term of office of an inspector general;
- Limits the prohibition on an inspector general, current officer or employee of an office of inspector general holding or being a candidate for elective office to only apply to elective office with the state, or any municipality, county, or other political subdivision of the state;
- Provides an inspector general’s access to specific buildings or facilities are limited to circumstances in which the inspector general deems such access necessary to carry out his or her duties;
- Authorizes an inspector general to request information or assistance that may be necessary from a state agency or from a federal, state, or local governmental entity;

²⁰ Department of Financial Services legislative bill analysis for HB 371, Feb. 18, 2015 (on file with the Governmental Oversight and Accountability Committee).

²¹ Department of Children and Families legislative bill analysis for HB 371, Jan. 30, 2015 (on file with the Governmental Oversight and Accountability Committee). Department of Revenue legislative bill analysis for HB 371, Feb. 17, 2015, (on file with the Senate Fiscal Policy Committee).

- Removes the terms “licensee” and “applicant for certification of eligibility for a contract or program” from the provision creating a duty of certain entities to cooperate with an inspector general; and
- Requires, beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract must contain a statement that the corporation, partnership, or person understands and will abide by the requirement to cooperate with the inspector general. The CS clarifies this requirement is prospective.

CS by Governmental Oversight and Accountability on March 23, 2015:

The CS amends definitions of the terms “agency head” and “state agency” contained in s. 20.55(1)(a) and (d), F.S. This change requires the State Board of Administration and the Office of Early Learning to appoint an inspector general.

The initial term of appointment for an inspector general is three years, and subsequent three year terms may be renewed at discretion of agency head. An inspector general may be removed from office for cause by the agency head.

Provides that the inspector general is under the general supervision of the agency head for administrative purposes.

In regards to qualifications, the inspector general:

- Is subject to level 2 background screening;
- Shall have at least one other related professional certification;
- May substitute an advanced degree in law, accounting, public administration, or another relevant field for one year of required experience.

Experience as a local judge is added to the experience category of state and federal court judge.

For related certifications, the area of financial crimes investigator is added.

B. Amendments:

None.



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Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to inspectors general; amending s. 14.32, F.S.; authorizing the Chief Inspector General or his or her designee to retain legal counsel and issue and enforce subpoenas under certain circumstances; amending s. 20.055, F.S.; revising the definitions of the terms "agency head" and "state agency" to include the State Board of Administration and the Office of Early Learning of the Department of Education; prescribing additional hiring requirements, employment qualifications, and terms of employment for inspectors general and staff of the office of inspector general; specifying that an inspector general is entitled to access to specified buildings or facilities; establishing the duty of specified persons and entities with respect to cooperation with an inspector general's official duties; requiring contracts and other specified documents to contain a statement regarding compliance with an inspector general's official duties; providing an effective date.

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

Section 1. Subsection (5) is added to section 14.32, Florida Statutes, to read:
14.32 Office of Chief Inspector General.—



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(5) In exercising authority under this section, the Chief Inspector General or his or her designee may:

(a) Hire or retain legal counsel.

(b) Issue and serve subpoenas and subpoenas duces tecum, for agencies under the jurisdiction of the Governor, to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

(c) Require or allow a person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.

In the event of noncompliance with a subpoena issued pursuant to this subsection, the Chief Inspector General may petition the circuit court of the county in which the person subpoenaed resides or has his or her principal place of business for an order requiring the person subpoenaed to appear and testify and to produce documents, reports, answers, records, accounts, or other data as specified in the subpoena.

Section 2. Present subsections (1) through (5) of section 20.055, Florida Statutes, are amended, new subsections (5) and (6) are added to that section, and present subsections (6) through (9) are redesignated as subsections (8) through (11), respectively, to read:

20.055 Agency inspectors general.—

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

(a) "Agency head" means the Governor, a Cabinet officer, or a secretary or executive director as those terms are defined in



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57 s. 20.03, the chair of the Public Service Commission, the
58 Director of the Office of Insurance Regulation of the Financial
59 Services Commission, the Director of the Office of Financial
60 Regulation of the Financial Services Commission, the board of
61 directors of the Florida Housing Finance Corporation, the
62 Executive Director of the State Board of Administration, the
63 Executive Director of the Office of Early Learning, and the
64 Chief Justice of the State Supreme Court.

65 (b) "Entities contracting with the state" means for-profit
66 and not-for-profit organizations or businesses that have a legal
67 existence, such as corporations or partnerships, as opposed to
68 natural persons, which have entered into a relationship with a
69 state agency to provide for consideration certain goods or
70 services to the state agency or on behalf of the state agency.
71 The relationship may be evidenced by payment by warrant or
72 purchasing card, contract, purchase order, provider agreement,
73 or other such mutually agreed upon relationship. The term does
74 not apply to entities that are the subject of audits or
75 investigations conducted pursuant to ss. 112.3187-112.31895 or
76 s. 409.913 or which are otherwise confidential and exempt under
77 s. 119.07.

78 (c) "Individuals substantially affected" means natural
79 persons who have established a real and sufficiently immediate
80 injury in fact due to the findings, conclusions, or
81 recommendations of a final report of a state agency inspector
82 general, who are the subject of the audit or investigation, and
83 who do not have or are not currently afforded an existing right
84 to an independent review process. The term does not apply to
85 employees of the state, including career service, probationary,



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86 other personal service, Selected Exempt Service, and Senior
87 Management Service employees; former employees of the state if
88 the final report of the state agency inspector general relates
89 to matters arising during a former employee's term of state
90 employment; or persons who are the subject of audits or
91 investigations conducted pursuant to ss. 112.3187-112.31895 or
92 s. 409.913 or which are otherwise confidential and exempt under
93 s. 119.07.

94 (d) "State agency" means each department created pursuant
95 to this chapter and the Executive Office of the Governor, the
96 Department of Military Affairs, the Fish and Wildlife
97 Conservation Commission, the Office of Insurance Regulation of
98 the Financial Services Commission, the Office of Financial
99 Regulation of the Financial Services Commission, the Public
100 Service Commission, the Board of Governors of the State
101 University System, the Florida Housing Finance Corporation, the
102 Agency for State Technology, the State Board of Administration,
103 the Office of Early Learning, and the state courts system.

104 (2) ~~An~~ The office of Inspector General is established in
105 each state agency to provide a central point for coordination of
106 and responsibility for activities that promote accountability,
107 integrity, and efficiency in government. It is the duty and
108 responsibility of each inspector general, with respect to the
109 state agency in which the office is established, to:

110 (a) Advise in the development of performance measures,
111 standards, and procedures for the evaluation of state agency
112 programs.

113 (b) Assess the reliability and validity of the information
114 provided by the state agency on performance measures and



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115 standards, and make recommendations for improvement, if
116 necessary, before submission of such information pursuant to s.
117 216.1827.

118 (c) Review the actions taken by the state agency to improve
119 program performance and meet program standards and make
120 recommendations for improvement, if necessary.

121 (d) Provide direction for, supervise, and coordinate
122 audits, investigations, and management reviews relating to the
123 programs and operations of the state agency, except that when
124 the inspector general does not possess the qualifications
125 specified in subsection (4), the director of auditing shall
126 conduct such audits.

127 (e) Conduct, supervise, or coordinate other activities
128 carried out or financed by that state agency for the purpose of
129 promoting economy and efficiency in the administration of, or
130 preventing and detecting fraud and abuse in, its programs and
131 operations.

132 (f) Keep the agency head or, for state agencies under the
133 jurisdiction of the Governor, the Chief Inspector General
134 informed concerning fraud, abuses, and deficiencies relating to
135 programs and operations administered or financed by the state
136 agency, recommend corrective action concerning fraud, abuses,
137 and deficiencies, and report on the progress made in
138 implementing corrective action.

139 (g) Ensure effective coordination and cooperation between
140 the Auditor General, federal auditors, and other governmental
141 bodies with a view toward avoiding duplication.

142 (h) Review, as appropriate, rules relating to the programs
143 and operations of such state agency and make recommendations



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144 concerning their impact.

145 (i) Ensure that an appropriate balance is maintained
146 between audit, investigative, and other accountability
147 activities.

148 (j) Comply with the General Principles and Standards for
149 Offices of Inspector General as published and revised by the
150 Association of Inspectors General.

151 (3) (a) 1. For state agencies under the jurisdiction of the
152 Cabinet or the Governor and Cabinet, the inspector general shall
153 be appointed by the agency head. For state agencies under the
154 jurisdiction of the Governor, the inspector general shall be
155 appointed by the Chief Inspector General. The agency head or
156 Chief Inspector General shall notify the Governor in writing of
157 his or her intention to hire the inspector general at least 7
158 days before an offer of employment. The inspector general shall
159 be appointed without regard to political affiliation.

160 2. Within 60 days after a vacancy or anticipated vacancy in
161 the position of inspector general, the agency head or, for
162 agencies under the jurisdiction of the Governor, the Chief
163 Inspector General, shall initiate a national search for an
164 inspector general and shall set the salary of the inspector
165 general. In the event of a vacancy in the position of inspector
166 general, the agency head or, for agencies under the jurisdiction
167 of the Governor, the Chief Inspector General, may appoint other
168 office of inspector general management personnel as interim
169 inspector general until such time as a successor inspector
170 general is appointed.

171 3. A former or current elected official may not be
172 appointed inspector general within 5 years after the end of such



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173 individual's period of service. This restriction does not
174 prohibit the reappointment of a current inspector general.

175 (b) The inspector general shall report to and be under the
176 general supervision of the agency head and is not subject to
177 supervision by any other employee of the state agency in which
178 the office is established. For state agencies under the
179 jurisdiction of the Governor, the inspector general shall be
180 under the general supervision of the agency head for
181 administrative purposes, shall report to the Chief Inspector
182 General, and may hire and remove staff within the office of the
183 inspector general in consultation with the Chief Inspector
184 General but independently of the agency.

185 (c) For state agencies under the jurisdiction of the
186 Cabinet or the Governor and Cabinet, the inspector general may
187 be removed from office by the agency head. For state agencies
188 under the jurisdiction of the Governor, the inspector general
189 may only be removed from office by the Chief Inspector General
190 for cause, including concerns regarding performance,
191 malfeasance, misfeasance, misconduct, or failure to carry out
192 his or her duties under this section. The Chief Inspector
193 General shall notify the Governor in writing of his or her
194 intention to remove the inspector general at least 21 days
195 before the removal. For state agencies under the jurisdiction of
196 the Governor and Cabinet, the agency head shall notify the
197 Governor and Cabinet in writing of his or her intention to
198 remove the inspector general at least 21 days before the
199 removal. If the inspector general disagrees with the removal,
200 the inspector general may present objections in writing to the
201 Governor within the 21-day period.



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202 (d) The Governor, the Governor and Cabinet, the agency
203 head, or agency staff may not prevent or prohibit the inspector
204 general from initiating, carrying out, or completing any audit
205 or investigation.

206 (4) (a) To ensure that state agency audits are performed in
207 accordance with applicable auditing standards, the inspector
208 general or the director of auditing within the inspector
209 general's office shall possess the following qualifications:

210 1. ~~(a)~~ A bachelor's degree from an accredited college or
211 university with a major in accounting, or with a major in
212 business which includes five courses in accounting, and 5 years
213 of experience as an internal auditor or independent postauditor,
214 electronic data processing auditor, accountant, or any
215 combination thereof. At a minimum, the experience must shall at
216 a minimum consist of audits of units of government or private
217 business enterprises, operating for profit or not for profit; ~~or~~

218 2. ~~(b)~~ A master's degree in accounting, business
219 administration, or public administration from an accredited
220 college or university and 4 years of the professional experience
221 ~~as required under subparagraph 1. in paragraph (a);~~ or

222 3. ~~(c)~~ A certified public accountant license issued pursuant
223 to chapter 473 or a certified internal audit certificate issued
224 by the Institute of Internal Auditors or earned by examination,
225 and 4 years of the professional experience ~~as required under~~
226 subparagraph 1. in paragraph (a).

227 (b) For agencies under the jurisdiction of the Governor,
228 the inspector general shall be selected on the basis of
229 integrity, leadership capability, and experience in accounting,
230 auditing, financial analysis, law, management analysis, program



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231 evaluation, public administration, investigation, criminal
232 justice administration, or another closely related field. The
233 inspector general is subject to level 2 background screening
234 pursuant to chapter 435. The inspector general shall have a 4-
235 year degree from an accredited institution of higher learning or
236 at least 5 years of experience in at least one of the following
237 areas:

- 238 1. Inspector general.
- 239 2. Supervisory experience in an office of inspector general
240 or an investigative public agency similar to an office of
241 inspector general.
- 242 3. Local, state, or federal law enforcement officer.
- 243 4. Local, state, or federal court judge.
- 244 5. Senior-level auditor or comptroller.
- 245 6. The administration and management of complex audits and
246 investigations.
- 247 7. Managing programs for prevention, examination,
248 detection, elimination of fraud, waste, abuse, mismanagement,
249 malfeasance, or misconduct in government or organizations.

250
251 An advanced degree in law, accounting, public administration, or
252 another relevant field may substitute for 1 year of required
253 experience.

254 (c) The inspector general shall possess at appointment, or
255 obtain within the first year after appointment, a certification
256 from the Association of Inspectors General as a certified
257 inspector general. The inspector general shall have at least one
258 other related professional certification, such as certified
259 inspector general investigator, certified inspector general



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260 auditor, certified public accountant, certified internal
261 auditor, certified governmental financial manager, certified
262 fraud examiner, or certified financial crimes investigator, or
263 be a licensed attorney.

264 (d) The inspector general may not hold, or be a candidate
265 for, an elective office with the state or any municipality,
266 county, or other political subdivision of the state while
267 inspector general, and a current officer or employee of an
268 office of inspector general may not hold, or be a candidate for,
269 an elective office with the state or any municipality, county,
270 or other political subdivision of the state. The inspector
271 general may not hold office in a political party or political
272 committee. An employee of an office of inspector general may not
273 hold office in a political party or political committee while
274 employed in the office of inspector general.

275 (5) The inspector general and his or her staff shall have
276 access to any records, data, and other information of the state
277 agency which he or she deems necessary to carry out his or her
278 duties. The inspector general, at all times, shall have access
279 to a building or facility that is owned, operated, or leased by
280 a department, agency, board, or commission, or a property held
281 in trust to the state if the inspector general deems such access
282 necessary to carry out his or her duties. The inspector general
283 may also request such information or assistance as may be
284 necessary from the state agency or from any federal, state, or
285 local governmental entity.

286 (6) It is the duty of every state officer, employee,
287 agency, special district, board, commission, contractor, and
288 subcontractor to cooperate with the inspector general in any



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289 investigation, audit, inspection, review, or hearing pursuant to
290 this section. Beginning July 1, 2015, each contract, bid,
291 proposal, and application or solicitation for a contract must
292 contain a statement that the corporation, partnership, or person
293 understands and will comply with this subsection.

294 ~~(7)(5)~~ In carrying out the auditing duties and
295 responsibilities specified in ~~of~~ this section ~~act~~, each
296 inspector general shall review and evaluate internal controls
297 necessary to ensure the fiscal accountability of the state
298 agency. The inspector general shall conduct financial,
299 compliance, electronic data processing, and performance audits
300 of the agency and prepare audit reports of his or her findings.
301 The scope and assignment of the audits shall be determined by
302 the inspector general; however, the agency head may at any time
303 request the inspector general to perform an audit of a special
304 program, function, or organizational unit. The performance of
305 the audit shall be under the direction of the inspector general,
306 except that if the inspector general does not possess the
307 qualifications specified in subsection (4), the director of
308 auditing shall perform the functions listed in this subsection.

309 (a) Such audits shall be conducted in accordance with the
310 current International Standards for the Professional Practice of
311 Internal Auditing as published by the Institute of Internal
312 Auditors, Inc., or, where appropriate, in accordance with
313 generally accepted governmental auditing standards. All audit
314 reports issued by internal audit staff shall include a statement
315 that the audit was conducted pursuant to the appropriate
316 standards.

317 (b) Audit workpapers and reports shall be public records to



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318 the extent that they do not include information which has been
319 made confidential and exempt from the provisions of s. 119.07(1)
320 pursuant to law. However, when the inspector general or a member
321 of the staff receives from an individual a complaint or
322 information that falls within the definition provided in s.
323 112.3187(5), the name or identity of the individual may not be
324 disclosed to anyone else without the written consent of the
325 individual, unless the inspector general determines that such
326 disclosure is unavoidable during the course of the audit or
327 investigation.

328 ~~(c) The inspector general and the staff shall have access~~
329 ~~to any records, data, and other information of the state agency~~
330 ~~he or she deems necessary to carry out his or her duties. The~~
331 ~~inspector general may also request such information or~~
332 ~~assistance as may be necessary from the state agency or from any~~
333 ~~federal, state, or local government entity.~~

334 ~~(d)~~ At the conclusion of each audit, the inspector general
335 shall submit preliminary findings and recommendations to the
336 person responsible for supervision of the program function or
337 operational unit who shall respond to any adverse findings
338 within 20 working days after receipt of the preliminary
339 findings. Such response and the inspector general's rebuttal to
340 the response shall be included in the final audit report.

341 ~~(d)(e)~~ At the conclusion of an audit in which the subject
342 of the audit is a specific entity contracting with the state or
343 an individual substantially affected, if the audit is not
344 confidential or otherwise exempt from disclosure by law, the
345 inspector general shall, consistent with s. 119.07(1), submit
346 the findings to the entity contracting with the state or the



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347 individual substantially affected, who shall be advised in
348 writing that they may submit a written response within 20
349 working days after receipt of the findings. The response and the
350 inspector general's rebuttal to the response, if any, must be
351 included in the final audit report.

352 ~~(e)~~ ~~(f)~~ The inspector general shall submit the final report
353 to the agency head, the Auditor General, and, for state agencies
354 under the jurisdiction of the Governor, the Chief Inspector
355 General.

356 ~~(f)~~ ~~(g)~~ The Auditor General, in connection with the
357 independent postaudit of the same agency pursuant to s. 11.45,
358 shall give appropriate consideration to internal audit reports
359 and the resolution of findings therein. The Legislative Auditing
360 Committee may inquire into the reasons or justifications for
361 failure of the agency head to correct the deficiencies reported
362 in internal audits that are also reported by the Auditor General
363 and shall take appropriate action.

364 ~~(g)~~ ~~(h)~~ The inspector general shall monitor the
365 implementation of the state agency's response to any report on
366 the state agency issued by the Auditor General or by the Office
367 of Program Policy Analysis and Government Accountability. No
368 later than 6 months after the Auditor General or the Office of
369 Program Policy Analysis and Government Accountability publishes
370 a report on the state agency, the inspector general shall
371 provide a written response to the agency head or, for state
372 agencies under the jurisdiction of the Governor, the Chief
373 Inspector General on the status of corrective actions taken. The
374 inspector general shall file a copy of such response with the
375 Legislative Auditing Committee.



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376 ~~(h)~~ ~~(i)~~ The inspector general shall develop long-term and
377 annual audit plans based on the findings of periodic risk
378 assessments. The plan, where appropriate, should include
379 postaudit samplings of payments and accounts. The plan shall
380 show the individual audits to be conducted during each year and
381 related resources to be devoted to the respective audits. The
382 Chief Financial Officer, to assist in fulfilling the
383 responsibilities for examining, auditing, and settling accounts,
384 claims, and demands pursuant to s. 17.03(1), and examining,
385 auditing, adjusting, and settling accounts pursuant to s. 17.04,
386 may use audits performed by the inspectors general and internal
387 auditors. For state agencies under the jurisdiction of the
388 Governor, the audit plans shall be submitted to the Chief
389 Inspector General. The plan shall be submitted to the agency
390 head for approval. A copy of the approved plan shall be
391 submitted to the Auditor General.

392 Section 3. This act shall take effect July 1, 2015.

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 Fiscal Policy

BILL: CS/CS/SB 1304

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Governmental Oversight and Accountability Committee; and Senator Latvala

SUBJECT: Inspectors General

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Fav/CS
2.	Davis	DeLoach	AGG	Recommend: Fav/CS
3.	Pace	Hrdlicka	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1304 amends s. 14.32, F.S., to authorize the Chief Inspector General or designee to hire or retain legal counsel and issue and enforce subpoenas under certain circumstances. The bill amends s. 20.055, F.S., related to agency inspectors general, to specifically include the Office of Early Learning of the Department of Education. The bill prescribes additional hiring requirements, employment qualifications, and terms of employment for inspectors general and employees of the office of inspector general.

Also, the bill requires that records must be accessible to an agency inspector general during an audit or investigation. The bill requires specified personnel to cooperate with requests of an agency inspector general during investigations, audits, inspections, reviews and hearings.

In addition, the bill requires, beginning July 1, 2015, certain language be included in state contracts, bids, and proposals.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.¹ The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.² Some of the duties of the Chief Inspector General include:

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigate and examine records of any agency under the direct supervision of the Governor, and coordinate complaint-handling activities with the agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conduct special investigations and management reviews at the request of the Governor.³

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.⁴

Agency Inspectors General

Duties

Section 20.055, F.S., requires each state agency of state government to have an inspector general office (OIG).⁵ The OIG is created to provide a focal point of accountability efforts within the agency.⁶ The responsibilities of each OIG include:⁷

- Advising in the development, assessment, and review of performance measures, standards, internal controls, and procedures for evaluation of state agency programs and related rules.
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency.
- Informing, reporting, and recommending corrective action to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General about fraud,

¹ Section 14.32(1), F.S.

² *Id.*

³ Section 14.32(2), F.S.

⁴ Section 14.32(3), F.S.

⁵ Section 20.055(1)(d), F.S., defines the term "state agency" as "each department created pursuant to this chapter and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, and the state courts system."

⁶ Section 20.055(2), F.S.

⁷ *Id.*

abuses, and deficiencies relating to programs and operations administered or financed by the state agency.

- Coordinating agency audit, investigative, and other accountability activities, and outside the agency with the Auditor General, federal auditors, and other governmental entities, to avoid duplication and maximize effectiveness.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.
- Conducting investigations pursuant to the Whistle-blower's Act.⁸
- Developing long-term and annual audit plans based on the findings of periodic risk assessments.⁹ Plans, where appropriate, should include post-audit samplings of payments and accounts.

In carrying out the investigative duties and responsibilities, the inspector general initiates, conducts, supervises, and coordinates investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.¹⁰

Each inspector general must submit an annual report on its activities to the agency head,¹¹ and provide any written complaints about the operations of the inspector general.¹² Audit plans and reports are submitted to the Auditor General.¹³

Appointment

For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the Chief Inspector General. The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general at least 7 days prior to an offer of employment. Inspectors general are appointed without regard to political affiliation.¹⁴

Removal

Inspectors general may be removed by the agency head for agencies under the jurisdiction of the Governor and Cabinet. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove an inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the

⁸ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

⁹ Section 20.055(5)(i), F.S.

¹⁰ Section 20.055(6), F.S.

¹¹ Section 20.055(7), F.S.

¹² Section 20.055(8), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.

¹³ Section 20.055(5)(f)-(i), F.S.

¹⁴ Section 20.055(3)(a), F.S.

removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.¹⁵

Qualifications

To ensure that state agency audits are performed in accordance with applicable auditing standards, that the inspector general or the director of auditing within the inspector general's office must have at least one of the following qualifications:

- A bachelor's degree from an accredited college or university with a major in accounting or business with a minimum of five accounting courses, and 5 years' experience; or
- A master's degree in accounting, business administration, or public administration from an accredited college or university, and 4 years of experience; or
- A certified public accountant license, or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience.¹⁶

The experience must be as an internal auditor, independent postauditor, electronic data processing auditor, accountant, or any combination thereof, and, at a minimum consist of audits of units of government or private business enterprises.

Elected Office/Political Office Restrictions

There are no current restrictions on inspectors general or OIG staff regarding holding elective office, holding office in a political party or political committee, participating in a political campaign of any candidate for public office, making campaign contributions, or making campaign endorsements, while serving in the office of inspector general.

Subpoenas

The Chief Inspector General and agency inspectors general do not currently have the authority to issue subpoenas.

Internal Audits

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹⁷ The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings.¹⁸ If the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 14.32, F.S., to authorize the Chief Inspector General or his or her designee to hire or retain legal counsel and to issue and serve subpoenas, for agencies under the

¹⁵ Section 20.055(3)(c), F.S.

¹⁶ Section 20.055(4), F.S.

¹⁷ Section 20.055(5), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

jurisdiction of the Governor, to compel attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

For noncompliance with issuance of a subpoena or subpoena duces tecum, the Chief Inspector General is authorized to petition the circuit court of the county where the person resides or has a principal place of business to obtain an order requiring the person to appear and testify or produce the requested documents.

The Chief Inspector General is also authorized to require a person to file a statement in writing, under oath or otherwise, as to facts and circumstances to be audited, examined, or investigated.

Section 2 amends s. 20.055, F.S., to revise definitions of the terms “agency head” and “state agency” to include the Office of Early Learning (OEL). All agencies identified under s. 20.055, F.S., must establish an OIG and comply with the requirements of s. 20.055, F.S. These two agencies currently have OIGs.

Appointment

The bill requires an agency head, or for agencies under the jurisdiction of the Governor, the Chief Inspector General, to conduct a national search for a new inspector general within 60 days after a vacancy or anticipated vacancy and to set the salary of the inspector general. The bill allows an interim inspector general to be appointed from other office of inspector general management personnel until a successor is appointed.

The bill prohibits an elected official from being appointed as inspector general within 5 years after the end of the individual’s term of service. However, this restriction does not prohibit the reappointment of a current inspector general.

The bill clarifies that for state agencies under the jurisdiction of the Governor, the inspector general is under the general supervision of the agency head for administrative purposes.

Qualifications

For agencies under the Governor, the inspector general shall be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field.

This bill requires the following qualifications, certifications, training, experience, education, and other criteria for inspectors general:

- An inspector general must possess at appointment or obtain within the first year after appointment, a certification from the Association of Inspectors General as a certified inspector general.
- An inspector general shall have at least one other related professional certification, such as certified inspector general investigator, certified inspector general auditor, certified public accountant, certified internal auditor, certified governmental financial manager, certified fraud examiner, certified financial crimes investigator, or be a licensed attorney.

- An inspector general is subject to level 2 background screening under ch. 435, F.S.
- A candidate for inspector general must have a 4-year degree from an accredited institution of higher learning or have at least 5 years of experience in at least one of the following areas:
 - Inspector general;
 - Local, state, or federal law enforcement officer;
 - Local, state or federal court judge;
 - Administration and management of complex audits and investigations;
 - Senior-level auditor or comptroller;
 - Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general;
 - Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or organizations; or
 - An advanced degree in law, accounting, public administration, or other relevant field may substitute for 1 year of required experience.

Political Office/Party Restrictions

The bill prohibits an inspector general or employee of an OIG from holding office, or being a candidate for an elective office with the state or any municipality, county, or other political subdivision of the state while serving as an inspector general or an employee of an OIG. The bill also prohibits such individuals from holding office in a political party or political committee.

Duty to Cooperate

The bill requires every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

Required Statement for Contract/Bid Proposals

Beginning July 1, 2015, the bill requires that each contract, bid, proposal, and application or solicitation for a contract to contain a statement that the corporation, partnership, or person understands and will abide by the duty to cooperate.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires certain local government entities to cooperate with an inspector general. However, the bill may be exempt because the fiscal impact will likely be insignificant.

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 requires, beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract contain a statement that the entity or individual seeking to contract with the state will comply and cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. The bill requires a national search when hiring an inspector general, which could be more costly than a typical search.

Authorizing inspectors general to obtain outside legal counsel has an indeterminate fiscal impact. It is unknown how often counsel would be obtained and the cost associated with such counsel.

The bill provides that every state officer, employee, agency, special district, board, commission, contractor, and subcontractor must cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. Depending on the nature of the inspection or audit, local government may be required to cooperate and assist an inspector general. As a result, there may be an indeterminate negative fiscal impact on local governments. These costs are expected to be minimal.

VI. Technical Deficiencies:

The bill (lines 276-278) requires that “each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will abide by this section.” This provision might be more appropriately codified in the state’s procurement statutes.

VII. Related Issues:

The bill permits that an agency head or Chief Inspector General may appoint an interim inspector general from current OIG staff. It is unclear if this provision is intended to limit the appointment of an interim inspector general only to current staff or is permissive to allow the appointment of an interim inspector general. If it is intended to limit the pool of available interim appointments, then such provision may create undue hardship on agencies with smaller OIG. The Department of Financial Services notes that there are currently 11 OIGs that have 3 or less employees,

including the inspector general, and 4 of those offices are only staffed by the inspector general himself or herself.²⁰ Other agencies also cited this concern.²¹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 14.32 and 20.055.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Fiscal Policy on April 15, 2015.

As recommended by the Appropriations Subcommittee on General Government the committee substitute:

- Clarifies the authorization to issue and serve subpoenas and subpoenas duces tecum only pertain to the Chief Inspector General or his or her designee for agencies under the jurisdiction of the Governor;
- Removes provisions relating to the term of office of an inspector general;
- Limits the prohibition on an inspector general, current officer or employee of an office of inspector general holding or being a candidate for elective office to only apply to elective office with the state, or any municipality, county, or other political subdivision of the state;
- Provides an inspector general's access to specific buildings or facilities are limited to circumstances in which the inspector general deems such access necessary to carry out his or her duties;
- Authorizes an inspector general to request information or assistance that may be necessary from a state agency or from a federal, state, or local governmental entity;
- Removes the terms "licensee" and "applicant for certification of eligibility for a contract or program" from the provision creating a duty of certain entities to cooperate with an inspector general; and
- Requires, beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract must contain a statement that the corporation, partnership, or person understands and will abide by the requirement to cooperate with the inspector general. The CS clarifies this requirement is prospective.

The CS revises the definitions of the terms "agency head" and "state agency" to remove the reference to the SBA. The CS also removes the authority of the Inspector General to have access to any records, data, or specified buildings and facilities of the state or to request assistance from any federal, state, or local government.

²⁰ Department of Financial Services legislative bill analysis for HB 371, Feb. 18, 2015 (on file with the Governmental Oversight and Accountability Committee).

²¹ Department of Children and Families legislative bill analysis for HB 371, Jan. 30, 2015 (on file with the Governmental Oversight and Accountability Committee). Department of Revenue legislative bill analysis for HB 371, Feb. 17, 2015, (on file with the Senate Fiscal Policy Committee).

CS by Governmental Oversight and Accountability on March 23, 2015:

The CS amends definitions of the terms “agency head” and “state agency” contained in s. 20.55(1)(a) and (d), F.S. This change requires the State Board of Administration and the Office of Early Learning to appoint an inspector general.

The initial term of appointment for an inspector general is three years, and subsequent three year terms may be renewed at discretion of agency head. An inspector general may be removed from office for cause by the agency head.

Provides that the inspector general is under the general supervision of the agency head for administrative purposes.

In regards to qualifications, the inspector general:

- Is subject to level 2 background screening;
- Shall have at least one other related professional certification;
- May substitute an advanced degree in law, accounting, public administration, or another relevant field for one year of required experience.

Experience as a local judge is added to the experience category of state and federal court judge.

For related certifications, the area of financial crimes investigator is added.

B. Amendments:

None.

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

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1 A bill to be entitled
2 An act relating to inspectors general; amending s.
3 14.32, F.S.; authorizing the Chief Inspector General
4 or his or her designee to retain legal counsel and
5 issue and enforce subpoenas under certain
6 circumstances; amending s. 20.055, F.S.; revising the
7 definitions of the terms "agency head" and "state
8 agency" to include the State Board of Administration
9 and the Office of Early Learning of the Department of
10 Education; prescribing additional hiring requirements,
11 employment qualifications, and terms of employment for
12 inspectors general and staff of the office of
13 inspector general; specifying that an inspector
14 general is entitled to access to specified buildings
15 or facilities; establishing the duty of specified
16 persons and entities with respect to cooperation with
17 an inspector general's official duties; requiring
18 contracts and other specified documents to contain a
19 statement regarding compliance with an inspector
20 general's official duties; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (5) is added to section 14.32,
26 Florida Statutes, to read:

27 14.32 Office of Chief Inspector General.—

28 (5) In exercising authority under this section, the Chief
29 Inspector General or his or her designee may:

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30 (a) Hire or retain legal counsel.
31 (b) Issue and serve subpoenas and subpoenas duces tecum to
32 compel the attendance of witnesses and the production of
33 documents, reports, answers, records, accounts, and other data
34 in any medium.
35 (c) Require or allow a person to file a statement in
36 writing, under oath or otherwise, as to all the facts and
37 circumstances concerning the matter to be audited, examined, or
38 investigated.
39
40 In the event of noncompliance with a subpoena issued pursuant to
41 this subsection, the Chief Inspector General may petition the
42 circuit court of the county in which the person subpoenaed
43 resides or has his or her principal place of business for an
44 order requiring the person subpoenaed to appear and testify and
45 to produce documents, reports, answers, records, accounts, or
46 other data as specified in the subpoena.
47 Section 2. Present subsections (1) through (5) of section
48 20.055, Florida Statutes, are amended, new subsections (5) and
49 (6) are added to that section, and present subsections (6)
50 through (9) are redesignated as subsections (8) through (11),
51 respectively, to read:
52 20.055 Agency inspectors general.—
53 (1) As used in this section, the term:
54 (a) "Agency head" means the Governor, a Cabinet officer, or
55 a secretary or executive director as those terms are defined in
56 s. 20.03, the chair of the Public Service Commission, the
57 Director of the Office of Insurance Regulation of the Financial
58 Services Commission, the Director of the Office of Financial

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59 Regulation of the Financial Services Commission, the board of
60 directors of the Florida Housing Finance Corporation, the
61 Executive Director of the State Board of Administration, the
62 Executive Director of the Office of Early Learning, and the
63 Chief Justice of the State Supreme Court.

64 (b) "Entities contracting with the state" means for-profit
65 and not-for-profit organizations or businesses that have a legal
66 existence, such as corporations or partnerships, as opposed to
67 natural persons, which have entered into a relationship with a
68 state agency to provide for consideration certain goods or
69 services to the state agency or on behalf of the state agency.
70 The relationship may be evidenced by payment by warrant or
71 purchasing card, contract, purchase order, provider agreement,
72 or other such mutually agreed upon relationship. The term does
73 not apply to entities that are the subject of audits or
74 investigations conducted pursuant to ss. 112.3187-112.31895 or
75 s. 409.913 or which are otherwise confidential and exempt under
76 s. 119.07.

77 (c) "Individuals substantially affected" means natural
78 persons who have established a real and sufficiently immediate
79 injury in fact due to the findings, conclusions, or
80 recommendations of a final report of a state agency inspector
81 general, who are the subject of the audit or investigation, and
82 who do not have or are not currently afforded an existing right
83 to an independent review process. The term does not apply to
84 employees of the state, including career service, probationary,
85 other personal service, Selected Exempt Service, and Senior
86 Management Service employees; former employees of the state if
87 the final report of the state agency inspector general relates

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88 to matters arising during a former employee's term of state
89 employment; or persons who are the subject of audits or
90 investigations conducted pursuant to ss. 112.3187-112.31895 or
91 s. 409.913 or which are otherwise confidential and exempt under
92 s. 119.07.

93 (d) "State agency" means each department created pursuant
94 to this chapter and the Executive Office of the Governor, the
95 Department of Military Affairs, the Fish and Wildlife
96 Conservation Commission, the Office of Insurance Regulation of
97 the Financial Services Commission, the Office of Financial
98 Regulation of the Financial Services Commission, the Public
99 Service Commission, the Board of Governors of the State
100 University System, the Florida Housing Finance Corporation, the
101 Agency for State Technology, the State Board of Administration,
102 the Office of Early Learning, and the state courts system.

103 (2) ~~An~~ The office of Inspector General is established in
104 each state agency to provide a central point for coordination of
105 and responsibility for activities that promote accountability,
106 integrity, and efficiency in government. It is the duty and
107 responsibility of each inspector general, with respect to the
108 state agency in which the office is established, to:

109 (a) Advise in the development of performance measures,
110 standards, and procedures for the evaluation of state agency
111 programs.

112 (b) Assess the reliability and validity of the information
113 provided by the state agency on performance measures and
114 standards, and make recommendations for improvement, if
115 necessary, before submission of such information pursuant to s.
116 216.1827.

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117 (c) Review the actions taken by the state agency to improve
118 program performance and meet program standards and make
119 recommendations for improvement, if necessary.

120 (d) Provide direction for, supervise, and coordinate
121 audits, investigations, and management reviews relating to the
122 programs and operations of the state agency, except that when
123 the inspector general does not possess the qualifications
124 specified in subsection (4), the director of auditing shall
125 conduct such audits.

126 (e) Conduct, supervise, or coordinate other activities
127 carried out or financed by that state agency for the purpose of
128 promoting economy and efficiency in the administration of, or
129 preventing and detecting fraud and abuse in, its programs and
130 operations.

131 (f) Keep the agency head or, for state agencies under the
132 jurisdiction of the Governor, the Chief Inspector General
133 informed concerning fraud, abuses, and deficiencies relating to
134 programs and operations administered or financed by the state
135 agency, recommend corrective action concerning fraud, abuses,
136 and deficiencies, and report on the progress made in
137 implementing corrective action.

138 (g) Ensure effective coordination and cooperation between
139 the Auditor General, federal auditors, and other governmental
140 bodies with a view toward avoiding duplication.

141 (h) Review, as appropriate, rules relating to the programs
142 and operations of such state agency and make recommendations
143 concerning their impact.

144 (i) Ensure that an appropriate balance is maintained
145 between audit, investigative, and other accountability

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146 activities.

147 (j) Comply with the General Principles and Standards for
148 Offices of Inspector General as published and revised by the
149 Association of Inspectors General.

150 (3) (a) 1. For state agencies under the jurisdiction of the
151 Cabinet or the Governor and Cabinet, the inspector general shall
152 be appointed by the agency head. For state agencies under the
153 jurisdiction of the Governor, the inspector general shall be
154 appointed by the Chief Inspector General. The agency head or
155 Chief Inspector General shall notify the Governor in writing of
156 his or her intention to hire the inspector general at least 7
157 days before an offer of employment. The inspector general shall
158 be appointed without regard to political affiliation.

159 2. Within 60 days after a vacancy or anticipated vacancy in
160 the position of inspector general, the agency head or, for
161 agencies under the jurisdiction of the Governor, the Chief
162 Inspector General, shall initiate a national search for an
163 inspector general and shall set the salary of the inspector
164 general. In the event of a vacancy in the position of inspector
165 general, the agency head or, for agencies under the jurisdiction
166 of the Governor, the Chief Inspector General, may appoint other
167 office of inspector general management personnel as interim
168 inspector general until such time as a successor inspector
169 general is appointed.

170 3. A former or current elected official may not be
171 appointed inspector general within 5 years after the end of such
172 individual's period of service. This restriction does not
173 prohibit the reappointment of a current inspector general.

174 4. Upon appointment as inspector general, an individual's

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175 initial term shall be 3 years. Subsequent 3-year terms may be
 176 renewed at the discretion of the agency head or, for agencies
 177 under the jurisdiction of the Governor, the Chief Inspector
 178 General. Notwithstanding this term of appointment, an inspector
 179 general may be removed from office for cause by the agency head
 180 or, for agencies under the jurisdiction of the Governor, the
 181 Chief Inspector General, as provided in paragraph (c).

182 (b) The inspector general shall report to and be under the
 183 general supervision of the agency head and is not subject to
 184 supervision by any other employee of the state agency in which
 185 the office is established. For state agencies under the
 186 jurisdiction of the Governor, the inspector general shall be
 187 under the general supervision of the agency head for
 188 administrative purposes, shall report to the Chief Inspector
 189 General, and may hire and remove staff within the office of the
 190 inspector general in consultation with the Chief Inspector
 191 General but independently of the agency.

192 (c) For state agencies under the jurisdiction of the
 193 Cabinet or the Governor and Cabinet, the inspector general may
 194 be removed from office by the agency head. For state agencies
 195 under the jurisdiction of the Governor, the inspector general
 196 may only be removed from office by the Chief Inspector General
 197 for cause, including concerns regarding performance,
 198 malfeasance, misfeasance, misconduct, or failure to carry out
 199 his or her duties under this section. The Chief Inspector
 200 General shall notify the Governor in writing of his or her
 201 intention to remove the inspector general at least 21 days
 202 before the removal. For state agencies under the jurisdiction of
 203 the Governor and Cabinet, the agency head shall notify the

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204 Governor and Cabinet in writing of his or her intention to
 205 remove the inspector general at least 21 days before the
 206 removal. If the inspector general disagrees with the removal,
 207 the inspector general may present objections in writing to the
 208 Governor within the 21-day period.

209 (d) The Governor, the Governor and Cabinet, the agency
 210 head, or agency staff may not prevent or prohibit the inspector
 211 general from initiating, carrying out, or completing any audit
 212 or investigation.

213 (4) (a) To ensure that state agency audits are performed in
 214 accordance with applicable auditing standards, the inspector
 215 general or the director of auditing within the inspector
 216 general's office shall possess the following qualifications:

217 1. (a) A bachelor's degree from an accredited college or
 218 university with a major in accounting, or with a major in
 219 business which includes five courses in accounting, and 5 years
 220 of experience as an internal auditor or independent postauditor,
 221 electronic data processing auditor, accountant, or any
 222 combination thereof. At a minimum, the experience must ~~shall at~~
 223 ~~a minimum~~ consist of audits of units of government or private
 224 business enterprises, operating for profit or not for profit; ~~or~~

225 2. (b) A master's degree in accounting, business
 226 administration, or public administration from an accredited
 227 college or university and 4 years of the professional experience
 228 ~~as required under subparagraph 1. in paragraph (a);~~ or

229 3. (c) A certified public accountant license issued pursuant
 230 to chapter 473 or a certified internal audit certificate issued
 231 by the Institute of Internal Auditors or earned by examination,
 232 and 4 years of the professional experience ~~as required under~~

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233 ~~subparagraph 1. in paragraph (a).~~

234 (b) For agencies under the jurisdiction of the Governor,
 235 the inspector general shall be selected on the basis of
 236 integrity, leadership capability, and experience in accounting,
 237 auditing, financial analysis, law, management analysis, program
 238 evaluation, public administration, investigation, criminal
 239 justice administration, or another closely related field. The
 240 inspector general is subject to level 2 background screening.
 241 The inspector general shall have a 4-year degree from an
 242 accredited institution of higher learning or at least 5 years of
 243 experience in at least one of the following areas:

244 1. Inspector general.

245 2. Supervisory experience in an office of inspector general
 246 or an investigative public agency similar to an office of
 247 inspector general.

248 3. Local, state, or federal law enforcement officer.

249 4. Local, state, or federal court judge.

250 5. Senior-level auditor or comptroller.

251 6. Experience in the administration and management of
 252 complex audits and investigations.

253 7. Experience managing programs for prevention,
 254 examination, detection, elimination of fraud, waste, abuse,
 255 mismanagement, malfeasance, or misconduct in government or
 256 organizations.

257 8. An advanced degree in law, accounting, public
 258 administration, or another relevant field may substitute for one
 259 year of required experience.

260 (c) The inspector general shall possess at appointment, or
 261 obtain within the first year after appointment, certification

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262 from the Association of Inspectors General as a certified
 263 inspector general. The inspector general shall have at least one
 264 other related professional certification, such as certified
 265 inspector general investigator, certified inspector general
 266 auditor, certified public accountant, certified internal
 267 auditor, certified governmental financial manager, certified
 268 fraud examiner, or certified financial crimes investigator, or
 269 be a licensed attorney.

270 (d) The inspector general may not hold, or be a candidate
 271 for, an elective office while inspector general, and a current
 272 officer or employee of an office of inspector general may not
 273 hold, or be a candidate for, an elective office. The inspector
 274 general may not hold office in a political party or political
 275 committee. An employee of an office of inspector general may not
 276 hold office in a political party or political committee while
 277 employed in the office of inspector general.

278 (5) The inspector general and his or her staff shall have
 279 access to any records, data, and other information of the state
 280 agency which he or she deems necessary to carry out his or her
 281 duties. At all times, the inspector general shall have access to
 282 a building or facility that is owned, operated, or leased by a
 283 department, agency, board, or commission, or a property held in
 284 trust to the state.

285 (6) It is the duty of every state officer, employee,
 286 agency, special district, board, commission, contractor,
 287 subcontractor, licensee, and applicant for certification of
 288 eligibility for a contract or program, to cooperate with the
 289 inspector general in any investigation, audit, inspection,
 290 review, or hearing conducted pursuant to this section. Each

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291 contract, bid, proposal, and application or solicitation for a
 292 contract shall contain a statement that the corporation,
 293 partnership, or person understands and will comply with this
 294 subsection.

295 ~~(7)(5)~~ In carrying out the auditing duties and
 296 responsibilities specified in ~~of this section~~ ~~and~~, each
 297 inspector general shall review and evaluate internal controls
 298 necessary to ensure the fiscal accountability of the state
 299 agency. The inspector general shall conduct financial,
 300 compliance, electronic data processing, and performance audits
 301 of the agency and prepare audit reports of his or her findings.
 302 The scope and assignment of the audits shall be determined by
 303 the inspector general; however, the agency head may at any time
 304 request the inspector general to perform an audit of a special
 305 program, function, or organizational unit. The performance of
 306 the audit shall be under the direction of the inspector general,
 307 except that if the inspector general does not possess the
 308 qualifications specified in subsection (4), the director of
 309 auditing shall perform the functions listed in this subsection.

310 (a) Such audits shall be conducted in accordance with the
 311 current International Standards for the Professional Practice of
 312 Internal Auditing as published by the Institute of Internal
 313 Auditors, Inc., or, where appropriate, in accordance with
 314 generally accepted governmental auditing standards. All audit
 315 reports issued by internal audit staff shall include a statement
 316 that the audit was conducted pursuant to the appropriate
 317 standards.

318 (b) Audit workpapers and reports shall be public records to
 319 the extent that they do not include information which has been

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320 made confidential and exempt from the provisions of s. 119.07(1)
 321 pursuant to law. However, when the inspector general or a member
 322 of the staff receives from an individual a complaint or
 323 information that falls within the definition provided in s.
 324 112.3187(5), the name or identity of the individual may not be
 325 disclosed to anyone else without the written consent of the
 326 individual, unless the inspector general determines that such
 327 disclosure is unavoidable during the course of the audit or
 328 investigation.

329 ~~(c) The inspector general and the staff shall have access~~
 330 ~~to any records, data, and other information of the state agency~~
 331 ~~he or she deems necessary to carry out his or her duties. The~~
 332 ~~inspector general may also request such information or~~
 333 ~~assistance as may be necessary from the state agency or from any~~
 334 ~~federal, state, or local government entity.~~

335 ~~(d)~~ At the conclusion of each audit, the inspector general
 336 shall submit preliminary findings and recommendations to the
 337 person responsible for supervision of the program function or
 338 operational unit who shall respond to any adverse findings
 339 within 20 working days after receipt of the preliminary
 340 findings. Such response and the inspector general's rebuttal to
 341 the response shall be included in the final audit report.

342 ~~(d)(e)~~ At the conclusion of an audit in which the subject
 343 of the audit is a specific entity contracting with the state or
 344 an individual substantially affected, if the audit is not
 345 confidential or otherwise exempt from disclosure by law, the
 346 inspector general shall, consistent with s. 119.07(1), submit
 347 the findings to the entity contracting with the state or the
 348 individual substantially affected, who shall be advised in

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349 writing that they may submit a written response within 20
 350 working days after receipt of the findings. The response and the
 351 inspector general's rebuttal to the response, if any, must be
 352 included in the final audit report.

353 ~~(e)~~ (f) The inspector general shall submit the final report
 354 to the agency head, the Auditor General, and, for state agencies
 355 under the jurisdiction of the Governor, the Chief Inspector
 356 General.

357 ~~(f)~~ (g) The Auditor General, in connection with the
 358 independent postaudit of the same agency pursuant to s. 11.45,
 359 shall give appropriate consideration to internal audit reports
 360 and the resolution of findings therein. The Legislative Auditing
 361 Committee may inquire into the reasons or justifications for
 362 failure of the agency head to correct the deficiencies reported
 363 in internal audits that are also reported by the Auditor General
 364 and shall take appropriate action.

365 ~~(g)~~ (h) The inspector general shall monitor the
 366 implementation of the state agency's response to any report on
 367 the state agency issued by the Auditor General or by the Office
 368 of Program Policy Analysis and Government Accountability. No
 369 later than 6 months after the Auditor General or the Office of
 370 Program Policy Analysis and Government Accountability publishes
 371 a report on the state agency, the inspector general shall
 372 provide a written response to the agency head or, for state
 373 agencies under the jurisdiction of the Governor, the Chief
 374 Inspector General on the status of corrective actions taken. The
 375 inspector general shall file a copy of such response with the
 376 Legislative Auditing Committee.

377 ~~(h)~~ (i) The inspector general shall develop long-term and

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378 annual audit plans based on the findings of periodic risk
 379 assessments. The plan, where appropriate, should include
 380 postaudit samplings of payments and accounts. The plan shall
 381 show the individual audits to be conducted during each year and
 382 related resources to be devoted to the respective audits. The
 383 Chief Financial Officer, to assist in fulfilling the
 384 responsibilities for examining, auditing, and settling accounts,
 385 claims, and demands pursuant to s. 17.03(1), and examining,
 386 auditing, adjusting, and settling accounts pursuant to s. 17.04,
 387 may use audits performed by the inspectors general and internal
 388 auditors. For state agencies under the jurisdiction of the
 389 Governor, the audit plans shall be submitted to the Chief
 390 Inspector General. The plan shall be submitted to the agency
 391 head for approval. A copy of the approved plan shall be
 392 submitted to the Auditor General.

393 Section 3. This act shall take effect July 1, 2015.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓
COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA

20th District

April 2, 2015

The Honorable Anitere Flores, Chair
Senate Committee on Fiscal Policy
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores:

I respectfully request consideration of Senate Bill SB 1304/Inspectors General by the Senate Committee on Fiscal Policy at your earliest convenience. The bill was favorably referred by the Appropriations Subcommittee on General Government on April 2nd.

This bill will authorize the Chief Inspector General to issue and enforce subpoenas and provide additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general and staff;

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack".

Jack Latvala
State Senator
District 20

Cc: Jamie DeLoach, Staff Director; Lisa Waddell, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

April 14, 2015

The Honorable Anitere Flores, Chair
Senate Fiscal Policy Committee
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

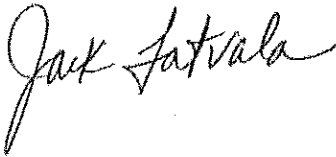
Dear Chair Flores:

On Wednesday, April 14, three of my bills are on the agenda in Fiscal Policy while I am in the Rules Committee. I will not be able to leave Rules because I have to present one of my bills and be present for important votes.

I would like to have my aide Tracy Caddell present SB1304 Inspectors General. Brenda Johnson, my other aide, will present SB922/Appointment of Guardian Ad Litem and SB636/Public Accountancy.

Thank you for your consideration.

Sincerely,



Jack Latvala
Senator, District 20

Cc: Jennifer Hrdlicka, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
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Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1388

INTRODUCER: Community Affairs Committee and Senator Stargel

SUBJECT: Special Districts

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1388 makes clarifying changes to provisions of the Uniform Special District Accountability Act to conform cross-references, reorganize oversight provisions to avoid duplication, and recognize that dependent special districts have been and may be created by special act.

Additionally, the bill requires special districts to publish additional information on their website, and ensure that budgets are accessible for longer periods of time.

The bill has no fiscal impact on the private sector and a minimal fiscal impact on the government sector.

II. Present Situation:

A special district is a unit of local government created for a special purpose, which has jurisdiction to operate within a limited geographical area. Special districts may be created by general law (an act of the Legislature), by special act (a law enacted by the Legislature at the request of a local government and affecting only that local government), by local ordinance, or by rule of the Governor and Cabinet.¹ Special districts are created to provide a wide variety of

¹ Section 189.012(6), F.S.

services, such as mosquito control,² beach facilities, children's services,³ fire control and rescue,⁴ or drainage control.⁵

All special districts must comply with the requirements of the Uniform Special District Accountability Act of 1989 (act) which was enacted by the Legislature to reform and consolidate laws relating to special districts. The act also charges the Department of Economic Opportunity (DEO) Special District Accountability Program with a number of duties relating to special districts, including publishing and updating a "Florida Special District Handbook."⁶

In 2014, the act was revised extensively.⁷ Chapter 2014-22, Laws of Florida, made significant changes to provisions concerning independent special districts and special district oversight and accountability,⁸ and reorganized ch. 189, F.S., into eight parts:

- Part I: General Provisions;
- Part II: Dependent Special Districts;
- Part III: Independent Special Districts;
- Part IV: Elections;
- Part V: Finance;
- Part VI: Oversight and Accountability;
- Part VII: Merger and Dissolution; and
- Part VIII: Comprehensive Planning

According to the DEO, the state currently has 1,636 active special districts and 12 inactive ones, comprised of 636 dependent and 1,012 independent special districts.⁹

Dependent special districts

A dependent special district is a special district that meets at least one of the following criteria:

- The membership of the special district's governing body is identical of the governing body of a single county or municipality;
- All members of the special district's governing body are appointed by the governing body of a single county or municipality;
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or municipality; or
- The special district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.¹⁰

² Section 388.021(1), F.S. However, new independent mosquito control districts are prohibited; *see* s. 388.021(2), F.S.

³ Section 125.901(1), F.S.

⁴ Section 191.002, F.S.

⁵ Section 298.01, F.S.

⁶ Section 189.064, F.S.

⁷ Ch. 2014-22, L.O.F.

⁸ Ch. 2014-22, s. 34, L.O.F.

⁹ Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, (data as of April 8, 2015) available at <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm> (last visited April 8, 2015).

¹⁰ Section 189.012(2), F.S.

Dependent special districts are created by counties or municipalities by the passage of an ordinance.¹¹ The ordinance creating a dependent special district must include:

- The purpose, powers, functions, authority, and duties of the district;
- The geographic boundary limitations of the district;
- The authority of the district;
- An explanation of why the district is the best alternative;
- The membership, organization, compensation, and administrative duties of the special district's body;
- The applicable financial disclosure, noticing, and reporting requirements;
- The methods financing of the district; and
- A declaration that the creation of the special district is consistent with the approved local government comprehensive plans.¹²

If a dependent special district fails to file required reports or information, the Joint Legislative Auditing Committee (JLAC) must provide notice to the local government.¹³

Independent special district

An independent special district does not have any of the characteristics of a dependent special district. An independent special district includes more than one county unless the district lies wholly within the boundaries of one city.¹⁴

Independent special districts are created or authorized by general laws or special acts. The charters of independent special districts must include the:

- Purpose of the district;
- Powers, functions, and duties of the district relating to ad valorem taxation, bond issuance, other revenue-raising capabilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and tax certificates for non-ad valorem assessments, and contractual agreements;
- Methods for establishing the district and amending the district charter;
- Membership and organization of the governing board of the district;¹⁵
- Maximum compensation and administrative duties of the governing body of the district;
- Applicable financial disclosure, noticing, and reporting requirements;
- Procedures and requirements for bond issues, if the special district will issue bonds;
- Election procedures and requirements;
- Methods for financing the district and for collecting non-ad valorem assessments, fees, or service charges;
- Authorized millage rate, and methods for collecting non-ad valorem assessments, fees, or service charges;

¹¹ Section 189.02(1), F.S.

¹² Section 189.02(4), F.S.

¹³ Section 189.035(2), F.S.

¹⁴ Section 189.012(3), F.S.

¹⁵ If an independent SD created after September 30, 1989, uses a one-acre/one-vote election principle, it shall provide for a governing body consisting of five members. Three members shall constitute a quorum. s. 189.031(3)(e), F.S.

- Planning requirements; and
- Geographic boundary limitations.¹⁶

If an independent special district fails to file required reports or requested information, the JLAC must provide notice to the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and House of Representatives charged with special district oversight, and the legislators who represent a portion of a special district's jurisdiction.

Special district requirements

Beginning October 1, 2015, each special district is required to maintain an official website containing specific information about the special district.¹⁷ Independent special districts are required to maintain their own website,¹⁸ while only a link to information about dependent special districts must be displayed on the home page of the local general-purpose government that created the district.¹⁹

Special districts are required to post tentative budgets online at least 2 days before the budget meeting. The final adopted budget must be on the special districts website within 30 days of adoption.

III. Effect of Proposed Changes:

Dependent special districts

Section 5 amends s. 189.02, F.S., (Dependent Special Districts) providing that the Legislature may create dependent special districts by special act at the request or with the consent of the local government upon which it is dependent.

Section 6 creates s. 189.022, F.S., (Status Statement) requiring the charter of a newly created dependent special district and, where practical or feasible, the charter of an existing dependent special district to contain a reference to the status of the special district as dependent. When necessary, the status statement shall be amended to conform to the DEO's determination or declaratory statement regarding the status of the district. This mirrors existing language that applies to all special districts but is located in s. 189.031, F.S., which relates to independent special districts.

Section 9 repeals the requirement that the JLAC provide notice to the chair of the local general purpose government when a special district fails to file required reports or information.

Independent special districts

Section 7 amends s. 189.031, F.S., (Legislative Intent for the Creation of Independent Special Districts) clarifying that the status statement requirement applies to independent special districts.

¹⁶ Section 189.031(3), F.S.

¹⁷ Section 189.069(1), F.S.

¹⁸ Section 189.069(1)(a), F.S.

¹⁹ Section 189.069(1)(b), F.S. Dependent SDs may maintain their own webpage, but are not required to.

Section 8 repeals the requirement that the JLAC provide notice to the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and House of Representatives charged with special district oversight, and the legislators who represent a portion of a special district's jurisdiction when an independent special district fails to file required reports or information.

Special district Requirements

Section 3 amends s. 189.011, F.S., (Statement of Legislative Purpose and Intent) clarifying that the purpose and intent of ch. 189, F.S., applies to all special districts, instead of only the independent special districts, and specifies that the failure of a special district to comply with minimum disclosure requirements may result in action against the special district, instead of the officers of the special district's governing body.

Section 4 amends s. 189.016, F.S., (Reports; Budgets; Audits) requiring that a special district's tentative budget remain on the special district's website for at least 45 days and that the final adopted budget remain on the special district's website for at least 2 years. The bill also requires a budget amendment to remain on the website for at least 2 years. The bill repeals outdated language addressing procedures for a special district to follow if it does not have a website since all special districts must have a website by October 1, 2015.

Section 15 amends s. 189.069, F.S., (Special Districts; Required Reporting of Information; Web-Based Public Access) clarifying that the website of a dependent special district must be prominently displayed on the home page of the local government upon which it is dependent, as opposed to the local government that created the special district since dependent special districts can also be created by special act of the Legislature. The bill adds to the information each special district is required to post on its website to include notice of its regularly scheduled public meetings for the year. The bill also conforms cross-references, including one related to the requirement that special districts must provide a link to the Department of Financial Services website to view submitted annual financial reports.

Technical Changes and Effective Date

Section 1 amends s. 11.40, F.S., (Legislative Auditing Committee) by conforming cross-references to renumbered sections.

Section 2 reenacts s. 165.0615, F.S., (Municipal Conversion of Independent Special Districts Upon Elector-Initiated and Approved Referendum) for the purpose of incorporating the amendment made by the bill to s. 189.016, F.S., (Reports; Budgets; Audits).

Section 8 renumbers s. 189.034, F.S., (Oversight of Special Districts Created by Special Act of the Legislature) as s. 189.0651, F.S., to move it to Part VI of the act, which is titled "Oversight and Accountability." The bill transfers provisions concerning the public hearing process to a newly created section, **Section 12** of the bill.

Section 9 renumbers s. 189.035, F.S., (Oversight of Special Districts Created by Local Ordinance or Resolution) as s. 189.0652, F.S., to move it to Part VI of the act, which is titled “Oversight and Accountability.” The bill clarifies that the section applies to special districts enacted by a local resolution. The bill transfers provisions concerning the public hearing process to a newly created section, **Section 12** of the bill.

Section 10 amends s. 189.061, F.S., (Official List of Special Districts) to move provisions relating to the DEO’s determination of special district status into the same subsection.

Section 11 amends s. 189.064, F.S., (Special District Accountability Program) to restore a reference to the Department of Management Services that was inadvertently deleted in 2014. The bill clarifies the responsibilities associated with maintaining the Official List of special districts by correcting cross-references, and requiring the DEO to include in the Florida special district Handbook:

- A summary of the most recent public facilities report;
- The evaluation and appraisal notification schedule, required under s. 189.08(2)(a), F.S.; and
- The Internet address of the full report and schedule.

Section 12 creates s. 189.0653, F.S., (Public Hearing on Noncompliance) and transfers provisions from **Sections 8 and 9** of the bill to this newly created section. The list of information that a noncompliant special district must provide the appropriate oversight authority prior to the public hearing is amended for clarification, to specifically include the special district’s most recent meeting minutes and those for the previous fiscal year.

Section 13 amends s. 189.067, F.S., (Failure of District to Disclose Financial Reports) to conform cross references.

Section 14 amends s. 189.068, F.S., (Special District; Authority for Oversight; General Oversight Review Process) to conform cross-references. The bill clarifies that all dependent special districts not created by special act may be reviewed by the local general-purpose government upon which they are dependent.

Section 16 reenacts ss. 189.074(2)(e) and (3)(g), F.S., (Voluntary Merger of Independent Special Districts) for the purpose of incorporating the changes made by this bill to s. 189.016, F.S.

Section 17 provides an effective date of October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEO has determined that the bill it will have a minimal fiscal impact on its operations.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.40, 189.011, 189.016, 189.02, 189.031, 189.034, 189.035, 189.061, 189.0652, 189.067, 189.068, and 189.069.

This bill creates the following sections of the Florida Statutes: 189.022, 189.064, 189.0651, and 189.0653.

This bill reenacts the following sections of the Florida Statutes: 165.0615 and 189.074.

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 Community Affairs on March 31, 2015:

Clarifies the types of information a special district would be required to provide to the appropriate oversight authority prior to a public hearing on noncompliance, pursuant to s. 189.0653, F.S.

²⁰ DEO, *2015 Agency Legislative Bill Analysis for SB 1388*, at 4 (Mar. 3, 2015).

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Stargel

578-03183-15

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1 A bill to be entitled
 2 An act relating to special districts; amending s.
 3 11.40, F.S.; conforming cross-references; amending s.
 4 189.011, F.S.; revising legislative intent with
 5 respect to the Uniform Special District Accountability
 6 Act to include independent and dependent special
 7 districts; amending s. 189.016, F.S., deleting a
 8 provision requiring a special district to transmit
 9 certain budgets to the local government instead of
 10 posting such information on the special district's
 11 website under specific circumstances; specifying the
 12 period in which certain budget information must be
 13 posted on the special district's website; amending s.
 14 189.02, F.S.; specifying the Legislature's authority
 15 to create dependent special districts by special act;
 16 creating s. 189.022, F.S.; requiring a newly created
 17 dependent special district, and authorizing an
 18 existing dependent special district, to identify the
 19 district as dependent in its charter; amending s.
 20 189.031, F.S.; requiring a newly created independent
 21 special district, and authorizing an existing
 22 independent special district, to identify the district
 23 as independent in its charter; transferring,
 24 renumbering, and amending ss. 189.034 and 189.035,
 25 F.S., deleting provisions requiring that special
 26 districts created by special act provide specified
 27 information to the Legislative Auditing Committee or
 28 requiring that special districts created by local
 29 ordinance provide specified information to the local

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30 general-purpose government, to conform; deleting
 31 related provisions requiring the Legislative Auditing
 32 Committee to provide certain notice to the Legislature
 33 or local general-purpose government, as appropriate,
 34 when a special district fails to file certain required
 35 reports or requested information, to conform; amending
 36 s. 189.061, F.S.; conforming provisions; amending s.
 37 189.064, F.S.; revising the required content of the
 38 special district handbook; creating s. 189.0653, F.S.;
 39 requiring special districts created by special act or
 40 local ordinance to provide specified information to
 41 the Legislative Auditing Committee or local general-
 42 purpose government, as appropriate; amending s.
 43 189.067, F.S.; conforming cross-references; amending
 44 s. 189.068, F.S.; specifying that local general-
 45 purpose governments may review certain special
 46 districts; conforming cross-references; amending s.
 47 189.069, F.S.; deleting a cross-reference, to conform;
 48 revising the list of items required to be included on
 49 the websites of special districts; reenacting ss.
 50 165.0615(16) and 189.074(2)(e) and (3)(g), F.S.,
 51 relating to municipal conversion of independent
 52 special districts upon elector-initiated and approved
 53 referendum and the voluntary merger of independent
 54 special districts, respectively, to incorporate the
 55 amendment made by the act to s. 189.016, F.S., in
 56 references thereto; providing an effective date.

57
 58 Be It Enacted by the Legislature of the State of Florida:

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59 Section 1. Paragraph (b) of subsection (2) of section
60 11.40, Florida Statutes, is amended to read:

61 11.40 Legislative Auditing Committee.—

62 (2) Following notification by the Auditor General, the
63 Department of Financial Services, or the Division of Bond
64 Finance of the State Board of Administration of the failure of a
65 local governmental entity, district school board, charter
66 school, or charter technical career center to comply with the
67 applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s.
68 218.38, or s. 218.503(3), the Legislative Auditing Committee may
69 schedule a hearing to determine if the entity should be subject
70 to further state action. If the committee determines that the
71 entity should be subject to further state action, the committee
72 shall:

73 (b) In the case of a special district created by:

74 1. A special act, notify the President of the Senate, the
75 Speaker of the House of Representatives, the standing committees
76 of the Senate and the House of Representatives charged with
77 special district oversight as determined by the presiding
78 officers of each respective chamber, the legislators who
79 represent a portion of the geographical jurisdiction of the
80 special district ~~pursuant to s. 189.034(2)~~, and the Department
81 of Economic Opportunity that the special district has failed to
82 comply with the law. Upon receipt of notification, the
83 Department of Economic Opportunity shall proceed pursuant to s.
84 189.062 or s. 189.067. If the special district remains in
85 noncompliance after the process set forth in s. 189.0651(2)
86 ~~189.034(3)~~, or if a public hearing is not held, the Legislative
87

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88 Auditing Committee may request the department to proceed
89 pursuant to s. 189.067(3).

90 2. A local ordinance, notify the chair or equivalent of the
91 local general-purpose government pursuant to s. 189.035(2) and
92 the Department of Economic Opportunity that the special district
93 has failed to comply with the law. Upon receipt of notification,
94 the department shall proceed pursuant to s. 189.062 or s.
95 189.067. If the special district remains in noncompliance after
96 the process set forth in s. 189.0652(2) ~~189.034(3)~~, or if a
97 public hearing is not held, the Legislative Auditing Committee
98 may request the department to proceed pursuant to s. 189.067(3).

99 3. Any manner other than a special act or local ordinance,
100 notify the Department of Economic Opportunity that the special
101 district has failed to comply with the law. Upon receipt of
102 notification, the department shall proceed pursuant to s.
103 189.062 or s. 189.067(3).

104 Section 2. For the purpose of incorporating the amendment
105 made by this act to section 189.016, Florida Statutes, in a
106 reference thereto, subsection (16) of section 165.0615, Florida
107 Statutes, is reenacted to read:

108 165.0615 Municipal conversion of independent special
109 districts upon elector-initiated and approved referendum.—

110 (16) If the incorporation plan is approved by a majority of
111 the votes cast in the independent special district, the district
112 shall notify the special district accountability program
113 pursuant to s. 189.016(2) and the local general-purpose
114 governments in which any part of the independent special
115 district is situated pursuant to s. 189.016(7).

116 Section 3. Subsection (2) of section 189.011, Florida

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117 Statutes, is amended to read:

118 189.011 Statement of legislative purpose and intent.—

119 (2) The Legislature finds that special districts serve a
 120 necessary and useful function by providing services to residents
 121 and property in the state. The Legislature finds further that
 122 special districts operate to serve a public purpose and that
 123 this is best secured by certain minimum standards of
 124 accountability designed to inform the public and appropriate
 125 local general-purpose governments of the status and activities
 126 of special districts. It is the intent of the Legislature that
 127 this public trust be secured by requiring each ~~independent~~
 128 special district in the state to register and report its
 129 financial and other activities. The Legislature further finds
 130 that failure of a an independent special district to comply with
 131 the minimum disclosure requirements set forth in this chapter
 132 may result in action against the special officers of such
 133 district body.

134 Section 4. Subsections (4) and (7) of section 189.016,
 135 Florida Statutes, are amended to read:

136 189.016 Reports; budgets; audits.—

137 (4) The tentative budget must be posted on the special
 138 district's official website at least 2 days before the budget
 139 hearing, held pursuant to s. 200.065 or other law, to consider
 140 such budget and must remain on the website for at least 45 days.
 141 The final adopted budget must be posted on the special
 142 district's official website within 30 days after adoption and
 143 must remain on the website for at least 2 years. ~~If the special~~
 144 ~~district does not operate an official website, the special~~
 145 ~~district must, within a reasonable period of time as established~~

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146 ~~by the local general-purpose government or governments in which~~
 147 ~~the special district is located or the local governing authority~~
 148 ~~to which the district is dependent, transmit the tentative~~
 149 ~~budget or final budget to the manager or administrator of the~~
 150 ~~local general-purpose government or the local governing~~
 151 ~~authority. The manager or administrator shall post the tentative~~
 152 ~~budget or final budget on the website of the local general-~~
 153 ~~purpose government or governing authority.~~ This subsection and
 154 subsection (3) do not apply to water management districts as
 155 defined in s. 373.019.

156 (7) If the governing body of a special district amends the
 157 budget pursuant to paragraph (6)(c), the adopted amendment must
 158 be posted on the official website of the special district within
 159 5 days after adoption and must remain on the website for at
 160 least 2 years. If the special district does not operate an
 161 official website, the special district must, within a reasonable
 162 period of time as established by the local general-purpose
 163 government or governments in which the special district is
 164 located or the local governing authority to which the district
 165 is dependent, transmit the adopted amendment to the manager or
 166 administrator of the local general-purpose government or
 167 governing authority. The manager or administrator shall post the
 168 adopted amendment on the website of the local general-purpose
 169 government or governing authority.

170 Section 5. Subsection (5) is added to section 189.02,
 171 Florida Statutes, to read:

172 189.02 Dependent special districts.—

173 (5) The Legislature may create dependent special districts
 174 by special act at the request or with the consent of the local

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175 government upon which it is dependent.

176 Section 6. Section 189.022, Florida Statutes, is created to
177 read:

178 189.022 Status statement.—The charter of a newly created
179 dependent special district shall contain, and where practical
180 and feasible, the charter of an existing dependent special
181 district shall be amended to contain, a reference to the status
182 of the special district as dependent. When necessary, the status
183 statement shall be amended to conform to the department's
184 determination or declaratory statement regarding the status of
185 the district.

186 Section 7. Subsection (5) of section 189.031, Florida
187 Statutes, is amended to read:

188 189.031 Legislative intent for the creation of independent
189 special districts; special act prohibitions; model elements and
190 other requirements; local general-purpose government/Governor
191 and Cabinet creation authorizations.—

192 (5) STATUS STATEMENT.—~~After October 1, 1997,~~ The charter of
193 a any newly created independent special district shall contain,
194 and, where as practical and feasible, the charter of an existing
195 independent a preexisting special district shall be amended to
196 contain, a reference to the status of the special district as
197 dependent or independent. When necessary, the status statement
198 shall be amended to conform to with the department's
199 determination or declaratory statement regarding the status of
200 the district.

201 Section 8. Section 189.034, Florida Statutes, is
202 transferred, renumbered as section 189.0651, Florida Statutes,
203 and amended to read:

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204 189.0651 ~~189.034~~ Oversight of special districts created by
205 special act of the Legislature.—

206 (1) This section applies to any special district created by
207 special act of the Legislature.

208 ~~(2) If a special district fails to file required reports or~~
209 ~~requested information under s. 11.45(7), s. 218.32, s. 218.39,~~
210 ~~or s. 218.503(3), with the appropriate state agency or office,~~
211 ~~the Legislative Auditing Committee or its designee shall provide~~
212 ~~written notice of the district's noncompliance to the President~~
213 ~~of the Senate, the Speaker of the House of Representatives, the~~
214 ~~standing committees of the Senate and the House of~~
215 ~~Representatives charged with special district oversight as~~
216 ~~determined by the presiding officers of each respective chamber,~~
217 ~~and the legislators who represent a portion of the geographical~~
218 ~~jurisdiction of the special district.~~

219 (2)(3) The Legislative Auditing Committee may convene a
220 public hearing on the issue of noncompliance, as well as general
221 oversight of the special district as provided in s. 189.068, at
222 the direction of the President of the Senate and the Speaker of
223 the House of Representatives.

224 ~~(4) Before the public hearing as provided in subsection~~
225 ~~(3), the special district shall provide the following~~
226 ~~information at the request of the Legislative Auditing~~
227 ~~Committee:~~

228 ~~(a) The district's annual financial report for the prior~~
229 ~~fiscal year.~~

230 ~~(b) The district's audit report for the previous fiscal~~
231 ~~year.~~

232 ~~(c) An annual report for the previous fiscal year providing~~

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233 a detailed review of the performance of the special district,
 234 including the following information:

- 235 1. ~~The purpose of the special district.~~
- 236 2. ~~The sources of funding for the special district.~~
- 237 3. ~~A description of the major activities, programs, and~~
 238 ~~initiatives the special district undertook in the most recently~~
 239 ~~completed fiscal year and the benchmarks or criteria under which~~
 240 ~~the success or failure of the district was determined by its~~
 241 ~~governing body.~~
- 242 4. Any challenges or obstacles faced by the special
 243 district in fulfilling its purpose and related responsibilities.
- 244 5. Ways the special district believes it could better
 245 fulfill its purpose and related responsibilities and a
 246 description of the actions that it intends to take during the
 247 ensuing fiscal year.
- 248 6. Proposed changes to the special act that established the
 249 special district and justification for such changes.
- 250 7. Any other information reasonably required to provide the
 251 Legislative Auditing Committee with an accurate understanding of
 252 the purpose for which the special district exists and how it is
 253 fulfilling its responsibilities to accomplish that purpose.
- 254 8. Any reasons for the district's noncompliance.
- 255 9. Whether the district is currently in compliance.
- 256 10. Plans to correct any recurring issues of noncompliance.
- 257 11. Efforts to promote transparency, including maintenance
 258 of the district's website in accordance with s. 189.069.

259 Section 9. Section 189.035, Florida Statutes, is
 260 transferred, renumbered as section 189.0652, Florida Statutes,
 261 and amended to read:

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262 189.0652 ~~189.035~~ Oversight of special districts created by
 263 local ordinance or enacted by local resolution.-

264 (1) This section applies to any special district created by
 265 local ordinance or enacted by local resolution.

266 ~~(2) If a special district fails to file required reports or~~
 267 ~~requested information under s. 11.45(7), s. 218.32, s. 218.39,~~
 268 ~~or s. 218.503(3) with the appropriate state agency or office,~~
 269 ~~the Legislative Auditing Committee or its designee shall provide~~
 270 ~~written notice of the district's noncompliance to the chair or~~
 271 ~~equivalent of the local general-purpose government.~~

272 (2)(3) The chair or equivalent of the local general-purpose
 273 government may convene a public hearing on the issue of
 274 noncompliance, as well as general oversight of the special
 275 district as provided in s. 189.068, within 3 months after
 276 receipt of notice of noncompliance from the Legislative Auditing
 277 Committee. Within 30 days after receiving written notice of
 278 noncompliance, the local general-purpose government shall notify
 279 the Legislative Auditing Committee as to whether a hearing under
 280 this section will be held and, if so, provide the date, time,
 281 and place of the hearing.

282 ~~(4) Before the public hearing as provided in subsection~~
 283 ~~(3), the special district shall provide the following~~
 284 ~~information at the request of the local general-purpose~~
 285 ~~government:~~

- 286 ~~(a) The district's annual financial report for the previous~~
 287 ~~fiscal year.~~
- 288 ~~(b) The district's audit report for the previous fiscal~~
 289 ~~year.~~
- 290 ~~(c) An annual report for the previous fiscal year, which~~

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291 ~~must provide a detailed review of the performance of the special~~
 292 ~~district and include the following information:~~

- 293 ~~1. The purpose of the special district.~~
 294 ~~2. The sources of funding for the special district.~~
 295 ~~3. A description of the major activities, programs, and~~
 296 ~~initiatives the special district undertook in the most recently~~
 297 ~~completed fiscal year and the benchmarks or criteria under which~~
 298 ~~the success or failure of the district was determined by its~~
 299 ~~governing body.~~
 300 ~~4. Any challenges or obstacles faced by the special~~
 301 ~~district in fulfilling its purpose and related responsibilities.~~
 302 ~~5. Ways in which the special district believes that it~~
 303 ~~could better fulfill its purpose and related responsibilities~~
 304 ~~and a description of the actions that it intends to take during~~
 305 ~~the ensuing fiscal year.~~
 306 ~~6. Proposed changes to the ordinance or resolution that~~
 307 ~~established the special district and justification for such~~
 308 ~~changes.~~
 309 ~~7. Any other information reasonably required to provide the~~
 310 ~~reviewing entity with an accurate understanding of the purpose~~
 311 ~~for which the special district exists and how it is fulfilling~~
 312 ~~its responsibilities to accomplish that purpose.~~
 313 ~~8. Any reasons for the district's noncompliance.~~
 314 ~~9. Whether the district is currently in compliance.~~
 315 ~~10. Plans to correct any recurring issues of noncompliance.~~
 316 ~~11. Efforts to promote transparency, including maintenance~~
 317 ~~of the district's website in accordance with s. 189.069.~~
 318 ~~(3)(5) If the local general-purpose government convenes a~~
 319 ~~public hearing under s. 189.0652(2) this section, it shall~~

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320 provide the department and the Legislative Auditing Committee
 321 with a report containing its findings and conclusions within 90
 322 days after completion of the public hearing.

323 Section 10. Section 189.061, Florida Statutes, is amended
 324 to read:

325 189.061 Official list of special districts.—

326 (1) The department shall maintain the official list of
 327 special districts. The official list of special districts shall
 328 include all special districts in this state and shall indicate
 329 the independent or dependent status of each district. All
 330 special districts on the list shall be sorted by county. The
 331 definitions in s. 189.012 shall be the criteria for
 332 determination of the independent or dependent status of each
 333 special district on the official list. The status of community
 334 development districts shall be independent on the official list
 335 of special districts.

336 (2) The official list shall be produced by the department
 337 after the department has notified each special district that is
 338 currently reporting to the department, the Department of
 339 Financial Services pursuant to s. 218.32, or the Auditor General
 340 pursuant to s. 218.39. Upon notification, each special district
 341 shall submit, within 60 days, its determination of its status.
 342 If a special district does not submit its status to the
 343 department within 60 days, the department may determine the
 344 status of that district. After such determination of status is
 345 completed, the department shall render the determination to an
 346 agent of the special district. The determination submitted by a
 347 special district shall be consistent with the status reported in
 348 the most recent local government audit of district activities

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349 submitted to the Auditor General pursuant to s. 218.39.

350 (3) The Department of Financial Services shall provide the
351 department with a list of dependent special districts reporting
352 pursuant to s. 218.32 for inclusion on the official list of
353 special districts.

354 ~~(4) If a special district does not submit its status to the~~
355 ~~department within the required time period, then the department~~
356 ~~shall have the authority to determine the status of said~~
357 ~~district. After such determination of status is completed, the~~
358 ~~department shall render the determination to an agent of the~~
359 ~~special district.~~

360 (4)(5) The official list of special districts shall be
361 available on the department's website and must include a link to
362 the website of each special district that provides web-based
363 access to the public of the information and documentation
364 required under s. 189.069.

365 (5)(6) The official list of special districts or the
366 determination of status does not constitute final agency action
367 pursuant to chapter 120. If the status of a special district on
368 the official list is inconsistent with the status submitted by
369 the district, the district may request the department to issue a
370 declaratory statement setting forth the requirements necessary
371 to resolve the inconsistency. If necessary, upon issuance of a
372 declaratory statement by the department which is not appealed
373 pursuant to chapter 120, the governing body of any special
374 district receiving such a declaratory statement shall apply to
375 the entity which originally established the district for an
376 amendment to its charter correcting the specified defects in its
377 original charter. This amendment shall be for the sole purpose

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378 of resolving inconsistencies between a district charter and the
379 status of a district as it appears on the official list.

380 Section 11. Subsections (1), (2), and (3) of section
381 189.064, Florida Statutes, are amended to read:

382 189.064 Special District Accountability Program; duties and
383 responsibilities.—The Special District Accountability Program of
384 the department has the following duties:

385 (1) Electronically publishing special district
386 noncompliance status reports from the Department of Management
387 Services, the Department of Financial Services, the Division of
388 Bond Finance of the State Board of Administration, the Auditor
389 General, and the Legislative Auditing Committee, for the
390 reporting required in ss. 112.63, 218.32, 218.38, and 218.39.
391 The noncompliance reports must list those special districts that
392 did not comply with the statutory reporting requirements and be
393 made available to the public electronically.

394 (2) Maintaining the official list of special districts as
395 set forth in s. 189.061.

396 (3) Publishing and updating of a "Florida Special District
397 Handbook" that contains, at a minimum:

398 (a) A section that specifies definitions of special
399 districts and status distinctions in the statutes.

400 (b) A section or sections that specify current statutory
401 provisions for special district creation, implementation,
402 modification, dissolution, and operating procedures.

403 (c) A section that summarizes the reporting requirements
404 applicable to all types of special districts as provided in ss.
405 189.015 and 189.016.

406 (d) A summary of the most recent public facilities report,

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407 the evaluation and appraisal notification schedule as required
 408 under s. 189.08(2)(a), and the Internet address of the full
 409 report and schedule.

410 Section 12. Section 189.0653, Florida Statutes, is created
 411 to read:

412 189.0653 Public hearing on noncompliance.—Before the public
 413 hearing as provided in s. 189.0651(2) or s. 189.0652(2) is held,
 414 the special district shall provide the following information at
 415 the request of the local general-purpose government or the
 416 Legislative Auditing Committee, as appropriate:

417 (1) The district's annual financial report for the previous
 418 fiscal year.

419 (2) The district's audit report for the previous fiscal
 420 year.

421 (3) Minutes of meetings of the special district's governing
 422 body for the previous fiscal year and the current fiscal year to
 423 date.

424 (4) A report for the previous fiscal year providing the
 425 following information:

426 (a) The purpose of the special district.

427 (b) The sources of funding for the special district.

428 (c) A description of the major activities, programs, and
 429 initiatives the special district undertook in the most recently
 430 completed fiscal year and the benchmarks or criteria under which
 431 the success or failure of the district was or will be determined
 432 by its governing body.

433 (d) Any challenges or obstacles faced by the special
 434 district in fulfilling its purpose and related responsibilities.

435 (e) Ways in which the special district's governing body

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436 believes that it could better fulfill the purpose of the special
 437 district and a description of the actions that it intends to
 438 take during the next and subsequent fiscal years.

439 (f) Proposed changes to the special act, ordinance, or
 440 resolution, as appropriate, which established the special
 441 district and justification for such changes.

442 (g) Any other information reasonably required to provide
 443 the reviewing entity with an accurate understanding of the
 444 purpose of the special district and how it is acting to fulfill
 445 that purpose.

446 (h) Any reasons for the district's noncompliance resulting
 447 in the public hearing.

448 (i) Whether the district is currently in compliance.

449 (j) Plans to correct any recurring issues of noncompliance.

450 (k) Efforts to promote transparency, including a statement
 451 as to whether the district's website complies with s. 189.069.

452 Section 13. Subsection (2) of section 189.067, Florida
 453 Statutes, is amended to read:

454 189.067 Failure of district to disclose financial reports.—

455 (2) Failure of a special district to comply with the
 456 actuarial and financial reporting requirements under s. 112.63,
 457 s. 218.32, or s. 218.39 after the procedures of subsection (1)
 458 are exhausted shall be deemed final action of the special
 459 district. The actuarial and financial reporting requirements are
 460 declared to be essential requirements of law. Remedies for
 461 noncompliance with ss. 218.32 and 218.39 shall be as provided in
 462 ss. 189.0651 and 189.0652 ~~189.034 and 189.035~~. Remedy for
 463 noncompliance with s. 112.63 shall be as set forth in subsection
 464 (4).

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465 Section 14. Paragraphs (a), (b), and (c) of subsection (2)
466 of section 189.068, Florida Statutes, are amended to read:

467 189.068 Special districts; authority for oversight; general
468 oversight review process.—

469 (2) Special districts may be reviewed for general oversight
470 purposes under this section as follows:

471 (a) All special districts created by special act may be
472 reviewed by the Legislature using the public hearing process
473 provided in s. 189.0651(2) ~~189.034~~.

474 (b) All special districts created by local ordinance or
475 resolution may be reviewed by the local general-purpose
476 government that enacted the ordinance or resolution using the
477 public hearing process provided in s. 189.0652(2) ~~189.035~~.

478 (c) All dependent special districts not created by special
479 act may be reviewed by the local general-purpose government upon
480 ~~to~~ which they are dependent.

481 Section 15. Section 189.069, Florida Statutes, is amended
482 to read:

483 189.069 Special districts; required reporting of
484 information; web-based public access.—

485 (1) Beginning on October 1, 2015, or by the end of the
486 first full fiscal year after its creation, each special district
487 shall maintain an official Internet website containing the
488 information required by this section ~~in accordance with s.~~
489 ~~189.016~~. Special districts shall submit their official Internet
490 website addresses to the department.

491 (a) Independent special districts shall maintain a separate
492 Internet website.

493 (b) Dependent special districts shall be prominently

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494 ~~prominently~~ displayed on the home page of the Internet website
495 of the local general-purpose government upon which it is
496 ~~dependent that created the special district~~ with a hyperlink to
497 such webpages as are necessary to provide the information
498 required by this section. Dependent special districts may
499 maintain a separate Internet website providing the information
500 required by this section.

501 (2) (a) A special district shall post the following
502 information, at a minimum, on the district's official website:

503 1. The full legal name of the special district.

504 2. The public purpose of the special district.

505 3. The name, address, e-mail address, and, if applicable,
506 the term and appointing authority for each member of the
507 governing body of the special district.

508 4. The fiscal year of the special district.

509 5. The full text of the special district's charter, the
510 date of establishment, the establishing entity, and the statute
511 or statutes under which the special district operates, if
512 different from the statute or statutes under which the special
513 district was established. Community development districts may
514 reference chapter 190 as the uniform charter, but must include
515 information relating to any grant of special powers.

516 6. The mailing address, e-mail address, telephone number,
517 and Internet website uniform resource locator of the special
518 district.

519 7. A description of the boundaries or service area of, and
520 the services provided by, the special district.

521 8. A listing of all taxes, fees, assessments, or charges
522 imposed and collected by the special district, including the

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523 rates or amounts for the fiscal year and the statutory authority
524 for the levy of the tax, fee, assessment, or charge. For
525 purposes of this subparagraph, charges do not include patient
526 charges by a hospital or other health care provider.

527 9. The primary contact information for the special district
528 for purposes of communication from the department.

529 10. A code of ethics adopted by the special district, if
530 applicable, and a hyperlink to generally applicable ethics
531 provisions.

532 11. The budget of each special district, in addition to
533 amendments in accordance with s. 189.016.

534 12. The final, complete audit report for the most recent
535 completed fiscal year, and audit reports required by law or
536 authorized by the governing body of the special district.

537 13. A listing of its regularly scheduled public meetings
538 for the year. The schedule shall include the date, time, and
539 location of each such meeting.

540 14. The link to the Department of Financial Services'
541 website as set forth in s. 218.32(1)(g).

542 (b) The department's Internet website list of special
543 districts in the state required under s. 189.061 shall include a
544 link for each special district that provides web-based access to
545 the public for all information and documentation required for
546 submission to the department pursuant to subsection (1).

547 Section 16. For the purpose of incorporating the amendment
548 made by this act to section 189.016, Florida Statutes, in
549 references thereto, paragraph (e) of subsection (2) and
550 paragraph (g) of subsection (3) of section 189.074, Florida
551 Statutes, are reenacted to read:

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552 189.074 Voluntary merger of independent special districts.-
553 Two or more contiguous independent special districts created by
554 special act which have similar functions and elected governing
555 bodies may elect to merge into a single independent district
556 through the act of merging the component independent special
557 districts.

558 (2) JOINT MERGER PLAN BY RESOLUTION.—The governing bodies
559 of two or more contiguous independent special districts may, by
560 joint resolution, endorse a proposed joint merger plan to
561 commence proceedings to merge the districts pursuant to this
562 section.

563 (e) After the final public hearing, the governing bodies
564 shall notify the supervisors of elections of the applicable
565 counties in which district lands are located of the adoption of
566 the resolution by each governing body. The supervisors of
567 elections shall schedule a separate referendum for each
568 component independent special district. The referenda may be
569 held in each district on the same day, or on different days, but
570 no more than 20 days apart.

571 1. Notice of a referendum on the merger of independent
572 special districts must be provided pursuant to the notice
573 requirements in s. 100.342. At a minimum, the notice must
574 include:

- 575 a. A brief summary of the resolution and joint merger plan;
576 b. A statement as to where a copy of the resolution and
577 joint merger plan may be examined;
578 c. The names of the component independent special districts
579 to be merged and a description of their territory;
580 d. The times and places at which the referendum will be

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581 held; and

582 e. Such other matters as may be necessary to call, provide
583 for, and give notice of the referendum and to provide for the
584 conduct thereof and the canvass of the returns.

585 2. The referenda must be held in accordance with the
586 Florida Election Code and may be held pursuant to ss. 101.6101-
587 101.6107. All costs associated with the referenda shall be borne
588 by the respective component independent special district.

589 3. The ballot question in such referendum placed before the
590 qualified electors of each component independent special
591 district to be merged must be in substantially the following
592 form:

593
594 "Shall ...(name of component independent special
595 district)... and ...(name of component independent special
596 district or districts)... be merged into ...(name of newly
597 merged independent district)...?

598
599 ...YES
600 ...NO"

601
602 4. If the component independent special districts proposing
603 to merge have disparate millage rates, the ballot question in
604 the referendum placed before the qualified electors of each
605 component independent special district must be in substantially
606 the following form:

607
608 "Shall ...(name of component independent special
609 district)... and ...(name of component independent special

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610 district or districts)... be merged into ...(name of newly
611 merged independent district)... if the voter-approved maximum
612 millage rate within each independent special district will not
613 increase absent a subsequent referendum?

614
615 ...YES
616 ...NO"

617
618 5. In any referendum held pursuant to this section, the
619 ballots shall be counted, returns made and canvassed, and
620 results certified in the same manner as other elections or
621 referenda for the component independent special districts.

622 6. The merger may not take effect unless a majority of the
623 votes cast in each component independent special district are in
624 favor of the merger. If one of the component districts does not
625 obtain a majority vote, the referendum fails, and merger does
626 not take effect.

627 7. If the merger is approved by a majority of the votes
628 cast in each component independent special district, the merged
629 independent district is created. Upon approval, the merged
630 independent district shall notify the Special District
631 Accountability Program pursuant to s. 189.016(2) and the local
632 general-purpose governments in which any part of the component
633 independent special districts is situated pursuant to s.
634 189.016(7).

635 8. If the referendum fails, the merger process under this
636 subsection may not be initiated for the same purpose within 2
637 years after the date of the referendum.

638 (3) QUALIFIED ELECTOR-INITIATED MERGER PLAN.—The qualified

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639 electors of two or more contiguous independent special districts
 640 may commence a merger proceeding by each filing a petition with
 641 the governing body of their respective independent special
 642 district proposing to be merged. The petition must contain the
 643 signatures of at least 40 percent of the qualified electors of
 644 each component independent special district and must be
 645 submitted to the appropriate component independent special
 646 district governing body no later than 1 year after the start of
 647 the qualified elector-initiated merger process.

648 (g) After the final public hearing, the governing bodies
 649 shall notify the supervisors of elections of the applicable
 650 counties in which district lands are located of the adoption of
 651 the resolution by each governing body. The supervisors of
 652 elections shall schedule a date for the separate referenda for
 653 each district. The referenda may be held in each district on the
 654 same day, or on different days, but no more than 20 days apart.

655 1. Notice of a referendum on the merger of the component
 656 independent special districts must be provided pursuant to the
 657 notice requirements in s. 100.342. At a minimum, the notice must
 658 include:

- 659 a. A brief summary of the resolution and elector-initiated
 660 merger plan;
- 661 b. A statement as to where a copy of the resolution and
 662 petition for merger may be examined;
- 663 c. The names of the component independent special districts
 664 to be merged and a description of their territory;
- 665 d. The times and places at which the referendum will be
 666 held; and
- 667 e. Such other matters as may be necessary to call, provide

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668 for, and give notice of the referendum and to provide for the
 669 conduct thereof and the canvass of the returns.

670 2. The referenda must be held in accordance with the
 671 Florida Election Code and may be held pursuant to ss. 101.6101-
 672 101.6107. All costs associated with the referenda shall be borne
 673 by the respective component independent special district.

674 3. The ballot question in such referendum placed before the
 675 qualified electors of each component independent special
 676 district to be merged must be in substantially the following
 677 form:

678 "Shall ...(name of component independent special
 679 district)... and ...(name of component independent special
 680 district or districts)... be merged into ...(name of newly
 681 merged independent district)...?"

682
 683
 684YES
 685NO"

686
 687 4. If the component independent special districts proposing
 688 to merge have disparate millage rates, the ballot question in
 689 the referendum placed before the qualified electors of each
 690 component independent special district must be in substantially
 691 the following form:

692
 693 "Shall ...(name of component independent special
 694 district)... and ...(name of component independent special
 695 district or districts)... be merged into ...(name of newly
 696 merged independent district)... if the voter-approved maximum

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697 millage rate within each independent special district will not
698 increase absent a subsequent referendum?

699

700YES

701NO"

702

703 5. In any referendum held pursuant to this section, the
704 ballots shall be counted, returns made and canvassed, and
705 results certified in the same manner as other elections or
706 referenda for the component independent special districts.

707 6. The merger may not take effect unless a majority of the
708 votes cast in each component independent special district are in
709 favor of the merger. If one of the component independent special
710 districts does not obtain a majority vote, the referendum fails,
711 and merger does not take effect.

712 7. If the merger is approved by a majority of the votes
713 cast in each component independent special district, the merged
714 district shall notify the Special District Accountability
715 Program pursuant to s. 189.016(2) and the local general-purpose
716 governments in which any part of the component independent
717 special districts is situated pursuant to s. 189.016(7).

718 8. If the referendum fails, the merger process under this
719 subsection may not be initiated for the same purpose within 2
720 years after the date of the referendum.

721 Section 17. This act shall take effect October 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/2015

Meeting Date

Topic _____

Bill Number 1388

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

SENATOR KELLI STARGEL
15th District

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

April 10, 2015

The Honorable Anitere Flores
Senate Fiscal Policy Committee, Chair
413 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Flores:

I am respectfully requesting that SB 1388, related to *Special Districts*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Jennifer Hrdlicka/ Staff Director
Tamra Lyon/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



300412

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hays) recommended the following:

Senate Amendment

Delete lines 30 - 31

and insert:

2. Any eating place maintained and operated by a church or
a religious, nonprofit fraternal, or

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 Fiscal Policy

BILL: CS/CS/CS/SB 1390

INTRODUCER: Fiscal Policy Committee; Regulated Industries Committee; Health Policy Committee;
and Senator Hays

SUBJECT: Public Food Service Establishments

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harper</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1390 creates new exclusions from the definition of “public food service establishment”:

- Any place maintained and operated by a public or private school, college, or university temporarily to serve food contests and cook-offs.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization temporarily to serve such events as food contests or cook-offs.
- Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or temporary event lasting 1-3 days, hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization.

Churches, religious organizations, and nonprofit fraternal or civic organizations that claim an exclusion from the definition of public food service establishment to provide the Division of Hotels and Restaurants within the Department of Business and Professional Regulation with documentation of such status when requested.

The bill is estimated to have a negative fiscal impact of \$228,410 on the Hotels and Restaurants Trust Fund. In addition, as a result of the reduction in license fees, there will be an estimated \$18,273 annual reduction in the service charge paid to the General Revenue Fund.

II. Present Situation:

Public Food Service Establishments

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

A “public food service establishment” is any building, vehicle, place, or structure, or any room or division therein where food is prepared, served, or sold for immediate consumption on or near the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.¹

At the end of the 2013-2014 fiscal year, there were 48,611 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.²

Exclusions from the Definition of Public Food Service Establishments

There are several exclusions from the definition of public food service establishment, including:³

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests.
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families.⁴
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services (DACS) under s. 500.12, F.S.
- Any vending machine that dispenses any food or beverages other than potentially hazardous foods.⁵
- Any research and development test kitchen limited to the use of employees and not open to the general public.

¹ Section 509.013(5)(a), F.S.

² Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report Fiscal Year 2013-2014*, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html (last visited 4/1/2015).

³ Section 509.013(5)(b), F.S.

⁴ Including other similar food service establishments that are regulated under s. 381.0072, F.S.

⁵ Vending machines located in a facility regulated under s. 381.0072, F.S., that dispense potentially hazardous foods are also excluded from the definition.

Temporary Food Service Events

In Florida, a “temporary food service event” is any event of 30 days or less where food is prepared, served, or sold to the general public.⁶ During Fiscal Year 2013-2014, the division issued 7,718 temporary food service event licenses.⁷ The division issues licenses for 1-3 day events, 4-30 day events, and an annual license. The following license fees apply to temporary and annual licenses:⁸

License Type	Licenses Issued FY 2013-2014	License Fee	Total Revenue
1-3 day event	2,510	\$91	\$228,410
4-30 day event	3,136	\$105	\$329,280
Annual	151	\$456	\$68,856
Totals:	5,797	-	\$626,546

The division does not license temporary food service events located on the premises of a church, school, or nonprofit fraternal or civic organization or events located elsewhere and operated by such organizations. The division does not require a license because these types of organizations are excluded from the division’s regulation.⁹

III. Effect of Proposed Changes:

The bill amends subparagraphs 1. and 2. of s. 509.0163(5)(b), F.S., to exclude from the definition of “public food service establishment” any:

- Place maintained and operated by a public or private school, college, or university temporarily to serve food contests and cook-offs.
- Eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization temporarily to serve food contests or cook-offs.

The bill requires churches, religious organizations, and nonprofit fraternal or civic organizations that claim to be excluded from the definition of public food service establishment to provide the division with documentation of such status when requested by the division.

The bill creates s. 509.0163(5)(b)3., F.S., to exclude from the definition of “public food service establishment” any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting 1 to 3 days, which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. The event host must provide the division with documentation of such status when requested by the division.

⁶ Section 509.13(8), F.S.

⁷ *Supra* note 2.

⁸ Data compiled by staff from Rule 61C-1.008(4)(a), F.A.C., and *supra* note 2. There were 1,921 licenses for temporary food service events that were already licensed either annually, permanently, or by the DACS. *See supra* note 2.

⁹ Department of Business and Professional Regulation, “Do churches, schools, or nonprofit organizations need a temporary food service event license?” (updated June 1, 2012), available at http://myfloridalicense.custhelp.com/app/answers/detail/a_id/104 (last visited on 4/12/2015).

The bill amends s. 509.032(3)(c)3.a., F.S., clarify that establishments excluded from the definition of “public food service establishment” are not required to obtain and pay the license fee for temporary food service events.

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates restrictions do not apply because the bill does not affect counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Currently, the division does not license temporary food service events located on the premises of a church, school, or nonprofit fraternal or civic organization or events located elsewhere and operated by such organizations. The department indicates that the additional exclusions to the definition of “public food service establishment” will result in a reduction in license fees for temporary food service vendors who operate at a 1-3 day event hosted by a church, religious organization, or nonprofit fraternal or civic organization. Any such public food service establishment that is currently required to be licensed would not be required to pay the applicable license fee of \$91 for a 1-3 day temporary license, \$105 for 4-30 day temporary license, or \$456 for an annual license.

C. Government Sector Impact:

The bill has an annual negative fiscal impact of \$228,410 on the Hotels and Restaurants Trust Fund of the department due to eliminating necessity of licenses for temporary food service events for certain events operated related to churches, religious organizations, and nonprofit fraternal or civic organizations. In addition, as a result of the estimated reduction in license and delinquent fees, there will be an \$18,273 annual reduction in the service charge paid to the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The terms “food contests” and “cook-offs” are not defined and it is not clear how the department may interpret the term in determining what type of event may be excluded from the definition of public food service establishments.¹⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013 and 509.032.

IX. Additional Information:

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

CS/CS/CS by Fiscal Policy on April 15, 2015:

The committee substitute removes the new exclusion from the definition of “public food service establishment” for any eating place maintained and operated *for the benefit of* a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or to serve certain temporary events.

CS/CS by Regulated Industries Committee on March 31, 2015:

The committee substitute:

- Amends s. 509.0163(5)(b)1.b., F.S., to exclude from the definition of “public food service establishment” any place maintained and operated by a public or private school, college, or university temporarily to serve cook-offs;
- Amends s. 509.0163(5)(b)3., to require that churches or religious, nonprofit fraternal, or nonprofit civic organization that claim to be excluded from the definition of public food service establishment must provide the division with documentation of its status when requested by the division;
- Does not create s. 509.0163(5)(b)2.c., F.S., to exclude from the definition of “public food service establishment” any eating place maintained and operated by, or for the benefit of, a church or a religious, nonprofit fraternal, or nonprofit civic organization by an individual or entity at a temporary event hosted by the church or organization, provided that the individual or entity guarantees a percentage of the profit to the host and does not generate more than \$2,000 in revenue from the single event or \$4,000 annually from all temporary food service events;
- Creates s. 509.0163(5)(b)3., F.S., to exempt from the definition of “public lodging establishment eating places maintained and operated by an individual or entity at a food contest, cook-off, or temporary event lasting 1 to 3 days, which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization by an

¹⁰ Department of Business and Professional Regulation, *2015 Legislative Bill Analysis: SB 1390*, March 16, 2015.

individual or entity at a temporary event hosted by the church or organization. It also requires that the event host must provide the division with documentation of its status when requested by the division; and

- Amends s. 509.032(3)(c)3.a., F.S., to provide that persons excluded from the definition of public food service establishment in s. 509.013(5)(b), F.S., are not required to obtain, and pay the license fee for, one of the classes of food service or food vendor license specified in this subparagraph.

CS by Health Policy on March 17, 2015:

The Committee Substitute excludes from the definition of “public food service establishments” certain eating places maintained or operated for the benefit of a church, a religious organization, a nonprofit fraternal organization, or a nonprofit civic organization by an individual or an entity at a temporary event hosted by the church or organization.

B. Amendments:

None.

By the Committees on Regulated Industries; and Health Policy;
and Senator Hays

580-03234-15

20151390c2

A bill to be entitled

An act relating to public food service establishments;
amending s. 509.013, F.S.; revising the definition of
the term "public food service establishment" to
exclude certain events; amending s. 509.032, F.S.;
clarifying that a license is not required to be
obtained if excluded under the definition of "public
food service establishment"; providing an effective
date.

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

Section 1. Subsection (5) of section 509.013, Florida
Statutes, is amended to read:

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

(5) (a) "Public food service establishment" means any
building, vehicle, place, or structure, or any room or division
in a building, vehicle, place, or structure where food is
prepared, served, or sold for immediate consumption on or in the
vicinity of the premises; called for or taken out by customers;
or prepared prior to being delivered to another location for
consumption.

(b) The following are excluded from the definition in
paragraph (a):

1. Any place maintained and operated by a public or private
school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals,
food contests, cook-offs, and athletic contests.

Page 1 of 4

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

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2. Any eating place maintained and operated by, or for the
benefit of, a church or a religious, nonprofit fraternal, or
nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals,
food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit
fraternal, or nonprofit civic organization claiming an exclusion
under this subparagraph must provide the division documentation
of its status as a church or religious, nonprofit fraternal, or
nonprofit civic organization.

3. Any eating place maintained and operated by an
individual or entity at a food contest, cook-off, or a temporary
event lasting from 1 to 3 days which is hosted by a church or a
religious, nonprofit fraternal, or nonprofit civic organization.
Upon request by the division, the event host must provide the
division documentation of its status as a church or a religious,
nonprofit fraternal, or nonprofit civic organization.

~~4.3-~~ Any eating place located on an airplane, train, bus,
or watercraft which is a common carrier.

~~5.4-~~ Any eating place maintained by a facility certified or
licensed and regulated by the Agency for Health Care
Administration or the Department of Children and Families or
other similar place that is regulated under s. 381.0072.

~~6.5-~~ Any place of business issued a permit or inspected by
the Department of Agriculture and Consumer Services under s.
500.12.

~~7.6-~~ Any place of business where the food available for

Page 2 of 4

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

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59 consumption is limited to ice, beverages with or without
60 garnishment, popcorn, or prepackaged items sold without
61 additions or preparation.

62 ~~8.7-~~ Any theater, if the primary use is as a theater and if
63 patron service is limited to food items customarily served to
64 the admittees of theaters.

65 ~~9.8-~~ Any vending machine that dispenses any food or
66 beverages other than potentially hazardous foods, as defined by
67 division rule.

68 ~~10.9-~~ Any vending machine that dispenses potentially
69 hazardous food and which is located in a facility regulated
70 under s. 381.0072.

71 ~~11.10-~~ Any research and development test kitchen limited to
72 the use of employees and which is not open to the general
73 public.

74 Section 2. Paragraph (c) of subsection (3) of section
75 509.032, Florida Statutes, is amended to read:

76 509.032 Duties.—

77 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE
78 EVENTS.—The division shall:

79 (c) Administer a public notification process for temporary
80 food service events and distribute educational materials that
81 address safe food storage, preparation, and service procedures.

82 1. Sponsors of temporary food service events shall notify
83 the division not less than 3 days before the scheduled event of
84 the type of food service proposed, the time and location of the
85 event, a complete list of food service vendors participating in
86 the event, the number of individual food service facilities each
87 vendor will operate at the event, and the identification number

580-03234-15

20151390c2

88 of each food service vendor's current license as a public food
89 service establishment or temporary food service event licensee.
90 Notification may be completed orally, by telephone, in person,
91 or in writing. A public food service establishment or food
92 service vendor may not use this notification process to
93 circumvent the license requirements of this chapter.

94 2. The division shall keep a record of all notifications
95 received for proposed temporary food service events and shall
96 provide appropriate educational materials to the event sponsors,
97 including the food-recovery brochure developed under s. 595.420.

98 3.a. Unless excluded under s. 509.013(5)(b), a public food
99 service establishment or other food service vendor must obtain
100 one of the following classes of license from the division: an
101 individual license, for a fee of no more than \$105, for each
102 temporary food service event in which it participates; or an
103 annual license, for a fee of no more than \$1,000, that entitles
104 the licensee to participate in an unlimited number of food
105 service events during the license period. The division shall
106 establish license fees, by rule, and may limit the number of
107 food service facilities a licensee may operate at a particular
108 temporary food service event under a single license.

109 b. Public food service establishments holding current
110 licenses from the division may operate under the regulations of
111 such a license at temporary food service events of 3 days or
112 less in duration.

113 Section 3. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS
11th District

MEMORANDUM

To: Senator Anitere Flores, Chair
Fiscal Policy Committee
CC: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 1390 – Public Food Service Establishments

Date: March 31, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

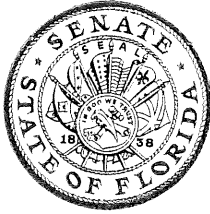
REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

8th District

April 15, 2015

The Honorable Anitere Flores
413 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Missed Votes

Dear Chairwoman Flores:

Due to presenting my bill in the Rules Committee today, I was unable to vote on the bills being heard in the Committee on Fiscal Policy. Pursuant to Rule 2.28 (4), I am submitting this letter to indicate how I would have voted if present.

For the record, I would like to be shown voting yes for the following bills:

S0054	Relief of Mark T. Sawicki and Sharon L. Sawicki by the City of Tallahassee	Montford
S0164	Crime Stoppers Trust Fund	Evers
S0322	Medicaid Reimbursement for Hospital Providers	Stargel
S0368	Rights of Grandparents and Great-grandparents	Abruzzo
S0388	Transportation Facility Designations	Montford
S0390	Fraud	Richter
S0414	Service Animals	Altman
S0418	Construction Defect Claims	Richter
S0512	HIV Testing	Thompson
S0636	Public Accountancy	Latvala
S0736	Residential Properties	Stargel
S0768	Patient Observation Status Notification	Gaetz
S0788	Disabled Parking	Sobel
S0792	Pharmacy	Bean
S0816	Home Health Agencies	Grimsley
S0908	Traffic Safety	Altman

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

April 15, 2015

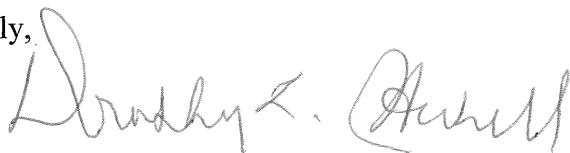
Page 2

S0912	Recycled and Recovered Materials	Bean
S0922	Appointment of an Ad Litem	Latvala
S0950	Public Health Emergencies	Hukill
S1010	False Personation	Braynon
S1098	Controlled Substances	Bradley
S1126	Continuing Care Communities	Altman
S1134	Blanket Health Insurance	Hays
S1222	Division of Insurance Agent and Agency Services	Richter
S1232	Building Codes	Simpson
S1270	Sexual Offenses	Soto
S1304	Inspectors General	Latvala
S1388	Special Districts	Stargel
S1390	Public Food Service Establishments	Hays

I would like to be shown voting no for the following bill:

S1040	Infectious Disease Elimination Pilot Program	Braynon
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Sincerely,



Dorothy L. Hukill, District 8

cc: Jennifer Hrdlicka, Staff Director of the Fiscal Policy Committee
Tamra Lyon, Administrative Assistant of the Fiscal Policy Committee



THE FLORIDA SENATE

Senator Maria Lorts Sachs
Deputy Minority Whip
District 34

Committees:

Higher Education
Vice Chair

Fiscal Policy

Communications, Energy,
and Public Utilities

Appropriations
Subcommittee on
Education

Appropriations
Subcommittee on
Transportation, Tourism,
and Economic
Development

Military Affairs, Space,
and Domestic Security

Regulated Industries

STAFF:

Matthew Damsky
Legislative Assistant

Laura Jiménez
Legislative Assistant

April 14, 2015

The Honorable Anitere Flores
413 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Flores,

I will not be able to attend the Committee on Fiscal Policy meeting taking place at 9:00am on April 15, 2015. Please excuse me from attending the meeting.

Your leadership and consideration are appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maria Lorts Sachs", written over a horizontal line.

Senator Maria Lorts Sachs
District 34

CourtSmart Tag Report

Room: KN 412
Caption: Senate Fiscal Policy

Case:
Judge:

Type:

Started: 4/15/2015 9:01:46 AM
Ends: 4/15/2015 11:08:32 AM **Length:** 02:06:47

9:01:58 AM Committee Meeting on Fiscal Policy is called to order
9:02:05 AM Roll Call
9:02:38 AM Tab 12 Senator Gaetz SB 768
9:04:01 AM CS/SB 768 favorable
9:04:26 AM Tab 6 Senator Richter SB 390
9:06:03 AM Amendment barcode 797088
9:09:23 AM Amendment favorable
9:09:28 AM CS/SB 390 favorable
9:09:37 AM Tab 8 Senator Richter SB 418
9:11:34 AM SB 418 favorable
9:11:53 AM Tab 26 SB 1222 Senator Richter
9:12:09 AM Tab 26 SB 1222 Senator Richter
9:12:21 AM Amendment barcode 570694
9:12:36 AM Amendment barcode 442200
9:12:46 AM Amendments adopted
9:13:38 AM SB 1222 favorable
9:14:07 AM Tab 21 SB 1032 Senator Richter
9:15:31 AM Cs 1032 favorable
9:15:38 AM Tab 1 SB 54 Senator Montford
9:16:55 AM SB 54 favorable
9:17:26 AM TAb 5 SB 388 Senator Montford
9:18:20 AM Amendment barcode 884540 adopted
9:18:33 AM Amendment barcode 605406
9:19:00 AM Amendment adopted
9:19:05 AM Amendment barcode 102454
9:19:23 AM Amendment adopted
9:19:56 AM Amendment barcode 173178
9:20:10 AM Amendment adopted
9:20:36 AM CS/SB 388 favorable
9:21:26 AM Tab 2 SB 164 Senator Evers
9:22:24 AM Brian Pitts, Justice-2-Jesus
9:24:29 AM James Peacock, Chairman, Chipola Crime Stoppers
9:25:48 AM SB 164 favorable
9:26:12 AM Tab 9 SB 512 Senator Thompson
9:27:35 AM Amendment barcode 682776
9:27:43 AM Amendment favorable
9:28:45 AM SB 512 favorable
9:29:04 AM Tab 13 Senator Sobel SB 788
9:30:10 AM SB 788 favorable
9:30:33 AM Tab 15 SB 816 Senator Grimsley
9:31:09 AM Amendment barcode 572864
9:32:52 AM Amendmdent adopted
9:33:28 AM Brian Pitts, Justice-2-Jesus
9:35:06 AM SB 816 favorable
9:35:45 AM Motion from Senator Bradley to show voting on bills missed
9:36:16 AM Tab 7 SB 414 Rick Kendust for Senator Altman
9:38:00 AM SB 414 favorable
9:38:24 AM Tab 16 SB 908 rick Kendust for Senator Altman
9:42:25 AM James Keichewbach, II, ABATE of Florida, Inc.
9:45:15 AM Tish Kelly, Naples, FL
9:48:45 AM Brian Pitts, Justice-2-Jesus
9:50:19 AM SB 908 favorable

9:51:00 AM Tab 24 SB 1126 Rick Kendust for Senator Altman
9:51:36 AM PCS barcode 242306
9:52:47 AM SB 1126 favorable
9:53:18 AM Tab 20 SB 1010 Senator Braynon
9:54:16 AM SB 1010 favorable
9:54:34 AM Tab 22 SB 1040 Senator Braynon
9:56:35 AM SB 1040 favorable
9:56:58 AM Tab 29 SB 1304 Tracy Caddell for Senator Latvala
9:58:20 AM PCS barcode 560970
9:58:43 AM Amendment barcode 891510
9:58:51 AM Amendment favorable
9:59:32 AM Amendment barcode 567240
9:59:43 AM Amendment favorable
10:00:07 AM SB 1304 favorable
10:00:56 AM Tab 10 SB 636 Brenda Johnson for Senator Latvala
10:02:07 AM SB 636 favorable
10:02:35 AM Tab 18 SB 922 Brenda Johnson for Senator Latvala
10:03:23 AM SB 922 favorable
10:04:02 AM Tab 4 SB 368 Senator Bradley
10:04:50 AM PCS barcode 934880
10:05:09 AM Amendment barcode 727400
10:05:19 AM Amendment favorable
10:05:48 AM Brian Pitts, Justice-2-Jesus
10:08:26 AM SB 368 favorable
10:08:54 AM Tab 11 SB 736 Senator Stargel
10:09:44 AM Amendment barcode 308876
10:09:53 AM Substitute amendment barcode 318184
10:11:04 AM Anthony Kalliche, First Service Residential
10:12:18 AM Substitute amendment adopted
10:13:54 AM Ron Book, First Residential
10:14:52 AM SB 736 favorable
10:15:39 AM Tab 23 SB 1098 Senator Bradley
10:17:02 AM Brian Pitts, Justice-2-Jesus
10:18:58 AM SB 1098 favorable
10:19:31 AM Tab 27 SB 1232 Senator Simpson
10:19:52 AM Amendment barcode 384976
10:20:11 AM Amendment to 384976 barcode 328722
10:22:04 AM Cam Fentriss, Florida Refrigeration & AC Contractors
10:23:44 AM 328722 favorable
10:24:44 AM Amendment to 384976 barcode 487780
10:25:49 AM 487780 adopted
10:26:50 AM Amendment to 384976 barcode 862830
10:27:06 AM 862830 favorable
10:27:17 AM Shad Haskert
10:28:06 AM Amendment barcode 384976 adopted as amended
10:28:46 AM Brian Pitts, Justice-2-Jesus
10:30:51 AM Kari Hebrank, Florida Home Builders, LLC
10:32:55 AM SB 1232 favorable
10:33:46 AM Tab 28 SB 1270 Senator Soto
10:34:32 AM PCS 554152
10:35:00 AM 154194 amendment
10:36:00 AM Amendment adopted
10:37:06 AM 624990 amendment
10:38:02 AM Amendment adopted
10:39:08 AM 801430 amendment
10:40:36 AM Brian Pitts, Justice-2-Jesus
10:40:50 AM Amendment adopted
10:41:15 AM Danielle Sullivan, Founder 43 Days Initiative
10:44:47 AM Greg Pound, Florida Families
10:47:39 AM SB 1270 favorable
10:48:40 AM Tab 14 SB 792 Senator Bean
10:49:37 AM Brian Pitts, Justice-2-Jesus

10:51:33 AM SB 792 favorable
10:52:24 AM Tab 17 SB 912 Senator Bean
10:53:25 AM Brian Pitts, Justice-2-Jesus
10:55:03 AM SB 912 favorable
10:55:28 AM Tab 25 SB 1134 Senator Hays
10:55:41 AM PCS 125558
10:56:08 AM PCS adopted
10:56:42 AM SB 1134 favorable
10:57:02 AM Tab 31 SB 1390 Senator Hays
10:57:20 AM Amendment barcode 300412
10:58:07 AM Amendment adopted
10:58:45 AM SB 1390 favorable
10:59:46 AM Tab 19 SB 950 Elizabeth Fetterhoff for Senator Hukill
11:01:28 AM SB 950 favorable
11:01:55 AM Tab 30 SB 1388 Senator Stargel
11:02:53 AM SB 1388 favorable
11:03:23 AM Tab 3 SB 322 Senator Stargel
11:04:01 AM Amendment barcode 561494
11:05:23 AM Amendment to 561494 barcode 541058
11:06:11 AM Amendment to 561494 favorable
11:06:22 AM Amendment barcode 866216 withdrawn
11:07:00 AM Amendment adopted
11:07:05 AM 561494 as amended favorable
11:07:37 AM SB 322 favorable
11:08:02 AM Motion by Senator Legg for missed votes
11:08:23 AM Senator Bean moves to adjourn