

SB 724 by Flores (CO-INTRODUCERS) Gaetz; (Identical to H 0633) Termination of Pregnancies						
888882	A	S	RS	FP, Margolis	btw L.76 - 77:	04/21 09:15 AM
698610	SA	S	RCS	FP, Flores	Delete L.76:	04/21 09:15 AM

SB 876 by Dean; (Compare to CS/CS/H 0801) Beirut Memorial						
742686	PCS	S	RCS	FP, AGG		04/21 09:15 AM
525050	PCS:D	S	RCS	FP, Hays	Delete everything after	04/21 09:15 AM

SB 634 by Stargel; (Similar to H 0161) Responsibilities of Health Care Facilities						
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SB 932 by Stargel; (Similar to CS/CS/1ST ENG/H 0453) Timeshares						
862930	A	S	RCS	FP, Stargel	Delete L.136:	04/21 09:15 AM
726268	A	S	RCS	FP, Stargel	Delete L.565 - 580.	04/21 09:15 AM
439174	A	S	RCS	FP, Stargel	Delete L.1117 - 1132.	04/21 09:15 AM

SB 7072 by TR; (Compare to H 0211) Specialty License Plates						
340976	PCS	S	RCS	FP, ATD		04/21 09:16 AM
453372	PCS:A	S	WD	FP, Hukill	Delete L.140:	04/21 09:16 AM
969762	PCS:A	S	RCS	FP, Clemens	btw L.175 - 176:	04/21 09:16 AM
702840	PCS:AA	S	RCS	FP, Clemens	Delete L.23 - 25:	04/21 09:16 AM
293048	PCS:A	S	RCS	FP, Abruzzo	Delete L.438 - 1069:	04/21 09:16 AM
946600	PCS:A	S	RCS	FP, Stargel	Delete L.438 - 1069:	04/21 09:16 AM
656544	PCS:A	S	RCS	FP, Bean	Delete L.563 - 615:	04/21 09:16 AM

CS/CS/SB 1172 by JU, RI, Latvala; (Similar to CS/CS/CS/H 0643) Termination of a Condominium Association						
656416	A	S	RCS	FP, Hays	Delete L.23 - 28:	04/21 09:16 AM

CS/CS/SB 1180 by RI, HP, Latvala (CO-INTRODUCERS) Soto, Diaz de la Portilla; (Compare to CS/H 0555) Practice of Pharmacy						
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SB 888 by Detert; (Compare to CS/CS/1ST ENG/H 0587) Educator Professional Practices						
573064	A	S	RCS	FP, Bradley	btw L.29 - 30:	04/21 09:23 AM
906706	A	S	RCS	FP, Bean	btw L.29 - 30:	04/21 09:23 AM

SB 1226 by Detert; (Similar to CS/H 1225) Guardianship						
366026	D	S	RCS	FP, Hays	Delete everything after	04/21 09:28 AM
547070	A	S	WD	FP, Hays	Delete L.978:	04/21 09:28 AM

CS/SB 36 by JU, Diaz de la Portilla; (Identical to CS/H 3513) Relief of the Estate of Victor Guerrero by Pasco County						
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CS/SB 42 by JU, Braynon; (Identical to CS/H 3547) Relief of Javier Soria by Palm Beach County						
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SB 44 by Grimsley; (Identical to CS/H 3505) Relief of the Estate of Lazaro Rodriguez by the City of Hialeah						
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SB 64 by Legg; (Identical to CS/H 3549) Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County						
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CS/SB 66 by JU, Legg; (Identical to CS/H 3521) Relief of Ronald Miller by the City of Hollywood

CS/SB 78 by JU, Flores; (Identical to CS/H 3557) Relief of Maricelly Lopez by the City of North Miami

SB 7076 by MS; (Similar to CS/H 7133) Military and Veteran Support

123208	PCS	S	RCS	FP, AGG		04/21 09:30 AM
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SB 1262 by Legg; (Compare to CS/CS/1ST ENG/H 0587) Education

666312	A	S	RCS	FP, Flores	btw L.67 - 68:	04/21 09:32 AM
534278	A	S	RCS	FP, Flores	btw L.67 - 68:	04/21 09:32 AM

CS/SB 1486 by CA, Brandes; (Similar to CS/H 1151) Residential Master Building Permit Programs

SB 572 by Montford; (Compare to H 7141) School Support Organizations

SB 530 by Ring; (Similar to H 0603) Bullying and Harassment Policies in Schools

207316	D	S	RCS	FP, Legg	Delete everything after	04/21 09:35 AM
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CS/SB 726 by CM, Ring; (Similar to H 0793) Consumer Protection

567610	A	S	RCS	FP, Bradley	Before L.31:	04/21 09:43 AM
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CS/CS/SB 748 by JU, RI, Ring; (Compare to CS/CS/H 0791) Residential Properties

842882	D	S	RCS	FP, Bradley	Delete everything after	04/21 09:49 AM
330410	AA	S	RCS	FP, Bradley	Delete L.682:	04/21 09:49 AM

CS/SB 1212 by CM, Ring; (Similar to H 0659) Contracts for Goods and Services

SB 7078 by CF; (Similar to CS/H 7121) Child Welfare

247066	A	S	RCS	FP, Abruzzo	btw L.478 - 479:	04/21 09:52 AM
234884	A	S	RCS	FP, Abruzzo	btw L.478 - 479:	04/21 09:52 AM

SB 1170 by Bradley; (Similar to H 1187) Problem-solving Courts

308648	PCS	S	RCS	FP, ACJ		04/21 09:55 AM
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CS/SB 118 by FT, Hays (CO-INTRODUCERS) Gaetz; (Similar to CS/H 0037) Voluntary Contributions for Public Education Facilities

454494	PCS	S	RCS	FP, AED		04/21 09:59 AM
128966	PCS:A	S	WD	FP, Flores	Before L.49:	04/21 09:59 AM
402642	PCS:A	S	WD	FP, Flores	Before L.49:	04/21 09:59 AM
479116	PCS:A	S	RCS	FP, Hays	Delete L.97:	04/21 09:59 AM
537222	PCS:A	S	RCS	FP, Hays	Delete L.138:	04/21 09:59 AM
951052	PCS:A	S	RCS	FP, Hays	btw L.167 - 168:	04/21 09:59 AM

SB 7080 by CJ; (Similar to CS/CS/CS/H 0057) Law Enforcement Officer Body Cameras

CS/CS/SB 824 by GO, CA, Evers; (Similar to CS/H 0063) Public-private Partnerships

523542	A	S	RCS	FP, Hays	Before L.35:	04/21 10:04 AM
497608	A	S	RCS	FP, Hays	Delete L.89 - 90:	04/21 10:04 AM

CS/SB 826 by GO, Evers; (Identical to CS/H 0065) Public Records and Public Meetings/Public-private Project Proposals**SB 780 by Smith;** (Similar to CS/H 0919) Special Assessment for Law Enforcement Services

536742	A	S	RCS	FP, Clemens	Delete L.32:	04/21 10:10 AM
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SB 464 by Joyner; (Identical to H 0741) Controlled Substances

402202	PCS	S	RCS	FP, ACJ		04/21 10:13 AM
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CS/SB 1052 by HP, Brandes; (Compare to CS/CS/H 0269) Florida Right to Try Act

592332	PCS	S	RCS	FP, AHS		04/21 10:22 AM
399254	PCS:D	S	RCS	FP, Bean	Delete everything after	04/21 10:22 AM

CS/SB 1526 by HP, Legg; (Similar to CS/H 0541) Athletic Trainers**SB 732 by Abruzzo;** (Identical to H 0115) Sentencing

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

FISCAL POLICY
Senator Flores, Chair
Senator Bradley, Vice Chair

MEETING DATE: Monday, April 20, 2015**TIME:** 1:00 —5:00 p.m.**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 724 Flores (Identical H 633)	Termination of Pregnancies; Revising conditions for the voluntary and informed consent to a termination of pregnancy; reenacting provisions relating to Agency for Health Care Administration rules regarding medical screening and evaluation of abortion clinic patients, to incorporate the amendment made by this act to s. 390.0111, F.S., in a reference thereto, etc. HP 03/31/2015 Favorable JU 04/15/2015 Favorable FP 04/20/2015 Fav/CS	Fav/CS Yeas 7 Nays 3

A proposed committee substitute for the following bill (SB 876) is available:

2	SB 876 Dean (Compare CS/CS/H 801)	Beirut Memorial; Requiring the Department of Management Services to establish a Beirut Memorial, subject to legislative appropriation; requiring the Department of Management Services to coordinate with the Division of Historical Resources regarding design and placement of the memorial, etc. MS 03/04/2015 Favorable AGG 04/02/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
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With subcommittee recommendation - General Government Appropriations

3	SB 634 Stargel (Similar H 161, Compare CS/CS/S 614)	Responsibilities of Health Care Facilities; Repealing provisions relating to practice parameters for physicians performing Caesarean section deliveries in provider hospitals; requiring a hospital to notify certain obstetrical physicians within a specified timeframe before the hospital closes its obstetrical department or ceases to provide obstetrical services, etc. HP 03/17/2015 Favorable AHS 04/14/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 10 Nays 0
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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
4	SB 932 Stargel (Similar CS/CS/H 453)	Timeshares; Revising provisions pertaining to multisite timeshare plans and clarifying single-site timeshare plan developer liability for nonmaterial errors or omissions; providing that leasehold accommodations or facilities may be added to a timeshare trust; providing for extension or termination of timeshare plans; providing for the transfer of reservation system data upon termination of managing entity; clarifying the annual fees due from managing entities of all timeshare plans, etc. RI 03/11/2015 Favorable JU 03/31/2015 Favorable FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
5	SB 7072 Transportation (Compare H 211, H 265, H 415, H 457, H 637, H 675, H 771, H 957, CS/H 7055, CS/H 7079, S 324, S 454, S 546, S 698, S 964, S 1042, S 1236, S 1238)	Specialty License Plates; Amending provisions relating to requirements for requests to establish a specialty license plate; deleting application requirements; revising the minimum requirements to continue issuance of certain specialty plates; directing the Department of Highway Safety and Motor Vehicles to develop certain specialty license plates, etc. ATD 04/14/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation - Transportation, Tourism, and Economic Development Appropriations			
6	CS/CS/SB 1172 Judiciary / Regulated Industries / Latvala (Similar CS/CS/CS/H 643)	Termination of a Condominium Association; Providing and revising procedures and requirements for termination of a condominium property; revising requirements relating to the right to contest a plan of termination, etc. RI 03/24/2015 Fav/CS JU 04/07/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/CS/SB 1180 Regulated Industries / Health Policy / Latvala (Compare CS/H 555, H 981, CS/CS/H 1049, CS/CS/S 860)	Practice of Pharmacy; Specifying that the Florida Pharmacy Act and rules adopted thereunder do not prohibit a veterinarian from administering a compounded drug to a patient or dispensing a compounded drug to the patient's owner or caretaker; requiring that each contract or contract renewal between a pharmacy benefits manager and a pharmacy require the pharmacy benefits manager to periodically update the maximum allowable cost pricing information and to maintain a procedure to eliminate certain drugs from the list of those subject to maximum allowable cost pricing or modify maximum allowable cost prices to remain consistent with changes in certain pricing data, etc. HP 03/23/2015 Fav/CS RI 04/08/2015 Not Considered RI 04/15/2015 Fav/CS FP 04/20/2015 Favorable	Favorable Yeas 10 Nays 0
8	SB 888 Detert (Compare CS/CS/H 587, S 1262)	Educator Professional Practices; Authorizing certain employees or agents of the Department of Education to have access to certain reports and records; revising the membership of the Education Practices Commission; authorizing the Commissioner of Education to appoint emeritus members to the commission; authorizing the commissioner to issue a letter of guidance in response to a complaint against a teacher or administrator in lieu of a probable cause determination, etc. ED 03/31/2015 Favorable AED 04/08/2015 Favorable FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation - Education Appropriations			
9	SB 1226 Detert (Similar CS/H 1225)	Guardianship; Revising the responsibilities of the executive director for the Office of Public and Professional Guardians; requiring the Office of Public and Professional Guardians to adopt rules; requiring that a professional guardian appointed by a court to represent an allegedly incapacitated person be selected from a registry of professional guardians, etc. CF 03/12/2015 Favorable JU 03/31/2015 Favorable FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 36 Judiciary / Diaz de la Portilla (Identical CS/H 3513)	Relief of the Estate of Victor Guerrero by Pasco County; Providing for an appropriation to compensate the Guerrero family for Officer Guerrero's death, which was the result of negligence by an employee of Pasco County; providing that the appropriation settles all present and future claims relating to the death of Officer Guerrero; providing a limitation on fees and costs, etc. SM 03/05/2015 Recommendation: Fav/1 Amendment JU 03/10/2015 Fav/CS CA 04/07/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 9 Nays 1
11	CS/SB 42 Judiciary / Braynon (Identical CS/H 3547)	Relief of Javier Soria by Palm Beach County; Providing for the relief of Javier Soria by Palm Beach County; providing for an appropriation to compensate him for injuries sustained as a result of negligence by an employee of Palm Beach County; providing a limitation on the payment of fees and cost, etc. SM 02/09/2015 Recommendation: Fav/2 Amendments JU 02/17/2015 Fav/CS CA 03/23/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 9 Nays 1
12	SB 44 Grimsley (Identical CS/H 3505)	Relief of the Estate of Lazaro Rodriguez by the City of Hialeah; Providing for the relief of the Estate of Lazaro Rodriguez and his legal survivors by the City of Hialeah; providing an appropriation to compensate the Estate and Lazaro Rodriguez's legal survivors for injuries sustained as a result of the negligence of the City of Hialeah; providing a limitation on the payment of fees and costs; providing that the appropriation settles all present and future claims related to the wrongful death of Lazaro Rodriguez, etc. SM 03/27/2015 Recommendation: Favorable JU 03/31/2015 Favorable CA 04/14/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 9 Nays 1

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 64 Legg (Identical CS/H 3549)	Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County; Providing for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, the surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Ms. Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs, etc. SM 04/03/2015 Recommendation: Unfavorable JU 04/07/2015 Favorable CA 04/14/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 9 Nays 1
14	CS/SB 66 Judiciary / Legg (Identical CS/H 3521)	Relief of Ronald Miller by the City of Hollywood; Providing for the relief of Ronald Miller by the City of Hollywood; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the City of Hollywood; providing a limitation on the payment of fees and costs, etc. SM 03/19/2015 Recommendation: Fav/1 Amendment JU 03/24/2015 Fav/CS CA 04/14/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 9 Nays 1
15	CS/SB 78 Judiciary / Flores (Identical CS/H 3557)	Relief of Maricelly Lopez by the City of North Miami; Providing for the relief of Maricelly Lopez by the City of North Miami; providing for an appropriation to compensate Maricelly Lopez, individually and as personal representative of the Estate of Omar Miele, for the wrongful death of her son, Omar Miele, which was due to the negligence of a police officer of the City of North Miami; providing a limitation on the payment of fees and costs; providing that the appropriation settles all present and future claims related to the death of Omar Miele, etc. SM 03/27/2015 Recommendation: Favorable JU 03/31/2015 Fav/CS CA 04/14/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	SB 7076 Military and Veterans Affairs, Space, and Domestic Security (Similar CS/H 7133, Compare S 834)	Military and Veteran Support; Removing the requirement that an applicant to the Defense Infrastructure Grant Program provide matching funds of a certain amount; requiring the Department of Business and Professional Regulation to waive initial professional licensing fees for a veteran who has received a general discharge under honorable conditions; requiring the Department of Highway Safety and Motor Vehicles and the Department of Military Affairs to create a pilot program for commercial driver license testing for qualified members of the Florida National Guard by a specified date, etc. AGG 04/14/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation - General Government Appropriations			
17	SB 1262 Legg (Compare CS/CS/H 587, S 888)	Education; Requiring the Department of Education to have an operating electronic IEP system in place for statewide use; authorizing the Commissioner of Education to issue a letter of guidance in response to a complaint against a teacher or administrator in lieu of a probable cause determination, etc. ED 03/18/2015 Favorable AED 04/02/2015 Favorable FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation - Education Appropriations			
18	CS/SB 1486 Community Affairs / Brandes (Similar CS/H 1151)	Residential Master Building Permit Programs; Requiring local governments to create master building permit programs if requested by a licensed general, building, or residential contractor to assist builders who construct certain dwellings and townhomes on a repetitive basis; authorizing a builder to use a master building permit for individual dwellings or townhomes under certain conditions; authorizing governing bodies of local governments to set specified fees, etc. CA 04/07/2015 Fav/CS RI 04/15/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 10 Nays 0
19	SB 572 Montford (Compare H 7141)	School Support Organizations; Defining the term "school support organization"; authorizing such organizations to pay tax on specified items purchased for resale in lieu of collecting the tax upon resale, etc. ED 03/31/2015 Favorable FT 04/07/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	SB 530 Ring (Similar H 603, Compare CS/H 7057)	Bullying and Harassment Policies in Schools; Requiring school districts to revise their bullying and harassment policies at specified intervals; specifying that a school district policy require a school to implement the policy in a certain manner and integrate it with the school's bullying prevention and intervention program, etc. ED 03/18/2015 Favorable AED 04/02/2015 Favorable FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation - Education Appropriations			
21	CS/SB 726 Commerce and Tourism / Ring (Similar H 793)	Consumer Protection; Requiring retail sales establishments that sell goods to the public to grant a refund within a specified period of time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements, etc. CM 03/10/2015 Fav/CS AGG 04/02/2015 Favorable FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation - General Government Appropriations			
22	CS/CS/SB 748 Judiciary / Regulated Industries / Ring (Compare CS/CS/H 791, CS/CS/CS/H 1211, S 348)	Residential Properties; Authorizing the use of a copy, facsimile transmission, or other reliable reproduction of an original proxy vote for certain purposes; providing that the vote necessary to charge use fees for the use of the common elements or association property may be approved by a majority of the voting interests present, in person or by proxy, at a meeting of the association if a quorum has been established; revising the provisions relating to the liability of condominium unit owners and mortgagees; authorizing condominium associations to conduct elections by electronic voting under certain conditions, etc. RI 03/18/2015 Fav/CS JU 04/07/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0

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23	CS/SB 1212 Commerce and Tourism / Ring (Similar H 659)	Contracts for Goods and Services; Prohibiting contracts for the sale or lease of consumer goods or services from waiving the right of the consumer to make certain statements; providing civil penalties; providing construction and applicability, etc. CM 03/23/2015 Fav/CS JU 03/31/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 10 Nays 0
24	SB 7078 Children, Families, and Elder Affairs (Similar CS/H 7121)	Child Welfare; Authorizing critical incident rapid response teams to review cases of child deaths occurring during an open investigation; requiring case staffing when medical neglect is substantiated; requiring an epidemiological child abuse death assessment and prevention system; providing intent for the operation of and interaction between the state and local death review committees, etc. FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0

A proposed committee substitute for the following bill (SB 1170) is available:

25	SB 1170 Bradley (Similar H 1187, Compare CS/CS/H 1069, CS/H 7113, S 1452)	Problem-solving Courts; Defining the term "problem-solving court"; authorizing a person eligible for participation in a problem-solving court to transfer his or her case to another county's problem-solving court under certain circumstances, etc. JU 03/10/2015 Favorable ACJ 04/02/2015 Not Considered ACJ 04/08/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
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With subcommittee recommendation - Criminal and Civil Justice Appropriations

A proposed committee substitute for the following bill (CS/SB 118) is available:

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
26	CS/SB 118 Finance and Tax / Hays (Similar CS/H 37)	Voluntary Contributions for Public Education Facilities; Authorizing a participating business that registers with the Department of Revenue to solicit and collect contributions from its customers for the construction and maintenance of public education facilities; providing registration requirements; requiring the department to issue a certificate and taxpayer identification number to a participating business; including voluntary contributions as a source of funding for the Public Education Capital Outlay and Debt Service Trust Fund, etc. FT 02/16/2015 FT 03/02/2015 FT 03/16/2015 Fav/CS AED 04/02/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation - Education Appropriations			
27	SB 7080 Criminal Justice (Similar CS/CS/CS/H 57)	Law Enforcement Officer Body Cameras; Requiring a law enforcement agency that permits its law enforcement officers to wear body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras; requiring such a law enforcement agency to ensure that specified personnel are trained in the law enforcement agency's policies and procedures; requiring that data recorded by body cameras be retained in accordance with specified requirements, etc. FP 04/20/2015 Favorable	Favorable Yeas 9 Nays 0
28	CS/CS/SB 824 Governmental Oversight and Accountability / Community Affairs / Evers (Similar CS/H 63, Compare CS/H 65, CS/H 7067, Link CS/S 826)	Public-private Partnerships; Deleting provisions creating the Public-Private Partnership Guidelines Task Force; deleting a provision that requires approval of the local governing body before a school board enters into a comprehensive agreement; requiring a responsible public entity to include a design criteria package in a solicitation; deleting provisions relating to notice to affected local jurisdictions, etc. CA 03/17/2015 Fav/CS GO 03/31/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
29	CS/SB 826 Governmental Oversight and Accountability / Evers (Identical CS/H 65, Compare CS/H 63, Link CS/CS/S 824)	Public Records and Public Meetings/Public-private Project Proposals; Transferring, renumbering, and amending provisions relating to qualifying public- private projects for public facilities and infrastructure; providing an exemption from public records requirements for unsolicited proposals received by a responsible public entity for a specified period; providing an exemption from public meeting requirements for any portion of a meeting of a responsible public entity during which exempt proposals are discussed; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CA 03/17/2015 Favorable GO 03/31/2015 Fav/CS FP 04/20/2015 Favorable	Favorable Yeas 9 Nays 1
30	SB 780 Smith (Similar CS/H 919)	Special Assessment for Law Enforcement Services; Authorizing a municipality to levy a special assessment to fund the costs of providing law enforcement services; requiring the property appraiser to list the special assessment on the notice of property taxes; specifying exceptions to the reduction of the ad valorem millage by more than a certain percentage; providing for construction, etc. CA 03/10/2015 Favorable FT 04/07/2015 Favorable FP 04/20/2015 Fav/CS	Fav/CS Yeas 6 Nays 4
A proposed committee substitute for the following bill (SB 464) is available:			
31	SB 464 Joyner (Identical H 741)	Controlled Substances; Authorizing a defendant to move to depart from the 3-year mandatory term of imprisonment and from the mandatory fine for a drug trafficking violation involving a specified quantity of a specified controlled substance; authorizing the state attorney to file an objection to the motion; authorizing the sentencing court to grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that specified criteria are met, etc. CJ 03/30/2015 Favorable ACJ 04/08/2015 Fav/CS FP 04/20/2015 Fav/CS RC	Fav/CS Yeas 8 Nays 2
With subcommittee recommendation - Criminal and Civil Justice Appropriations			
A proposed committee substitute for the following bill (CS/SB 1052) is available:			

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Monday, April 20, 2015, 1:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
32	CS/SB 1052 Health Policy / Brandes (Compare CS/CS/H 269, Link S 1626)	Florida Right to Try Act; Citing this act as the "Florida Right to Try Act"; authorizing a manufacturer of an investigational drug, biological product, or device to make such drug, product, or device available to certain eligible patients with a terminal illness without charge or for a specified cost; authorizing hospital personnel, nursing home facility staff, and home health agency personnel, respectively, to withhold or withdraw cardiopulmonary resuscitation if an individual has a Physician Order for Life-Sustaining Treatment (POLST); authorizing a health care surrogate to provide written consent for a POLST, etc. HP 03/17/2015 Fav/CS AHS 04/02/2015 Fav/CS FP 04/20/2015 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation - Health and Human Services Appropriations			
33	CS/SB 1526 Health Policy / Legg (Similar CS/H 541)	Athletic Trainers; Deleting the requirement for the Governor to appoint the initial members of the Board of Athletic Training; revising the board's authorization to adopt certain rules relating to communication between an athletic trainer and a supervising physician; revising responsibilities of athletic trainers to include requirements that a trainer must practice under the direction of a physician; revising general background screening provisions to include athletic trainers, etc. HP 03/23/2015 Fav/CS AHS 04/08/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 10 Nays 0
With subcommittee recommendation - Health and Human Services Appropriations			
34	SB 732 Abruzzo (Identical H 115)	Sentencing; Revising the definition of the term "victim" to include governmental entities and political subdivisions in certain instances; requiring the sentencing judge to order restitution and a specified number of community service work hours for violations of chapter 838, F.S., relating to bribery and misuse of public office, or chapter 839, F.S., relating to offenses by public officers and employees, etc. CJ 03/30/2015 Favorable JU 04/15/2015 Favorable FP 04/20/2015 Favorable	Favorable Yeas 8 Nays 0
Other Related Meeting Documents			

COMMITTEE MEETING EXPANDED AGENDA

Fiscal Policy

Monday, April 20, 2015, 1:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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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.



888882

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Between lines 76 and 77
insert:

The woman may waive the requirements of this subparagraph if the pregnancy is the result of rape or incest.



698610

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (888882) (with title amendment)

Delete line 76
and insert:
pregnancy to term.

The physician may provide the information required in this subparagraph within 24 hours prior to the procedure, if requested by the woman at the time she schedules or arrives for



698610

her appointment to obtain an abortion and she presents to the
physician a copy of a restraining order, police report, medical
record, or other court order or documentation evidencing that
she is obtaining the abortion because she is a victim of rape,
incest, domestic violence, or human trafficking.

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

And the title is amended as follows:

Delete line 5

and insert:

pregnancy; providing an exception; reenacting s.

390.012(3)(d), F.S., relating

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 724

INTRODUCER: Fiscal Policy Committee and Senators Flores and Gaetz

SUBJECT: Termination of Pregnancies

DATE: April 21, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Stovall	HP	Favorable
2. Davis	Cibula	JU	Favorable
3. Hrdlicka	Hrdlicka	FP	Fav/CS

I. Summary:

CS/SB 724 redefines what constitutes “voluntary and informed consent” when terminating a pregnancy. Currently, s. 390.0111(3), F.S., requires a physician, before performing an abortion, to obtain the voluntary and informed written consent of the pregnant woman. Consent is voluntary and informed only if the physician, or the referring physician, informs the woman of the nature and risks of undergoing or not undergoing the procedure, the probable gestational age of the fetus, and the medical risks to the woman and fetus of carrying the pregnancy to term.

This bill additionally requires that:

- The physician be physically present in the same room as the woman when providing her the necessary information about the procedure; and
- The information be provided to the woman at least 24 hours before the procedure is performed.
- If the woman provides to the physician a copy of a restraining order, police report, medical record, or other documentation that evidences that she is obtaining an abortion due to rape, incest, domestic violence, or human trafficking, then the information may be provided to her within 24 hours before the procedure is performed.

II. Present Situation:

Abortion in Florida

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or remove a dead fetus.¹ The termination of a pregnancy must

¹ Section 390.011(1), F.S.

be performed by a physician² licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.³

The termination of a pregnancy may not be performed in the third trimester or if a physician determines that the fetus has achieved viability unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week and defines viability to mean the state of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.⁴ Specifically, an abortion may not be performed after viability or within the third trimester unless two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for the termination of the pregnancy.⁵

Sections 390.0111(4) and 390.0112(3), F.S., provide that if a termination of pregnancy is performed during the third trimester or during viability, the physician who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which the physician would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when the concerns are in conflict. This termination of a pregnancy must be performed in a hospital.⁶

Case Law on Abortion

Federal Case Law

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision.⁷ Using the strict scrutiny standard, the Court determined that a woman's right to terminate a pregnancy is protected by a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.⁸ Further, the Court reasoned that state regulations limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.⁹

In 1992, the U.S. Supreme Court ruled on the constitutionality of a Pennsylvania statute involving a 24-hour waiting period between the provision of information to a woman and the performance of an abortion. In that decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*,¹⁰ the Court upheld the statute and relaxed the standard of review in abortion cases

² Section 390.0111(2), F.S.

³ Section 390.011(8), F.S.

⁴ Sections 390.011(11) and (12), F.S.

⁵ Sections 390.0111(1) and 390.01112(1), F.S.

⁶ Sections 797.03(3), F.S.

⁷ 410 U.S. 113 (1973).

⁸ *Id.*

⁹ *Id.*

¹⁰ 505 U.S. 833 (1992).

involving adult women from “strict scrutiny” to “unduly burdensome.” An undue burden exists and makes a statute invalid if the statute’s purpose or effect is to place a substantial obstacle in the way of a woman seeking an abortion before the fetus is viable.¹¹ The Court held that the undue burden standard is an appropriate means of reconciling a state’s interest in human life with the woman’s constitutionally protected liberty to decide whether to terminate a pregnancy. The Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference. Before viability, a state’s interests are not strong enough to support prohibiting an abortion or the imposition of a substantial obstacle to the woman’s right to elect the procedure.¹² However, once viability occurs, a state has the power to restrict abortions if the law contains exceptions for pregnancies that endanger a woman’s life or health.

The Court held that the informed consent provision of Pennsylvania’s abortion statute requiring a physician to provide information relevant to the woman’s informed consent did not impose an undue burden on the woman’s right to abortion. Rather, the provision was a reasonable means to insure that the woman’s consent was informed. The Court also determined that the 24-hour waiting period did not impose an undue burden on the woman’s abortion right, even though the waiting period had the effect of increasing the costs for the woman and the risk of a delayed abortion.¹³

Florida Law on Abortion

Florida law embraces more privacy interests and expressly extends more privacy protection to its citizens than the U.S. Constitution does. Article I, s. 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that this constitutional right to privacy “is clearly implicated in a woman’s decision whether or not to continue her pregnancy.”¹⁴ The Florida Supreme Court ruled in *In re T. W.*¹⁵

Under Florida law, prior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests.... Under our Florida Constitution, the state’s interest becomes compelling upon viability Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.¹⁶

¹¹ *Id.* at 878.

¹² *Id.* at 846.

¹³ *Id.* at 886-887.

¹⁴ *In re T.W.*, 551 So. 2d 1186 (Fla. 1989).

¹⁵ 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor’s right to privacy).

¹⁶ *Id.* at 1193-94.

The Court concluded that, “Following viability, the state may protect its interest in the potentiality of life by regulating abortion, provided that the mother’s health is not jeopardized.”¹⁷

Unlike the U.S. Supreme Court, however, the Florida Supreme Court reached a different standard of review for privacy laws involving abortion. The Florida Supreme Court held that, when determining the constitutionality of a statute that impinges upon a right of privacy under the Florida Constitution, the strict scrutiny standard of review applies.¹⁸

The Woman’s Right-to-Know Act

The Woman’s Right to Know Act (act) was enacted by the Florida Legislature in 1997.¹⁹ The act required the voluntary and informed written consent of the pregnant woman before an abortion could be performed. The act also specified that consent was only voluntary and informed if the physician informed the woman, in person, of the nature and risks of undergoing the abortion or carrying the pregnancy to term and the probable gestational age of the fetus. In 2011, the Florida Legislature amended the statute and added the requirement that the gestational age of the fetus be verified by an ultrasound and that the pregnant woman be offered the opportunity to view the live ultrasound images and hear an explanation of them.²⁰

Litigation of the Woman’s Right-to-Know Act

Shortly after enactment, the statute’s validity was challenged under the Florida and federal constitutions. The plaintiff physicians and clinics enjoined the enforcement of the act pending the outcome of the litigation, and the injunction was upheld on appeal.²¹ Thereafter, the plaintiffs were successful in obtaining a summary judgment against the state on the grounds that the act violated the right to privacy under Article I, s. 23 of the Florida Constitution and was unconstitutionally vague under the federal and state constitutions. This decision was also upheld on appeal.²² The state appealed this decision to the Florida Supreme Court.²³

The Florida Supreme Court addressed two issues raised by the plaintiffs. With regard to whether the act violated a woman’s right to privacy, the Court determined that the information required to be provided to women in order to obtain informed consent was comparable to those informed consent requirements established in common law and by Florida statutory law²⁴ applicable to

¹⁷ *Id.* at 1194.

¹⁸ *North Florida Women’s Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612 (Fla. 2003).

¹⁹ Chapter 97-151, L.O.F.

²⁰ Chapter 2011-224, s. 1, L.O.F.

²¹ *Florida v. Presidential Women’s Center*, 707 So. 2d 1145 (Fla. 4th DCA 1998).

²² *Florida v. Presidential Women’s Center*, 884 So. 2d 526 (Fla. 4th DCA 2004).

²³ *Florida v. Presidential Women’s Center*, 937 So. 2d 114 (Fla. 2006).

²⁴ *Id.* at 117-118. Section 766.103, F.S., is a general informed consent law for the medical profession, which requires that a patient receive information that would provide a “reasonable individual” with a general understanding of the procedure he or she will undergo, medically acceptable alternative procedures or treatments, and the substantial potential risks or hazards associated with the procedure. The Court also refers to s. 458.324, F.S. (informed consent for patients who may be at high risk of developing breast cancer); s. 458.325, F.S., (informed consent for patients receiving electroconvulsive and psychosurgical procedures); and s. 945.48, F.S., (express and informed consent requirements for inmates receiving psychiatric treatment).

other medical procedures.²⁵ Accordingly, the Court determined that the act was not an unconstitutional violation of a woman's right to privacy.²⁶

Second, the Court addressed the allegation that the term "reasonable patient," and the act's reference to information about "risks" were unconstitutionally vague. The plaintiffs argued it was unclear whether the act requires patients to receive information about "non-medical" risks, such as social, economic, or other risks.²⁷ The Court rejected these arguments and held that "... the act constitutes a neutral informed consent statute that is comparable to the common law and to informed consent statutes implementing the common law that exist for other types of medical procedures ..."²⁸

Abortion Statistics in Florida

The Department of Health reported 220,143 live births in the state for 2014.²⁹

According to the Agency for Health Care Administration, there are 65 licensed clinics in Florida that perform abortions.³⁰

In 2014, the state reported that 72,107 abortions were performed in the following stages of fetal development:³¹

- 65,934 abortions during the first 12 weeks of gestation;
- 6,173 abortions between 13 and 24 weeks of gestation; and
- None were performed after 24 weeks of gestation.

The majority of abortions, approximately 90 percent, were elective procedures, with:

- 60,007 performed in the first 12 weeks; and
- 5,370 performed between 13 and 24 weeks of gestation.

The remaining 10 percent were performed due to:

- Social or economic reasons – 5,115.
- Rape – 749.
- Serious fetal genetic defect, deformity, or abnormality – 562.
- Physical health of the mother that is not life endangering – 158.
- Emotion or psychological health of the mother – 77.
- Life endangering physical condition – 69.
- Incest – 0.

²⁵ *Id.*

²⁶ *Id.* at 118, 120.

²⁷ *Id.* at 118-119.

²⁸ *Id.* at 120.

²⁹ E-mail from Ken T. Jones, Florida Department of Health, Bureau of Vital Statistics, on April 10, 2014 (on file with the Senate Committee on Judiciary).

³⁰ E-mail from Orlando Pryor, Agency for Health Care Administration, on April 10, 2014 (on file with the Senate Committee on Judiciary).

³¹ Agency for Health Care Administration, *Reported Induced Terminations of Pregnancy (ITOP) by Reason, by Weeks of Gestation, Calendar Year 2014* (on file with the Committee on Judiciary).

Counseling and Waiting Periods for Abortions in Other States

Currently, 26 states require a waiting period between abortion counseling and the actual abortion procedure. Most states require 24 hour waiting periods, but Alabama and Arkansas require 48 hour waiting periods while Missouri, South Dakota, and Utah require 72 hour waiting periods. Of the states having waiting periods, 12 require pre-abortion counseling to be provided in person which necessitates two separate trips to the facility before an abortion can be performed.³² Under the undue burden standard adopted by the United States Supreme Court in *Planned Parenthood*, while “24-hour waiting period[s] may make some abortions more expensive and less convenient, it cannot be said that [they are] invalid ...”³³

III. Effect of Proposed Changes:

SB 724 revises the requirements for what is “voluntary and informed consent” when terminating a pregnancy in s. 390.0111, F.S. The current law requires that a physician, before performing an abortion, obtain the voluntary and informed written consent of the pregnant woman, unless a medical emergency exists. Consent is voluntary and informed only if the physician who is to perform the abortion, or the referring physician, informs the woman of:

- The nature and risks of undergoing or not undergoing the proposed procedure;
- The probable gestational age of the fetus, verified by an ultrasound, at the time the termination of pregnancy is to be performed; and
- The medical risks to the woman and fetus of carrying the pregnancy to term.

This bill amends the current law to add two additional elements of informed consent. The three conditions above must be met by the physician who is to perform the procedure or the referring physician, and the information must be given by the physician:

- While physically present in the same room as the woman; and
- At least 24 hours before the procedure is performed.

Because of the 24-hour waiting period, a pregnant woman may need to make two trips to the facility to obtain an abortion.

However, the information may be provided to a woman *within* 24 hours before the procedure is performed upon her request if she provides a copy of a restraining order, police report, medical record, or other documentation that evidences that she is obtaining an abortion due to being the victim of rape, incest, domestic violence, or human trafficking. The request may be made at the time the appointment is scheduled or when the woman arrives for the appointment to obtain the abortion.

The bill also republishes s. 390.012, F.S., for the purpose of incorporating the amendment made to s. 390.0111, F.S.

³² Guttmacher Institute, *Counseling and Waiting Periods for Abortion*, April 1, 2015, available at http://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf (last visited April 10, 2015). Arkansas amended its law on April 6, 2015, to require a 48 hour waiting period and the presence of a physician or qualified person for pre-abortion counseling (HB 1578, 2015).

³³ *Supra* note 10, at 838.

The bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

If the bill becomes law and is challenged, it is uncertain whether a court will apply the strict scrutiny or undue burden standard of review. Historically, the Florida Supreme Court has applied the strict scrutiny standard to legislation imposing abortion restrictions. In contrast, the U.S. Supreme Court adopted the undue burden standard in a challenge to a Pennsylvania law similar to this bill. Whether the Florida Supreme Court will choose to adopt the undue burden standard under the Florida Constitution's privacy protections is not known (See *Florida Law on Abortion* above).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 390.011 of the Florida Statutes.

This bill reenacts section 390.012 of the Florida Statutes.

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

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

CS by Fiscal Policy on April 20, 2015:

The committee substitute provides that if the woman provides to the physician a copy of a restraining order, police report, medical record, or other documentation that evidences that she is obtaining an abortion due to rape, incest, domestic violence, or human trafficking, then the information may be provided to her within 24 hours before the procedure is performed.

B. Amendments:

None.

By Senator Flores

37-00574A-15

2015724__

1 A bill to be entitled
 2 An act relating to termination of pregnancies;
 3 amending s. 390.0111, F.S.; revising conditions for
 4 the voluntary and informed consent to a termination of
 5 pregnancy; reenacting s. 390.012(3)(d), F.S., relating
 6 to Agency for Health Care Administration rules
 7 regarding medical screening and evaluation of abortion
 8 clinic patients, to incorporate the amendment made by
 9 this act to s. 390.0111, F.S., in a reference thereto;
 10 providing an effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Paragraph (a) of subsection (3) of section
 15 390.0111, Florida Statutes, is amended to read:
 16 390.0111 Termination of pregnancies.—
 17 (3) CONSENTS REQUIRED.—A termination of pregnancy may not
 18 be performed or induced except with the voluntary and informed
 19 written consent of the pregnant woman or, in the case of a
 20 mental incompetent, the voluntary and informed written consent
 21 of her court-appointed guardian.
 22 (a) Except in the case of a medical emergency, consent to a
 23 termination of pregnancy is voluntary and informed only if:
 24 1. The physician who is to perform the procedure, or the
 25 referring physician, has, at a minimum, orally, while physically
 26 present in the same room, and at least 24 hours before the
 27 procedure in-person, informed the woman of:
 28 a. The nature and risks of undergoing or not undergoing the
 29 proposed procedure that a reasonable patient would consider

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

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30 material to making a knowing and willful decision of whether to
 31 terminate a pregnancy.
 32 b. The probable gestational age of the fetus, verified by
 33 an ultrasound, at the time the termination of pregnancy is to be
 34 performed.
 35 (I) The ultrasound must be performed by the physician who
 36 is to perform the abortion or by a person having documented
 37 evidence that he or she has completed a course in the operation
 38 of ultrasound equipment as prescribed by rule and who is working
 39 in conjunction with the physician.
 40 (II) The person performing the ultrasound must offer the
 41 woman the opportunity to view the live ultrasound images and
 42 hear an explanation of them. If the woman accepts the
 43 opportunity to view the images and hear the explanation, a
 44 physician or a registered nurse, licensed practical nurse,
 45 advanced registered nurse practitioner, or physician assistant
 46 working in conjunction with the physician must contemporaneously
 47 review and explain the images to the woman before the woman
 48 gives informed consent to having an abortion procedure
 49 performed.
 50 (III) The woman has a right to decline to view and hear the
 51 explanation of the live ultrasound images after she is informed
 52 of her right and offered an opportunity to view the images and
 53 hear the explanation. If the woman declines, the woman shall
 54 complete a form acknowledging that she was offered an
 55 opportunity to view and hear the explanation of the images but
 56 that she declined that opportunity. The form must also indicate
 57 that the woman's decision was not based on any undue influence
 58 from any person to discourage her from viewing the images or

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hearing the explanation and that she declined of her own free will.

(IV) Unless requested by the woman, the person performing the ultrasound may not offer the opportunity to view the images and hear the explanation and the explanation may not be given if, at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a restraining order, police report, medical record, or other court order or documentation is presented which provides evidence that the woman is obtaining the abortion because the woman is a victim of rape, incest, domestic violence, or human trafficking or that the woman has been diagnosed as having a condition that, on the basis of a physician's good faith clinical judgment, would create a serious risk of substantial and irreversible impairment of a major bodily function if the woman delayed terminating her pregnancy.

c. The medical risks to the woman and fetus of carrying the pregnancy to term.

2. Printed materials prepared and provided by the department have been provided to the pregnant woman, if she chooses to view these materials, including:

a. A description of the fetus, including a description of the various stages of development.

b. A list of entities that offer alternatives to terminating the pregnancy.

c. Detailed information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care.

3. The woman acknowledges in writing, before the

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termination of pregnancy, that the information required to be provided under this subsection has been provided.

Nothing in this paragraph is intended to prohibit a physician from providing any additional information which the physician deems material to the woman's informed decision to terminate her pregnancy.

Section 2. For the purpose of incorporating the amendment made by this act to section 390.0111, Florida Statutes, in a reference thereto, paragraph (d) of subsection (3) of section 390.012, Florida Statutes, is reenacted to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including the following:

(d) Rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum, these rules shall require:

1. A medical history including reported allergies to medications, antiseptic solutions, or latex; past surgeries; and an obstetric and gynecological history.

2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.

3. The appropriate laboratory tests, including:

a. Urine or blood tests for pregnancy performed before the abortion procedure.

b. A test for anemia.

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117 c. Rh typing, unless reliable written documentation of
118 blood type is available.

119 d. Other tests as indicated from the physical examination.

120 4. An ultrasound evaluation for all patients. The rules
121 shall require that if a person who is not a physician performs
122 an ultrasound examination, that person shall have documented
123 evidence that he or she has completed a course in the operation
124 of ultrasound equipment as prescribed in rule. The rules shall
125 require clinics to be in compliance with s. 390.0111.

126 5. That the physician is responsible for estimating the
127 gestational age of the fetus based on the ultrasound examination
128 and obstetric standards in keeping with established standards of
129 care regarding the estimation of fetal age as defined in rule
130 and shall write the estimate in the patient's medical history.
131 The physician shall keep original prints of each ultrasound
132 examination of a patient in the patient's medical history file.

133 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)

4/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic Termination of Pregnancy

Amendment Barcode (if applicable)

Name Sherri Daume

Job Title Self

Address 1043 Epping Forest
Street
Tallahassee FL 32317
City State Zip

Phone 850 567 4624

Email shdaume@comcastmail.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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4/20/2015
Meeting Date

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

SB 724
Bill Number (if applicable)

Topic Abortion

Amendment Barcode (if applicable)

Name Virginia Frank

Job Title Caregiver

Address 9166 Sunrise drive
Street

Phone

Largo Florida 33773
City State Zip

Email

Speaking: ☒ For ☐ Against ☒ Information

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

Representing The Women of Florida that had abortion

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 Hour Bill

Amendment Barcode (if applicable)

Name Lisa Lizotte

Job Title Homemaker

Address 5317 98th Terr

Phone (386) 365-1729

Live Oak FL 32040
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

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

4-20-15
Meeting Date

724
Bill Number (if applicable)

Topic 24 Hr. Delay Bill

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 1025 E. Brevard St
Street

Phone 850-272-3969

Tall FL 32308
City State Zip

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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)

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Corrie Pfeffer

Job Title

Address 4793 94th Pl

Phone (321) 230 - 3903

Street

Live Oak

FL

32060

Email pfefferindustries@windstream.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Kellan Pfeffer

Job Title _____

Address 4793 94th Pl
Street

Phone (321) 230-3903

Live Oak FL 32060
City State Zip

Email kpf@windstream.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Grace Law

Job Title

Address 11255 Hogan RD

Street

Phone (321)-230-3903

Live Oak

City

FL

State

32060

Zip

Email gslaw97@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4-20-15
Meeting Date

724
Bill Number (if applicable)

Topic termination of pregnancy

Amendment Barcode (if applicable)

Name LARRY Ewing

Job Title _____

Address 2090 12th Place
Street

Phone 386-842-5193

Live Oak FL 32060
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4-Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic Abortion

Amendment Barcode (if applicable)

Name Greg Pount

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Largo Fl. 33773

Email _____

Speaking: ☒ For ☐ Against ☒ Information

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

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Ave

Street

Phone _____

Tallahassee

City

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Terrod Pfeffer

Job Title Web designer

Address 4793 94th Pl

Phone (321) 230-3903

Street

Live Oak

FL

State

32060

Zip

Email pfefferindustries@windstream

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4.20.15

Meeting Date

SB 724

Bill Number (if applicable)

Topic

termination of Pregnancy

Amendment Barcode (if applicable)

Name

Betty Pfeffer

Job Title

Ranch Manager

Address

14209 217th Road

Phone

386 776 2197

Street

Live Oak Florida 32060

Email

Pfefferb@windstream.net

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

4 Life Task Force

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

4/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 Hour Bill

Amendment Barcode (if applicable)

Name Justin Gerry

Job Title student

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4. life task force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic 24 Hour Bill

Amendment Barcode (if applicable)

Name David Parnell

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 Hour Bill

Amendment Barcode (if applicable)

Name ~~Lisa Lizotte~~ Lucas Lizotte

Job Title Child

Address 5317 98th Terrace

Phone (386) 365-1729

Live Oak, FL 32060
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 hr Bill

Amendment Barcode (if applicable)

Name Joshua Sewack

Job Title N/A

Address 407 Alma Dr.
Street

Phone (386) 867-1887

Brandon FL 33510
City State Zip

Email N/A

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic ~~Michael Baker~~ 24 hour Bill

Amendment Barcode (if applicable)

Name Michael Baker

Job Title Student

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic 24 Hour Bill

Amendment Barcode (if applicable)

Name Peyton Lizotte

Job Title Student

Address _____
Street

Phone _____

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 4 Life Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-20-15

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

Meeting Date

724-Flores

Bill Number (if applicable)

Topic

24-hr waiting period

Amendment Barcode (if applicable)

Name

Mark Phillips

Job Title

Leg. Affairs Dir.

Address

1101 Victoria Dr

Phone

813-532-5023

Street

Dunedin FL 34698

Email

mphil@senate.fl.gov

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FL FAMILY ACTION + POLICY 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.

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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)

4.20.18

Meeting Date

724

Bill Number (if applicable)

Topic TERMINATION of PREGNANCIES

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 340288

Phone 813. ~~264~~ 2977

Street

TAMPA

City

FL

State

33694

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

WAVE IN SUPPORT

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

7/20/2015

Meeting Date

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

SB 724

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Teresa Ward

Job Title attorney - FLORIDA RIGHT TO LIFE

Address 230 N. Jefferson St

Phone 850-544-5171

Monticello FL 32344
City State Zip

Email teresa.cooper.ward@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA RIGHT TO LIFE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/20/2015

Meeting Date

SB 724

Bill Number (if applicable)

Topic Mandatory Delay

Amendment Barcode (if applicable)

Name Molly Uher

Job Title Student

Address 641 45th Street

Phone (404) 274-4857

Street

Sarasota

City

FL

State

34234

Zip

Email mollyuher@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Mandatory delay

Amendment Barcode (if applicable)

Name Nicole Saltiel

Job Title student

Address 500 Clareon Dr.
Street

Phone (516) 314-6725

Panama City Beach FL 32413
City State Zip

Email nicole.saltiel14@ncf.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic Abortion Access

Amendment Barcode (if applicable)

Name Stephanie Kastan

Job Title Student

Address 7350 SW 89th St. Apt. 1110

Street

Phone (786) 378-4657

Miami

City

FL

State

33156

Zip

Email sakastan@eckerd.edu

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic Abortion Access

Amendment Barcode (if applicable)

Name Katherine Kurz

Job Title Student

Address 15319 Montauk Lane
Street

Phone 407-575-5161

Clermont
City

FL

State

324714

Zip

Email ktkurz@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15
Meeting Date

SB724
Bill Number (if applicable)

Topic 24 Hour Mandatory Delay

Amendment Barcode (if applicable)

Name Kristine Jones

Job Title Student at New College of Florida

Address 5800 Bay Shore Road
Street

Phone 561-371-9391

Sarasota FL 34243
City State Zip

Email Kristine.Jones12@ncf.edu

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-15

Meeting Date

SB 724

Bill Number (if applicable)

Topic 24 Hour Mandatory Delay

Amendment Barcode (if applicable)

Name Alton Francis

Job Title Sports Writer

Address 2481 NE Coachman #404
Street

Phone 727) 492-6748

Clearwater FL 33765
City State Zip

Email altonlabrecque@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-20-15

Meeting Date

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

SB724

Bill Number (if applicable)

Topic 24 Hour Mandatory Delay

Amendment Barcode (if applicable)

Name Roger Butterfield

Job Title Unemployed

Address 5034 Old Bradenton Rd
Street

Phone 813.784.2864

Sarasota FL 34234
City State Zip

Email rogerabutterfield@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic SB 724-

Amendment Barcode (if applicable)

Name Ivan ~~Ag~~ Aguayo

Job Title _____

Address _____

Phone _____

Street

Orlando

FL

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/2015

Meeting Date

SB 724

Bill Number (if applicable)

Topic 24 hour delay

Amendment Barcode (if applicable)

Name Molly Finn

Job Title Student

Address 4200 54th Ave S. Box #724

Street

St. Petersburg

City

FL

State

33711

Zip

Phone 203-300-3811

Email mpfinn@eckerd.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20

Meeting Date

SB 724

Bill Number (if applicable)

Topic 24 hr. mandatory delay

Amendment Barcode (if applicable)

Name Jeni Hollander

Job Title individual

Address 1911 Kings Row Mnr.

Phone 34-941-1528

Street

St. Louis

City

MO

State

63146

Zip

Email jehollan@eckerd.edu

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Mandatory Delay

Amendment Barcode (if applicable)

Name Kellie Dupree

Job Title VP Public Policy & Communications

Address 4617 Summer Oak Ave E, #823

Street

Phone ~~941-228-1476~~ 941-228-1476

Sarasota

City

FL

State

34243

Zip

Email ~~kel~~

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic MANDATORY DELAY

Amendment Barcode (if applicable)

Name Christine KNAPP

Job Title Nurse practitioner (ret.)

Address 1598 LANDINGS TERRACE

Street

SARASOTA FL 34231

City

State

Zip

Phone 941-924-1050

Email none

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/15
Meeting Date

724
Bill Number (if applicable)

Topic Mandatory Delay

None
Amendment Barcode (if applicable)

Name Mary Lou Morton

Job Title Retired teacher

Address 7179 University Victoria Circle
Street
University Park, FL 34201
City State Zip

Phone 941-366-3712

Email kaynm1kyiv@hotmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20

Meeting Date

SB 724

Bill Number (if applicable)

Topic 24 hr. Delay Before abortion

Amendment Barcode (if applicable)

Name Healy Slakman

Job Title Individual

Address 5710 Cameron Hall Place

Phone 304-803-2763

Street

Atlanta

GA

City

State

Zip

Email healyshire@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15
Meeting Date

724
Bill Number (if applicable)

Topic TERMINATION OF PREGNANCY

698610
Amendment Barcode (if applicable)

Name JENNIFER DRIFF (DRIFF)

Job Title EXECUTIVE DIRECTOR

Address 1820 E. PARK AVE, SUITE 100
Street

Phone (850) 297-2000

PALM BEACH FL 33407
City State Zip

Email jdrieff@fla.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.

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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)

4/20/15

Meeting Date

724

Bill Number (if applicable)

000002

Amendment Barcode (if applicable)

Topic TERMINATION OF PREGNANCIES

Name JENNIFER DRETT

Job Title EXECUTIVE DIRECTOR

Address 1820 E. PARK AVE. STE 100

Street

Phone (850) 297-2000

TALLAHASSEE

City

FL

State

32301

Zip

Email jdrett@fcav.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.

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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)

06/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 Mar Mandatory Delay

Amendment Barcode (if applicable)

Name Heather Crawford McLellan

Job Title Portfolio Manager

Address 1384 Fawnwood Circle
Street

Phone 425-275-8197

Sarasota
City

FL
State

34232
Zip

Email heather.mclellan@egnaid.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Planned Parenthood / Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/20/2015
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 hour mandatory Delay

Amendment Barcode (if applicable)

Name Shelby Statnam

Job Title Student Government

Address 5500 Bay Shore Road
Street

Phone 954-661-2613

Southern
City

FL
State

334243
Zip

Email ShelbyStatnam94@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Planned Parenthood (Self)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 Hour Mandatory Delay

Amendment Barcode (if applicable)

Name Daniella Benedi

Job Title Student Government

Address 5800 Bay Shore Road Box 64
Street

Phone 305-979-0147

Sarasota FL 33173
City State Zip

Email daniella.benedi12@nfc.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/20/15

Meeting Date

724

Bill Number (if applicable)

Topic Abortion Access / 24 hour delay

Amendment Barcode (if applicable)

Name Lauren Brenzel

Job Title _____

Address 8420 Isles Worth Ct Apt 15204 Phone 727-560-4289

Street

Sarasota

City

FL

State

342

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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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)

4/20/2015
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 hr mandatory delay bill

Amendment Barcode (if applicable)

Name Catherine Wolfe

Job Title Student

Address 926 46th Street
Street

Phone 904 314 0985

Sarasota FL 34234
City State Zip

Email Catherine.wolfe@nct.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15
Meeting Date

SP 724
Bill Number (if applicable)

Topic SP 724 - MANDATORY WAITING PERIOD

Amendment Barcode (if applicable)

Name LEANDRA LITTLE

Job Title RETIRED JOURNALIST

Address 512 69th ST

Phone 201 988-8510

Street

HOLMES BEACH FL 34217

City

State

Zip

Email llittle9@earthlink.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing PLANNED PARENTHOOD (Self and the like-minded)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

04/20/15

Meeting Date

SP 724

Bill Number (if applicable)

Topic BILL SP-724 : WOMEN'S HEALTH

Amendment Barcode (if applicable)

Name ATHENA ANTHONY

Job Title STUDENT

Address 4200 54TH AVES
Street

Phone (612)-819-8692

ST. PETERSBURG FL 33711
City State Zip

Email aranthong@eckerd.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-26-15

Meeting Date

SP-724

Bill Number (if applicable)

Topic Bill SP724 - Womens health

Amendment Barcode (if applicable)

Name Jake Solomon

Job Title Student

Address 4200 54th Ave S

Phone

Street

St. Petersburg

City

FL

State

3371

Zip

Email jsolomo@cedar.edu

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Planned Parenthood

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic 24 Hr waiting

Amendment Barcode (if applicable)

Name Tracy Vanderneck

Job Title

Address 3406 30th Ln E.

Street

Phone

Bradenton FL

City

State

34208

Zip

Email tracyd0206@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

04/20/15
Meeting Date

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

SB 724
Bill Number (if applicable)

Topic 24 HR WAITING PERIOD

Amendment Barcode (if applicable)

Name CHELSEA ALESSA DYE

Job Title TRAINEES Coordinator Planned Parenthood of SW & CF.

Address 525 Columbia Ct Apt 2B

Phone

Street

SARASOTA

FL

34236

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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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)

4/20
Meeting Date

SB 724
Bill Number (if applicable)

Topic 24 hr delay before abortion

Amendment Barcode (if applicable)

Name VERNA TOMASSON

Job Title Individual

Address 1820 University Place
Street

Phone (941) 955-5787

Sarasota FL
City State Zip

Email vernasafraan4@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Planned Parenthood / Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Mandatory Delay Bill

Amendment Barcode (if applicable)

Name adrian Pendergast

Job Title student

Address 4200 54th ave S.

Street

Phone 401-440-5044

St Petersburg

City

FL

State

33711

Zip

Email aepender@eckerd.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing addie Pendergast (self)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/26/2015

Meeting Date

SB 724

Bill Number (if applicable)

Topic Mandatory delay Bill

Amendment Barcode (if applicable)

Name Jennifer Leigh Gierson

Job Title Student

Address 4213 Sarasota avenue

Street

Phone 305 720 8908

Sarasota

City

FL

State

34234

Zip

Email jennifer.gierson13@ncf.edu

Speaking: ☐ For ☒ ~~Against~~ ☐ Information

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

Representing ~~William W. Gierson~~ Jennifer Gierson

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/2015

Meeting Date

SB724

Bill Number (if applicable)

Topic Mandatory Delay Bill

Amendment Barcode (if applicable)

Name Mia Diaz

Job Title Student

Address 600 Dixie Drive

Street

Phone (786) 443-8

Tallahassee, FL

City

State

Zip

Email miabd14@gmail.com

Speaking: ☐ For ☒ ~~Against~~ ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/2015

Meeting Date

724

Bill Number (if applicable)

Topic 24hr waiting period

Amendment Barcode (if applicable)

Name Lizbeth Hampton

Job Title Operations Coordinator, New College, FL

Address 1135 22nd street

Phone _____

Sarasota FL

City

State

Zip

Email LHAMPTON@NCE.EDU

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic SB 724

Amendment Barcode (if applicable)

Name Kimberly DIAZ

Job Title Legislative Representative

Address 2300 N FL Mango Rd.

Street

West Palm Beach FL. 33409

City

State

Zip

Phone 561.472.9934

Email kimberly.diaz@psenfl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Planned Parenthood Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic SB 724

Amendment Barcode (if applicable)

Name Carlos Smith

Job Title Public Policy Advocate

Address _____
Street

Phone ~~404~~ 404.934.4944

City

State

Zip

Email carlos@egfi.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Equality FL.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 120/2015

Meeting Date

Topic _____

Bill Number 728
(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)

4/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic SB 724 Abortion

Amendment Barcode (if applicable)

Name Michelle Richardson

Job Title Director of Public Policy

Address 4500 Biscayne Blvd.
Street

Phone 786-363-2700

Miami FL 33137
City State Zip

Email mrichardson@acluf.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4-19-15

Meeting Date

SB

724

Bill Number (if applicable)

Topic 24 hr. Abortion wait

Amendment Barcode (if applicable)

Name Amy Datz

Job Title legislative liaison

Address Street

Phone 850 322-7599

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Council of Jewish Women

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

724
Bill Number (if applicable)

Meeting Date _____

Topic 24-hour waiting period

Amendment Barcode (if applicable) _____

Name Amber Kelly

Job Title Director

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email amber@feltamerica.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Foundation for Defense of 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/15
Meeting Date

724
~~945~~
Bill Number (if applicable)

Topic Senate Bill 724 - Against

Amendment Barcode (if applicable)

Name Sara McCabe

Job Title retired

Address 2808 Wood Hollow Ct

Phone 850-562-5423

Street

Jallahassee

FL

32303

City

State

Zip

Email sumccabe@comcast.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.20.15

Meeting Date

72A

Bill Number (if applicable)

Topic Abortion

Amendment Barcode (if applicable)

Name Denisse Macias

Job Title Student

Address 308 egret lake ct
Street

Phone 713-444-8679

Brandon FL 33510
City State Zip

Email denissemacias@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing no one

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15

Meeting Date

724

Bill Number (if applicable)

Topic Abortion

Amendment Barcode (if applicable)

Name Rochelle D. Euseany

Job Title Ministry

Address P.O. Box 24504

Phone _____

Street

Tampa

City

FL

State

33623

Zip

Email reuseany@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

4/20/15
Meeting Date

724
Bill Number (if applicable)

Topic abortion

Amendment Barcode (if applicable)

Name Roberta King

Job Title CNA

Address 1604 Chevy Chase Dr
Street
Sun City Center FL 33573
City State Zip

Phone 813 294-4769

Email Ki/Robertaseyaker.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing no one

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

Meeting Date _____

724
Bill Number (if applicable) _____

Topic Abortion

Amendment Barcode (if applicable) _____

Name Cindy Rowan

Job Title _____

Address 3621 Bermuda Lake
Street
Brandon FL 33570
City State Zip

Phone 813-777-7874

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-20-15

Meeting Date

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

724

Bill Number (if applicable)

Topic ABORTION

Amendment Barcode (if applicable)

Name VENITA DEFOE

Job Title BUSINESS OWNER

Address 3544 COLLEEN DR

Phone 0137649064

Street

LAKE LAND

FL

33810

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-15

Meeting Date

~~413~~ 724
Bill Number (if applicable)

Topic Abortion

Amendment Barcode (if applicable)

Name Susan G McIntosh

Job Title _____

Address 2202 Columbus Av.
Street
Brandon, FL 33510
City State Zip

Phone 813-379-1946
ad. on
Email www.prayer@

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-15

Meeting Date

724

Bill Number (if applicable)

Topic Abortion Waiting Period

Amendment Barcode (if applicable)

Name Elizabeth Odom

Job Title Home maker

Address 12817 Gillett Acres Rd

Phone 262-586-9721

Street

Dover

City

FL

State

33527

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/15
Meeting Date

724
Bill Number (if applicable)

Topic 24 Hour Waiting Period

Amendment Barcode (if applicable)

Name Mary Wells

Job Title Crisis Pregnancy Counselor

Address 326 Carriage Crossing Circle
Street

Phone 813-728-7798

Brandon FL
City State Zip

Email maryal:ce.w7@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Life Care of Brandon

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4-20-15

Meeting Date

724

Bill Number (if applicable)

Topic Abortion Waiting Period

Amendment Barcode (if applicable)

Name Erica Williams

Job Title

Address 3603 Carronway

Street

Phone 813) 770-4930

Tampa

City

FL

State

Zip

Email EricaWilliams801@gmail

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/2014
Meeting Date

724
Bill Number (if applicable)

Topic ~~Pro-life~~ Abortion waving

Amendment Barcode (if applicable)

Name Pauline MOORE

Job Title

Address 3747 William Landry Cir Apt 111
Street
Tampa FL 33610
City State Zip

Phone 813 598 1414

Email GoldenEagleMoore@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

4-20-15
Meeting Date

724
Bill Number (if applicable)

Topic unborn children need a voice
Amendment Barcode (if applicable)

Name Paul Tanssen wait-ins Period

Job Title owner e/c car's

Address _____
Street
Tampa FL
City State Zip

Phone 865-759-3653

Email victorjauto work
sg@gmail

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The unborn children of america in this
great nation need a voice.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4-20-15

Meeting Date

724

Bill Number (if applicable)

Topic Abortion

Amendment Barcode (if applicable)

Name Lizeth Zavala-Rivera

Job Title _____

Address _____

Street

Phone _____

City

State

Zip

Email Tampa737@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

4-20-15

Meeting Date

724

Bill Number (if applicable)

Topic

Abortion

Amendment Barcode (if applicable)

Name

Deshauntra Johnson

Job Title

Address

2202 Columbus Drive

Street

Phone

202-520-8441

Brandon

FL

33510

City

State

Zip

Email

d.r.johnson2014@gmail.com

Speaking:

☒ For

☐ Against

☐ Information

Waive Speaking:

☒ In Support

☐ Against

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

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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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)

9/20/15
Meeting Date

513724
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ana Sanz

Job Title FAMU student

Address 2833 S. Adams St.

Phone 305 510 3754

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

04/20/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Roxanne Finch

Job Title VOX: Voices for Planned Parenthood of FSU student

Address FSU / 2525 W. Tennessee St Apt 8203 Phone (904) 392-5158

Street

Tallahassee

City

FL

State

32304

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 124

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gianna Bonner

Job Title Ambassador of Voices for Planned Parenthood FSU

Address 75 N Woodward V Box 63795
Street

Phone 352-638-7801

City

State

Zip

Email gmb14@my.fsu.edu

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kristin Sanders

Job Title President of VOX: Voices for IF

Address 1503 W. Tharpe St Apt 3/22

Phone 9544780581

Street

City

Tallahassee

FL

State

32303

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.20.15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Addn'l 24-hr waiting period for abortion procedure

Amendment Barcode (if applicable)

Name Judith S. Lyons

Job Title Retired

Address 9601-56 Miccosukee Rd

Street

Phone 850-264-1990

Tallahassee

City

FL

State

32309

Zip

Email jsblyons@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)



525050

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 265.111, Florida
Statutes, is amended to read:

265.111 Capitol Complex; monuments.—

(3) The Department of Management Services, in consultation
with the Florida Historical Commission, shall set aside an area
of the Capitol Complex, not including the State Capital Circle
Office Complex, and dedicate a memorial garden on which



525050

authorized monuments shall be placed. The memorial garden must include a monument in remembrance of the 241 members of the United States Armed Forces who lost their lives on October 23, 1983, in Beirut, Lebanon.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to the Beirut Memorial; amending s.
265.111, F.S.; requiring the Capitol Complex memorial
garden to include a memorial for members of the United
States Armed Forces who lost their lives in Beirut,
Lebanon, on a specified date; 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: PCS/SB 876 (742686)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Dean

SUBJECT: Beirut Memorial

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	Favorable
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 876 requires the Florida Veteran's Memorial Garden to include a memorial to honor those who lost their lives in the October 23, 1983, attack on the U.S. Armed Forces in Beirut, Lebanon.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Beirut Attack

In July of 1982, President Reagan authorized the deployment of U.S. Marines to join a multinational force (MNF) alongside French and Italian troops to contribute to peacekeeping efforts in Lebanon.¹ Lebanon was in the midst of a civil war that threatened the stability of the region and raised the threat of a wider war.² Syria and Israel supported opposing Lebanese factions and perpetuated the violence in an attempt to gain control of the country. In response, the MNF was tasked to protect Palestinian civilians from the ongoing conflict.³

¹ U.S. Department of State, Office of the Historian, *The Reagan Administration and Lebanon, 1981-1984*, available at <https://history.state.gov/milestones/1981-1988/lebanon> (last visited April 14, 2015).

² *Id.*

³ *Id.*

On October 23, 1983, the headquarters and barracks of the 1st Battalion, 8th Marines Regiment in Beirut, Lebanon was attacked.⁴ A truck carrying 2,000 pounds of explosives drove into the facility, exploded and collapsed the structure killing 220 Marines and 21 other members of the United States Armed Forces.⁵

In February of 1984, President Reagan ordered that the Marines withdraw from Lebanon.⁶

Managing Agency for the Capitol Center

Section 272.03(1), F.S., provides that the Capitol Center⁷ is under the general control and supervision of the Department of Management Services (DMS),⁸ which includes the management and maintenance of both the grounds and buildings.⁹ Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.¹⁰ This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.¹¹ After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.¹²

Capitol Complex Monuments

The construction and placement of a monument on the premises of the Capitol Complex¹³ is prohibited unless authorized by general law and unless the design and placement of the monument is approved by the DMS after considering the recommendations of the Florida Historical Commission.¹⁴ Additionally, the DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.¹⁵ The DMS, in consultation with the Florida Historical Commission, is required to set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized

⁴ Marines Blog: The Official Blog of the United States Marine Corps, *30th Anniversary of Beirut Bombing: Survivor Shares his Story*, available at <http://marines.dodlive.mil/2013/10/22/30th-anniversary-of-beirut-bombing-survivor-shares-his-story/> (last visited April 14, 2015).

⁵ *Id.*

⁶ *Supra* note 1.

⁷ Section 272.12, F.S., describes the Tallahassee area bounded by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.

⁸ Section 272.03, F.S.

⁹ Section 272.09, F.S.

¹⁰ Section 272.07, F.S.

¹¹ Department of Management Services, *2013 Legislative Bill Analysis, SB 608* (February 19, 2014) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

¹² *Id.*

¹³ Section 281.01, F.S.

¹⁴ Section 265.111(2), F.S.

¹⁵ *Id.*

monuments. Monuments constructed on or after July 1, 2014, are required to be placed in the memorial garden.¹⁶

Among the statutorily authorized Capitol Complex memorials to honor military service members are:

- The Florida Veterans' Walk of Honor;¹⁷
- The Florida Veterans' Memorial Garden;¹⁸ and
- The POW-MIA Chair of Honor Memorial.¹⁹

The Florida Veterans' Walk of Honor and the Florida Veterans' Memorial Garden are administered by the direct-support organization (DSO) of the Department of Veteran's Affairs without funding from the state.²⁰ However, donations made to the Florida Veterans' Walk of Honor and the Florida Veterans' Memorial Garden are credited to the DSO of the Department of Veterans' Affairs and used to support and maintain the Florida Veteran's Walk of Honor, the Florida Veterans' Memorial Garden, and other efforts of the DSO.²¹

III. Effect of Proposed Changes:

This bill requires the Florida Veterans' Memorial Garden to include a memorial in remembrance of the 241 members of the United States Armed Forces who lost their lives in the October 23, 1983, attack on the U.S. Armed Forces in Beirut, Lebanon.

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.

C. Trust Funds Restrictions:

None.

¹⁶ Section 265.111(1), F.S., defines the term "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of significant person or event in Florida history. The term does not include any "Official Florida Historical Marker" as defined in s. 267.021, F.S.

¹⁷ Section 265.0031, F.S.

¹⁸ *Id.*

¹⁹ Section 265.00301, F.S.

²⁰ Section 265.0031(2), F.S.

²¹ *Id.*

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under the bill, the cost to construct the memorial is indeterminate, as the design for the memorial has not been completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 265.0031 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.)

Recommended CS by Appropriations Subcommittee on General Government on April 2, 2015:

The committee substitute requires the Florida Veterans' Memorial Garden to include a memorial in remembrance of the 241 members of the United States Armed Forces who lost their lives on October 23, 1983, in Beirut, Lebanon.

B. Amendments:

None.



742686

594-03394-15

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the Beirut Memorial; amending s.
265.0031, F.S.; requiring that the Florida Veterans'
Memorial Garden include the Beirut Memorial; providing
an effective date.

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

Section 1. Subsection (4) is added to section 265.0031,
Florida Statutes, to read:

265.0031 Florida Veterans' Walk of Honor and Florida
Veterans' Memorial Garden.—

(4) The Florida Veterans' Memorial Garden must include a
memorial in remembrance of the 241 members of the United States
Armed Forces who lost their lives on October 23, 1983, in
Beirut, Lebanon.

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/SB 876

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Dean

SUBJECT: Beirut Memorial

DATE: April 21, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Favorable</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>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 876 requires the Florida Veteran's Memorial Garden to include a monument to honor those who lost their lives in the October 23, 1983, attack on the U.S. Armed Forces in Beirut, Lebanon.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Beirut Attack

In July of 1982, President Reagan authorized the deployment of U.S. Marines to join a multinational force (MNF) alongside French and Italian troops to contribute to peacekeeping efforts in Lebanon.¹ Lebanon was in the midst of a civil war that threatened the stability of the region and raised the threat of a wider war.² Syria and Israel supported opposing Lebanese factions and perpetuated the violence in an attempt to gain control of the country. In response, the MNF was tasked to protect Palestinian civilians from the ongoing conflict.³

¹ U.S. Department of State, Office of the Historian, *The Reagan Administration and Lebanon, 1981-1984*, available at <https://history.state.gov/milestones/1981-1988/lebanon> (last visited April 14, 2015).

² *Id.*

³ *Id.*

On October 23, 1983, the headquarters and barracks of the 1st Battalion, 8th Marines Regiment in Beirut, Lebanon was attacked.⁴ A truck carrying 2,000 pounds of explosives drove into the facility, exploded and collapsed the structure killing 220 Marines and 21 other members of the United States Armed Forces.⁵

In February of 1984, President Reagan ordered that the Marines withdraw from Lebanon.⁶

Managing Agency for the Capitol Center

Section 272.03(1), F.S., provides that the Capitol Center⁷ is under the general control and supervision of the Department of Management Services (DMS),⁸ which includes the management and maintenance of both the grounds and buildings.⁹ Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.¹⁰ This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.¹¹ After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.¹²

Capitol Complex Monuments

The construction and placement of a monument on the premises of the Capitol Complex¹³ is prohibited unless authorized by general law and unless the design and placement of the monument is approved by the DMS after considering the recommendations of the Florida Historical Commission.¹⁴ Additionally, the DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.¹⁵ The DMS, in consultation with the Florida Historical Commission, is required to set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized

⁴ Marines Blog: The Official Blog of the United States Marine Corps, *30th Anniversary of Beirut Bombing: Survivor Shares his Story*, available at <http://marines.dodlive.mil/2013/10/22/30th-anniversary-of-beirut-bombing-survivor-shares-his-story/> (last visited April 14, 2015).

⁵ *Id.*

⁶ *Supra* note 1.

⁷ Section 272.12, F.S., describes the Tallahassee area bounded by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.

⁸ Section 272.03, F.S.

⁹ Section 272.09, F.S.

¹⁰ Section 272.07, F.S.

¹¹ Department of Management Services, *2013 Legislative Bill Analysis, SB 608* (February 19, 2014) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

¹² *Id.*

¹³ Section 281.01, F.S.

¹⁴ Section 265.111(2), F.S.

¹⁵ *Id.*

monuments. Monuments constructed on or after July 1, 2014, are required to be placed in the memorial garden.¹⁶

Among the statutorily authorized Capitol Complex memorials to honor military service members are:

- The Florida Veterans' Walk of Honor;¹⁷
- The Florida Veterans' Memorial Garden;¹⁸ and
- The POW-MIA Chair of Honor Memorial.¹⁹

The Florida Veterans' Walk of Honor and the Florida Veterans' Memorial Garden are administered by the direct-support organization (DSO) of the Department of Veteran's Affairs without funding from the state.²⁰ However, donations made to the Florida Veterans' Walk of Honor and the Florida Veterans' Memorial Garden are credited to the DSO of the Department of Veterans' Affairs and used to support and maintain the Florida Veteran's Walk of Honor, the Florida Veterans' Memorial Garden, and other efforts of the DSO.²¹

III. Effect of Proposed Changes:

This bill requires the Florida Veterans' Memorial Garden to include a monument in remembrance of the 241 members of the United States Armed Forces who lost their lives in the October 23, 1983, attack on the U.S. Armed Forces in Beirut, Lebanon.

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.

C. Trust Funds Restrictions:

None.

¹⁶ Section 265.111(1), F.S., defines the term "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of significant person or event in Florida history. The term does not include any "Official Florida Historical Marker" as defined in s. 267.021, F.S.

¹⁷ Section 265.0031, F.S.

¹⁸ *Id.*

¹⁹ Section 265.00301, F.S.

²⁰ Section 265.0031(2), F.S.

²¹ *Id.*

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under the bill, the cost to construct the memorial is indeterminate, as the design for the monument has not been completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 265.111 of the Florida Statutes.

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

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

CS by Fiscal Policy on April 20, 2015:

The committee substitute requires the Florida Veterans' Memorial Garden to include a monument in remembrance of the 241 members of the United States Armed Forces who lost their lives on October 23, 1983, in Beirut, Lebanon.

B. Amendments:

None.

By Senator Dean

5-01222-15

2015876__

A bill to be entitled

An act relating to the Beirut Memorial; creating s. 265.005, F.S.; providing legislative intent; requiring the Department of Management Services to establish a Beirut Memorial, subject to legislative appropriation; requiring the department to consider recommendations of the Department of Veterans' Affairs and the Florida Historical Commission regarding specific aspects of the memorial; requiring the Department of Management Services to coordinate with the Division of Historical Resources regarding design and placement of the memorial; providing an effective date.

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

Section 1. Section 265.005, Florida Statutes, is created to read:

265.005 Beirut Memorial.—

(1) It is the intent of the Legislature to recognize and honor the sacrifices endured by members of the United States Armed Forces who lost their lives as a result of the explosion of a truck laden with compressed gas-enhanced explosives which collapsed the headquarters building of the 1st Battalion, 8th Marines Regiment in Beirut, Lebanon, on October 23, 1983.

(2) The Department of Management Services shall, subject to legislative appropriation, establish a Beirut Memorial. The Department of Management Services shall approve the design and placement of the Beirut Memorial in the Capitol Complex, as defined in s. 281.01, after considering recommendations from the

Page 1 of 2

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

5-01222-15

2015876__

Department of Veterans' Affairs and, pursuant to ss. 265.111 and 267.0612(9), the Florida Historical Commission with regard to the appropriate design and placement of the memorial. The Department of Management Services shall also coordinate with the Division of Historical Resources of the Department of State regarding the memorial's design and placement, subject to the division's powers and duties under s. 267.031.

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

4/20/2015

Meeting Date

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

SB 876

Bill Number (if applicable)

Topic Beirut Memorial

Name Col. Mike Prendergast

Job Title Executive Director

Address Suite 2105, The Capitol

Street

Tallahassee

City

FL

State

32399

Zip

Phone (850) 487-1533

Email exdir@fdva.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Florida Dept. of Veterans' Affairs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 20 / 2015

Meeting Date

Topic _____ Bill Number 876
(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)

4-20-15
Meeting Date

SB-876
Bill Number (if applicable)

Topic BEIBUT MEMORIAL

Amendment Barcode (if applicable)

Name JOHN HAYNES

Job Title CHAIRMAN EMERITUS

Address CAPITOL RM. 2107
Street

Phone 850-488-4181

City _____ State _____ Zip _____

Email john2045lemborg@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA VETERANS FOUNDATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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:
Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Community Affairs
Ethics and Elections

SENATOR CHARLES S. DEAN, SR.

5th District

April 6, 2015

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

Dear Chair Flores,

I respectfully request you place Committee Substitute for Senate Bill 876, relating to the Beirut Memorial, on your Fiscal Policy Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean". The signature is stylized with a large, flowing "C" and "D".

Charles S. Dean
State Senator District 5

cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- ☐ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- ☐ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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:

Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.

5th District

April 16, 2015

The Honorable Anitere Flores
413 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

Dear Chair Flores:

Thank you for allowing Senate Bill 876, relating to the Beirut Memorial, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Chase Daniels, to present this bill in my place.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles S. Dean".

Charles S. Dean
State Senator, District 5

Cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- ☐ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- ☐ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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 634

INTRODUCER: Senator Stargel

SUBJECT: Responsibilities of Health Care Facilities

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Stovall	HP	Favorable
2. Brown	Pigott	AHS	Recommend: Favorable
3. Pace	Hrdlicka	FP	Favorable

I. Summary:

SB 634 requires a hospital to notify obstetrical physicians at least 120 days before closing its obstetrical department or ceasing to provide obstetrical services.

The bill also repeals s. 383.336, F.S., which requires provider hospitals and physicians in those hospitals to follow additional practice parameters when providing cesarean sections paid for by the state. The section also requires provider hospitals to establish a peer review board to review all cesarean sections performed by the hospital and paid for by the state.

The bill has no fiscal impact on state government.

II. Present Situation:

Obstetrical Departments in Hospitals

A license issued by the Agency for Health Care Administration (AHCA) is required to operate a hospital. Hospitals are required to report the services which will be provided by the hospital as a requirement of licensure, and these services are listed on the hospital's license. A hospital must notify the AHCA of any change of service that affects information on the hospital's license by submitting a revised licensure application between 60 and 120 days in advance of the change.¹ The list of services is also used for the AHCA's inventory of hospital emergency services. According to the AHCA's website, there are currently over 140 hospitals in Florida that offer emergency obstetrical services.²

¹ AHCA, *Senate Bill 380 Analysis* (December 20, 2013) (on file with Senate Committee on Health Policy). See also ss. 408.806(2)(c) and 395.1041(2), F.S.

² Report generated by floridahealthfinder.gov on March 12, 2015 (on file with the Senate Committee on Health Policy).

Provider Hospitals

Currently, s. 383.336, F.S., defines the term “provider hospital” as a hospital in which 30 or more births occur annually that are paid for partly or fully by state funds or federal funds administered by the state.³ Physicians in such hospitals are required to comply with additional practice parameters⁴ when performing cesarean sections partially or fully paid for by the state. The additional practice requirements are designed to reduce the number of unnecessary cesarean sections performed within the hospital. The section also requires provider hospitals to establish a peer review board consisting of obstetric physicians and other persons with credentials to perform cesarean sections within the hospital. The board is required to review, on a monthly basis, all cesarean sections performed within the hospital that were partially or fully funded by the state.

These provisions are not currently implemented and Department of Health rules regarding provider hospitals were repealed by ss. 9 and 10, ch. 2012-31, L.O.F.

Closure of an Obstetrical Department in Bartow, Florida

In June 2007, Bartow Regional Medical Center in Polk County announced to patients and physicians that it would close its obstetrics department at the end of July of the same year.⁵ Although many obstetrical physicians could continue to see patients in their offices, they would no longer be able to deliver babies at the hospital.⁶ Physicians and the local community protested the short timeframe for ceasing to offer obstetrical services. According to the Florida Medical Association and several physicians who worked at the hospital, the short notice “endangered pregnant women who [were] too close to delivery for obstetricians at other hospitals to want them as patients.”⁷

III. Effect of Proposed Changes:

Section 1 repeals s. 383.336, F.S., relating to provider hospitals.

Section 2 amends s. 395.1051, F.S., to require a hospital to give advance notice of at least 120 days to each obstetrical physician with clinical privileges at the hospital if the hospital intends to close its obstetrical department or cease providing obstetrical services.

³ Section 383.336(1), F.S.

⁴ These parameters are established by the Office of the State Surgeon General in consultation with the Board of Medicine and the Florida Obstetric and Gynecologic Society and are required to address, at a minimum, the feasibility of attempting a vaginal delivery, dystocia, fetal distress, and fetal malposition.

⁵ Jennifer Starling, *Community Unites Against OB Closure*, The Polk County Democrat, July 12, 2007, available at <http://ufdc.ufl.edu/UF00028292/00258/1x?vo=12> (last visited April 14, 2015).

⁶ Robin W. Adams, *Bartow Hospital Plan Criticized*, The Ledger, July 11, 2007, available at <http://www.theledger.com/article/20070711/NEWS/707110433?p=1&tc=pg&tc=ar> (last visited April 14, 2015).

⁷ Id.

Although specific penalties are not listed for violating the notification provisions, the AHCA has authority to fine a health care facility up to \$500 for a non-designated violation,⁸ including the violation of any provision of that health care facility's authorizing statute.⁹

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:

SB 634 may have a positive fiscal impact for obstetrical physicians who receive the notice to allow them adequate time to ensure that they obtain privileges at another hospital. Advance notice will also allow the patient to adequately plan for delivery at another location. The bill may have a negative fiscal impact on hospitals that fail to comply due to potential administrative fines.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁸ A non-designated violation is any violation that is not designated as class I-IV. See s. 408.813(3), F.S.

⁹ Section 408.813(3)(b), F.S.

VIII. Statutes Affected:

This bill substantially amends section 395.1051 of the Florida Statutes.

This bill repeals section 383.336 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 Stargel

15-00530-15

2015634__

A bill to be entitled

An act relating to responsibilities of health care facilities; repealing s. 383.336, F.S., relating to practice parameters for physicians performing Caesarean section deliveries in provider hospitals; amending s. 395.1051, F.S.; requiring a hospital to notify certain obstetrical physicians within a specified timeframe before the hospital closes its obstetrical department or ceases to provide obstetrical services; providing an effective date.

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

Section 1. Section 383.336, Florida Statutes, is repealed.

Section 2. Section 395.1051, Florida Statutes, is amended to read:

395.1051 Duty to notify patients and physicians.—

(1) An appropriately trained person designated by each licensed facility shall inform each patient, or an individual identified pursuant to s. 765.401(1), in person about adverse incidents that result in serious harm to the patient. Notification of outcomes of care that result in harm to the patient under this section ~~does shall~~ not constitute an acknowledgment or admission of liability and may not, ~~nor can it~~ be introduced as evidence.

(2) A hospital shall notify each obstetrical physician who has privileges at the hospital at least 120 days before the hospital closes its obstetrical department or ceases to provide obstetrical services.

Page 1 of 2

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

15-00530-15

2015634__

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)

4/20/15
Meeting Date

634
Bill Number (if applicable)

Topic Responsibilities of Health Care Facility - Ob ward closure

Amendment Barcode (if applicable)

Name Holly Miller

Job Title Gov Affairs Counsel

Address 1430 Piedmont Dr E
Street

Phone 850 224 6496

Tallahassee FL 32308
City State Zip

Email hmlr@flmedical.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FMJA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/120/2015
Meeting Date

Topic _____

Bill Number 637
(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:

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

April 15, 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 634, related to *Responsibilities of Health Care Facilities*, 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 black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

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



862930

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 136
and insert:
right. For purposes of this subparagraph, the developer has the
burden of proof with regard to compliance.

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

And the title is amended as follows:

Delete line 7



862930

11 and insert:
12 errors or omissions; establishing a burden of proof;
13 amending s. 721.08, F.S.;



726268

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 565 - 580.

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

And the title is amended as follows:

Delete lines 18 - 20

and insert:

termination of managing entity; amending s. 721.52,



439174

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 1117 - 1132.

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

And the title is amended as follows:

Delete lines 48 - 51

and insert:

specific multistate timeshare plan; providing an
effective

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 932

INTRODUCER: Fiscal Policy Committee and Senator Stargel

SUBJECT: Timeshares

DATE: April 21, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2. <u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3. <u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

I. Summary:

CS/SB 932 relates to the Florida Vacation Plan and Timesharing Act (act), which establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers. The act is enforced by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) within the Department of Business and Professional Regulation (department). The bill:

- Provides that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust is required for such interests to qualify as timeshare estates;
- Revises the definitions for nonspecific and specific multisite timeshare plans to provide that the plans may include interests other than timeshare licenses or personal property timeshare interests;
- Revises the required disclosures for public offering statements in multisite timeshare plans;
- Revises the requirements for amendments to timeshare instruments in regards to component sites;
- Expands the limitation on liability for developers who, in good faith attempt to and substantially comply with, all the provisions of the act;
- Requires the disclosure of lease terms in timeshare trusts;
- Repeals the requirement for judicial approval of transactions involving timeshare trust property;
- Creates a procedure of the extension or termination of timeshare plans;
- Creates a procedure for the transfer of the reservation system and owner data when a managing entity is discharged;
- Requires all multisite timeshare plans to disclose the term of each component site plan and prominently disclose the term of component sites which are shorter than the term of the plan;
- Excludes component site common expenses and ad valorem expenses from the cap on annual increases in common expense assessments;

- Allows for substitute and replacement accommodations that are better than the existing accommodations; and
- Revises the limitations on substitute accommodations.

The bill has no fiscal impact

II. Present Situation:

A timeshare interest is a form of ownership of real and personal property.¹ In a timeshare, the real property is typically a condominium unit or a cooperative unit in which multiple parties hold the right to use. Each owner of a timeshare interest is allotted a period of time (typically 1 week) in which he or she may use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.² Chapter 721, F.S., applies to all timeshare plans consisting of more than 7 timeshare periods over a period of at least 3 years in which the accommodations and facilities are located within this state or offered within this state.³ Part I of ch. 721, F.S., relates to vacation plans and timesharing and Part II of ch. 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

According to a report prepared by the American Resort Development Association (ARDA), 23 percent of the estimated 1,540 timeshare resorts in the United States were located in Florida as of December 31, 2013.⁴

Definitions

A timeshare plan is any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.⁵ The term includes both personal property timeshare and real property timeshare plans.⁶

Each timeshare plan, must have a managing entity, which must be the developer, a separate manager or management firm, or an owners' association. The managing entity operates or maintains the timeshare plan.⁷

¹ See s. 721.05(36), F.S.

² Section 721.02(2) and (3), F.S.

³ Section 721.03, F.S.

⁴ ARDA International Foundation, *Banner Year for Timeshare Industry*, available at <http://www.arda.org/arda/news-information/default.aspx?id=4675&libID=4694> (last visited April 15, 2015).

⁵ Section 721.05(39), F.S.

⁶ A "personal property timeshare plan," is a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and a "real property timeshare plan," is a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

⁷ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.

A timeshare unit is an accommodation⁸ of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁹

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.¹⁰ The term also includes an interest in a condominium unit, a cooperative unit, or a trust. The definition does not specify whether the term includes both direct and indirect interests in trusts. An example of an indirect interest in a trust is a trust beneficiary’s spouse or other dependent.

A “timeshare license” is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.¹¹ A “timeshare interest” is a timeshare estate, a personal property timeshare interest, or a timeshare license.¹²

Multisite Timeshare Plans

A “multisite timeshare plan” is any method, arrangement, or procedure with respect to which a purchaser obtains a recurring right to use and occupy accommodations or facilities of more than one component site through use of a reservation system.¹³ The reservations system requires purchasers to compete with other purchases in the same multisite timeshare plan.¹⁴ There are two different types of multisite timeshare plans, nonspecific and specific.

A “nonspecific multisite timeshare plan” is a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, which a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the multisite timeshare plan in the event that the reservation system is terminated for any reason prior to the expiration of the term of the multisite timeshare plan.¹⁵

Whereas, a “specific multisite timeshare plan” is a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.¹⁶

⁸ “Accommodation” means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals. s. 721.05, F.S.

⁹ See ss. 721.05(41) and 718.103(26), F.S.

¹⁰ Section 721.05(34), F.S.

¹¹ Section 721.05(37), F.S.

¹² Section 721.05(36), F.S.

¹³ Section 721.52(4), F.S. The purchaser may or may not be able to elect to stop participating in the multisite timeshare plan.

¹⁴ Section 721.52(6), F.S.

¹⁵ Section 721.52(5), F.S.

¹⁶ Section 721.52(7), F.S.

Public Offering Statement

Prior to offering any timeshare plan, the developer of a timeshare plan must file a public offering statement, which must include certain information and disclosures, with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation.¹⁷

The public offering statement must include an estimated operating budget for the timeshare plan, and a schedule of the purchaser's expenses to be paid to the timeshare plan and the managing entity.¹⁸ A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures. Any amendment to an approved offering statement must be filed with the division for approval before it may become effective.¹⁹

Public offering statements and amendments to timeshare instruments for component sites located in Florida are not required to be provided to purchasers who do not receive a timeshare estate or an interest in a specific multisite timeshare plan in that component site.²⁰

A developer who, in good faith, attempts to comply with the requirements for public offering statements and if, in fact, he or she has substantially complied with the disclosure requirements, nonmaterial errors or omissions will not be actionable.²¹

Leasehold Accommodations in a Timeshare Trust

Sections 721.08(2)(c) and 721.53(1)(e), F.S., which regulate timeshare trusts, do not specify whether leasehold accommodations may be included in a timeshare trust and how they should be disclosed in a public offering statement or to interestholders.

Disposition of Timeshare Trust Property

Any transfer or encumbrance of timeshare trust property must be approved by the voting interests of the timeshare plan and approved by a court.²² In non-multisite timeshare plans the division has standing to advise the court on its interpretation of the statute as it relates to the petition to transfer.²³

Transfer of a Reservation System Following the Discharge of the Managing Entity

Section 721.14, F.S., provides for the discharge of the management entity for a timeshare plan after it has been purchased but does not provide for the disposition of the reservation system and the data in that system in the event the managing entity is discharged.

¹⁷ Sections 721.07 and 721.55, F.S.

¹⁸ Section 721.07(5)(t)3., F.S.

¹⁹ Section 721.07(3)(a)1., F.S.

²⁰ Sections 721.07(3) and 721.551(2), F.S.

²¹ Sections 721.07(5) and 721.55(5), F.S.

²² Sections 721.08(2)(c) and 721.53(1)(e), F.S.

²³ Section 721.08(2)(c), F.S.

The reservation system of a nonspecific multisite timeshare plan is considered a facility of the timeshare plan. However, the reservation system is not a facility of any specific multisite timeshare plan, nor is it a facility of any multisite timeshare plan in which timeshare estates are offered.²⁴

Section 721.56(5)(a), F.S., permits the manager or management firm and the purchasers or owners' association to agree that the manager or management firm own the reservation system and will continue to own the system in the event of a discharge of the management entity. In regards to the data in the reservation system, s. 721.56(5)(b), F.S., provides the procedure and criteria for establishing a trust for the reservation system of a nonspecific multisite timeshare plan in the event the plan's managing entity is terminated.

Term of Nonspecific Multisite Timeshare Plans and other Required Disclosures

A person cannot represent to a purchaser of a nonspecific multisite timeshare plan that the term of the plan for that purchaser is longer than the shortest term of availability of any of the accommodations included in the plan at the time of purchase.²⁵ However, for other specific multisite timeshare plans, the term of each component site within the timeshare plan must be disclosed in the multisite timeshare plan public offering statement.²⁶

A public offering statement for a multisite timeshare plan must include a description of the purchaser's liability for common expenses which must include certain information specified in s. 721.55(4)(h), F.S.

Substitutions and Deletions for Multisite Timeshare Plans

Section 721.552(2), F.S., permits substitutions of accommodations and facilities for nonspecific multisite timeshare plans that are "substantially similar" to the existing accommodations and facilities. Substitutions are limited to no more than 25 percent of the available accommodations at a given component site per year. Before a substitution occurs, notice must be provided to all the purchasers of the timeshare plan. However, under limited circumstances, a managing entity may substitute all accommodations in a given year if a written plan of substitution has been provided to each purchaser of the timeshare plan and approved by a majority of purchasers and a majority of the board of administration.²⁷

III. Effect of Proposed Changes:

Definitions (Section 1)

The bill amends s. 721.05(34), F.S., to revise the definition of the term "timeshare estate" to provide that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust *coupled* with a right to occupy a timeshare unit is required for such interest to

²⁴ Section 721.56(5), F.S.

²⁵ Section 721.54, F.S.

²⁶ Section 721.55(4)(a), F.S.

²⁷ Section 721.552(2), F.S.

qualify as a timeshare estate. The bill also provides that a beneficial trust in a qualifying multisite timeshare trust is also a timeshare estate.

Public Offering Statement (Sections 2 and 9)

The bill amends s. 721.07(3), F.S., to provide that public offering amendments to timeshare instruments for component sites located in this state are only required to be delivered to purchasers who receive a specific interest in that component site.

The bill amends s. 721.07(5), F.S., to expand the limitation on liability for developers who have in good faith attempted to and substantially complied with all the provisions of ch. 721, F.S. The bill specifies that developer has the burden of proof with regards to proving compliance. Current law limits the good faith limitation on liability to violations of the disclosure requirements. The bill provides that any nonmaterial errors, omissions, or violations of ch. 721, F.S., for which a developer has limited liability under this section, are not considered violations of ch. 721, F.S., and do not give rise to any purchaser cancellation rights. The bill provides a comparable amendment to s. 721.55(5)(b), F.S., relating to multisite timeshare plans.

Leasehold Accommodations in a Timeshare Trust (Sections 3 and 7)

The bill amends s. 721.08(2)(c)4.a., F.S., to provide that if the accommodations or facilities of a single-site timeshare trust plan are subject to a lease, the unexpired term of the lease must be disclosed as the term of the timeshare plan. The bill provides a comparable amendment to s. 721.53(1)(e), F.S., relating to multisite timeshare plans.

Disposition of Timeshare Trust Property (Sections 3 and 7)

The bill amends ss. 721.08(2)(c)4.b. and 721.53(1)(e), F.S., to provide that, subject to the statutory provisions regulating changes to component site accommodations or facilities in s. 721.552, F.S., a vote of the voting interests of the timeshare plan is not required for substitution or automatic deletion of accommodations or facilities in timeshare trusts.

The bill also amends ss. 721.08(2)(c) and 721.53(1)(e), F.S., to repeal the requirement for judicial approval of any transfer or encumbrance of timeshare trust property after approval by the voting interests of the timeshare plan. The bill also amends s. 721.08(2)(c), F.S., to repeal the provision granting the division standing to advise the court in a transfer related to non-multisite timeshare plans.

Extension or Termination of Timeshare Plans (Section 4)

The bill creates s. 721.125, F.S., to provide a process for timeshare instruments that have been in existence for at least 25 years and are silent as to how the plan terminates or is extended. The bill requires an affirmative vote or written consent from 60 percent of all the voting interests in the timeshare plan to extend or terminate the term of a timeshare plan.

If the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force. If a timeshare plan is

terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument. A termination or extension vote or consent proposed for a component site of a multisite timeshare plan located in this state is effective only if the person authorized to make additions or substitutions approves.

Transfer of a Reservation System Following the Discharge of the Managing Entity (Sections 5 and 12)

The bill creates s. 721.14(4)(a), F.S., to permit the owners' association and the manager or management firm to enter into a written agreement for the transition procedures and related time periods in the event the manager or management firm is discharged.

Section 721.14(4)(b), F.S., provides a procedure to be followed in the event there is no written agreement for the transfer of relevant owner data and reservation system information. It requires that the managing entity transfer all of the relevant data to the owners' association within 90 days after receiving notice of the termination vote. The bill specifies certain information that must be included in the transfer. Within 10 days after the completed transfer of the data, the timeshare plan must reimburse the managing entity for all reasonable costs incurred in effecting the transfer of information.

The bill repeals the provisions in s. 721.56(5), F.S., related to the transfer of the reservation system and owner data for multisite timeshare plans. The procedure in s. 721.14(4), F.S., applies to terminations of managing entities of single site or multisite timeshare plans.

Definitions – Multisite Timeshare Plans (Section 6)

The bill amends s. 721.52, F.S., to amend the definitions of the terms “nonspecific multisite timeshare plan” and “specific multisite timeshare plan” to repeal the condition that such plans contain timeshare licenses or personal property timeshare interests.

Term of Nonspecific Multisite Timeshare Plans and other Required Disclosures (Sections 8 and 9)

The bill amends ss. 721.54 and 721.55(4)(a), F.S., to repeal the distinction between specific and nonspecific multisite timeshare plans in regards to the duty to disclose the term of each component site within the timeshare plans. The bill requires that both specific and nonspecific multisite timeshare plans disclose the term of each component site within the timeshare plan. The term of each component site, which is shorter than the term of the multisite timeshare plan, must be disclosed in a conspicuous type.

The bill also amends s. 721.55(4)(h), F.S., to specify that the component site common expenses and ad valorem taxes may not be included in calculating the total common expense assessment, which must be included in the multisite timeshare public offering statement, for the multisite plan in any given year.

Multisite Timeshare Estates (Sections 9, 10, 11, and 13)

The bill amends s. 721.55(5)(7), F.S., relating to the required disclosures in the public offering statement, s. 721.551(2), F.S., relating to the delivery of the public offering statement, and s. 721.552(2), F.S., relating to amendments to multisite timeshare plans, to repeal references to plans offering a timeshare estate pursuant to s. 721.57, F.S.

The bill also amends s. 721.57(2), F.S., to repeal the reference to a timeshare trust in the context of a specific multisite timeshare plan.

Substitutions and Deletions for Multisite Timeshare Plans (Section 11)

The bill amends s. 721.552(2), F.S., to provide for the substitution of accommodations. It modifies the notice required before a substitution will occur to include a statement that purchasers have the right to object to the proposed substitution. The 25 percent limitation on substitutions is repealed and replaced with the following provisions:

- If the developer is authorized to make substitutions, the developer is annually limited to substitution of 10 percent of the annual use availability in the multisite timeshare plan calculated in 7-day increments;
- If the managing entity is authorized to make substitutions, and the managing entity is under common ownership or control with the developer, the managing entity is annually limited to substitution of 10 percent of the annual use availability in the multisite timeshare plan calculated in 7-day increments;
- If the managing entity is authorized to make substitutions, and the managing entity is not under common ownership or control with the developer, the managing entity is annually limited to substitution of 25 percent of the annual use availability in the multisite timeshare plan calculated in 7-day increments; and
- If at least 10 percent of purchasers in the timeshare plan object to a proposed substitution within 21 days after the notice of the substitution, a meeting of the purchasers must be held within 30 days after the end of the 21 period. Unless the proposed substitution is rejected by a majority of purchasers voting and at least 25 percent of the purchasers cast votes, it is deemed approved.

The above requirements do not apply if the timeshare instrument provides that the purchasers have no right to consent to a proposed substitution and if the proposed substitution has been approved pursuant to s. 721.552(2)(f), F.S.

The bill repeals the provision in s. 721.552(2)(f), F.S., which permits a managing entity to substitute all accommodations pursuant to a plan approved by a majority of purchasers and a majority of the board. The bill amends this provision to permit substitutions by purchasers without limit if the proposed substitution is approved in advance by a majority of voting purchasers, provided at least 25 percent of the total number of purchasers cast votes.

The bill creates s. 721.552(2)(g), F.S., to provide that the trustee of a timeshare trust may convey title to any accommodation and facility that has been designated or approved for substitution when directed by the authorized person without any further vote or other authorization from the purchasers of the multisite timeshare plan.

Currently, s. 721.552(3), F.S., allows for the automatic deletion of component sites only if a sufficient number of purchasers of the plan will also be deleted to maintain a one-to-one right to use ratio. The bill amends this provision to also allow for automatic deletions if replacement accommodations that are substantially similar to or better than the deleted accommodations are provided.

Effective Date (Section 14)

The bill is effective 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 721.05, 721.07, 721.08, 721.125, 721.14, 721.52, 721.53, 721.54, 721.55, 721.551, 721.552, 721.56, and 721.57.

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 20, 2015:

The committee substitute:

- Under the bill, developers must provide public offering statements and has limited liability for nonmaterial errors or omissions. The CS provides that the developer has the burden of proof when showing that he or she complied with the requirements of the public offering statement.
- Removes the amendment to s. 721.27, F.S., which clarified that only one annual managing entity fee was required.
- Removes s. 721.58, F.S., which repealed the annual fee for multistate timeshare plans.

B. Amendments:

None.

By Senator Stargel

15-00546C-15

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1 A bill to be entitled
 2 An act relating to timeshares; amending s. 721.05,
 3 F.S.; revising the term "timeshare estate"; amending
 4 s. 721.07, F.S.; revising provisions pertaining to
 5 multisite timeshare plans and clarifying single-site
 6 timeshare plan developer liability for nonmaterial
 7 errors or omissions; amending s. 721.08, F.S.;
 8 providing that leasehold accommodations or facilities
 9 may be added to a timeshare trust; providing that a
 10 vote of the voting interests of a timeshare plan is
 11 not required for substitution or automatic deletion of
 12 multisite timeshare trust property; removing the
 13 requirement for court approval of trustee dispositions
 14 of timeshare trust property; creating s. 721.125,
 15 F.S.; providing for extension or termination of
 16 timeshare plans; amending s. 721.14, F.S.; providing
 17 for the transfer of reservation system data upon
 18 termination of managing entity; amending s. 721.27,
 19 F.S.; clarifying the annual fees due from managing
 20 entities of all timeshare plans; amending s. 721.52,
 21 F.S.; revising the definitions of the terms
 22 "nonspecific multisite timeshare plan" and "specific
 23 multisite timeshare plan"; amending s. 721.53, F.S.;
 24 providing that leasehold accommodations or facilities
 25 may be added to a multisite timeshare trust; providing
 26 that a vote of the voting interests of a multisite
 27 timeshare plan is not required for substitution or
 28 automatic deletion of multisite timeshare trust
 29 property; removing the requirement for court approval

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30 of trustee dispositions of multisite timeshare trust
 31 property; amending s. 721.54, F.S.; eliminating the
 32 term restrictions for nonspecific multisite timeshare
 33 plans; amending s. 721.55, F.S.; requiring the
 34 conspicuous disclosure of the term of each component
 35 site in a multisite timeshare plan; modifying the cap
 36 on common expense assessment increases for multisite
 37 timeshare; clarifying multisite timeshare plan
 38 developer liability for nonmaterial errors or
 39 omissions; amending s. 721.551, F.S.; clarifying the
 40 obligation to deliver component site documents to
 41 purchasers; amending s. 721.552, F.S.; providing
 42 procedures for substitutions and automatic deletions
 43 of multisite timeshare plan accommodations and
 44 facilities; amending s. 721.56, F.S.; relocating data
 45 transfer obligations upon termination of managing
 46 entity to s. 721.14, F.S.; amending s. 721.57, F.S.;
 47 providing for the offering of timeshare estates in a
 48 specific multistate timeshare plan; amending s.
 49 721.58, F.S.; transferring the requirement to pay
 50 annual fees by managing entities of multisite
 51 timeshare plans to s. 721.27; providing an effective
 52 date.

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

56 Section 1. Subsection (34) of section 721.05, Florida
 57 Statutes, is amended to read:

58 721.05 Definitions.—As used in this chapter, the term:

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(34) "Timeshare estate" means a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof, ~~or coupled with. The term includes an ownership~~ ownership interest in a condominium unit pursuant to s. 718.103, an ownership interest in a cooperative unit pursuant to s. 719.103, or a direct or indirect beneficial interest in a trust that complies in all respects with ~~the provisions of s.~~ 721.08(2)(c)4. or s. 721.53(1)(e), provided that the trust does not contain any personal property timeshare interests. A timeshare estate is a parcel of real property under the laws of this state.

Section 2. Paragraph (a) of subsection (3) and paragraph (gg) of subsection (5) of section 721.07, Florida Statutes, are amended to read:

721.07 Public offering statement.—Prior to offering any timeshare plan, the developer must submit a filed public offering statement to the division for approval as prescribed by s. 721.03, s. 721.55, or this section. Until the division approves such filing, any contract regarding the sale of that timeshare plan is subject to cancellation by the purchaser pursuant to s. 721.10.

(3)(a)1. Any change to an approved public offering statement filing must ~~shall~~ be filed with the division for approval as an amendment prior to becoming effective. The division shall have 20 days after receipt of a proposed amendment to approve or cite deficiencies in the proposed amendment. If the division fails to act within 20 days, the amendment will be deemed approved. If the proposed amendment

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adds a new component site to an approved multisite timeshare plan, the division's initial period in which to approve or cite deficiencies is 45 days. If the developer fails to adequately respond to any deficiency notice within 30 days, the division may reject the amendment. Subsequent to such rejection, a new filing fee pursuant to subsection (4) and a new division initial review period pursuant to this paragraph ~~shall~~ apply to any refiling or further review of the rejected amendment.

2. For filings only subject to this part, each approved amendment to the approved purchaser public offering statement, other than an amendment made only for the purpose of the addition of a phase or phases to the timeshare plan in the manner described in the timeshare instrument or any amendment that does not materially alter or modify the offering in a manner that is adverse to a purchaser, shall be delivered to a purchaser no later than 10 days prior to closing. For filings made under part II, each approved amendment to the multisite timeshare plan purchaser public offering statement, other than an amendment made only for the purpose of the addition, substitution, or deletion of a component site pursuant to part II or the addition of a phase or phases to a component site of a multisite timeshare plan in the manner described in the timeshare instrument or any amendment that does not materially alter or modify the offering in a manner that is adverse to a purchaser, shall be delivered to a purchaser no later than 10 days prior to closing.

3. For filing only subject to part II, amendments made to a timeshare instrument for a component site located in this state are only ~~not~~ required to be delivered to purchasers who ~~do not~~

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117 receive ~~a timeshare estate or~~ an interest in a specific
 118 multisite timeshare plan in that component site. Amendments made
 119 to a timeshare instrument for a component site not located in
 120 this state are not required to be delivered to purchasers.

121 (5) Every filed public offering statement for a timeshare
 122 plan which is not a multisite timeshare plan shall contain the
 123 information required by this subsection. The division is
 124 authorized to provide by rule the method by which a developer
 125 must provide such information to the division.

126 (gg) 1. Such other information as is necessary to fairly,
 127 meaningfully, and effectively disclose all aspects of the
 128 timeshare plan, including, but not limited to, any disclosures
 129 made necessary by the operation of s. 721.03(8). ~~However,~~

130 2. If a developer has, in good faith, attempted to comply
 131 with the requirements of this ~~chapter section,~~ and if the
 132 developer, in fact, he or she has substantially complied with
 133 the ~~disclosure~~ requirements of this chapter, nonmaterial errors
 134 or omissions ~~are shall not be~~ actionable, are not violations of
 135 this chapter, and do not give rise to any purchaser cancellation
 136 right.

137 Section 3. Paragraph (c) of subsection (2) of section
 138 721.08, Florida Statutes, is amended to read:

139 721.08 Escrow accounts; nondisturbance instruments;
 140 alternate security arrangements; transfer of legal title.—

141 (2) One hundred percent of all funds or other property
 142 which is received from or on behalf of purchasers of the
 143 timeshare plan or timeshare interest prior to the occurrence of
 144 events required in this subsection shall be deposited pursuant
 145 to an escrow agreement approved by the division. The funds or

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146 other property may be released from escrow only as follows:

147 (c) *Compliance with conditions.*—

148 1. Timeshare licenses.—If the timeshare plan is one in
 149 which timeshare licenses are to be sold and no cancellation or
 150 default has occurred, the escrow agent may release the escrowed
 151 funds or other property to or on the order of the developer upon
 152 presentation of:

153 a. An affidavit by the developer that all of the following
 154 conditions have been met:

155 (I) Expiration of the cancellation period.

156 (II) Completion of construction.

157 (III) Closing.

158 (IV) Either:

159 (A) Execution, delivery, and recordation by each
 160 interestholder of the nondisturbance and notice to creditors
 161 instrument, as described in this section; or

162 (B) Transfer by the developer of legal title to the subject
 163 accommodations and facilities, or all use rights therein, into a
 164 trust satisfying the requirements of subparagraph 4. and the
 165 execution, delivery, and recordation by each other
 166 interestholder of the nondisturbance and notice to creditors
 167 instrument, as described in this section.

168 b. A certified copy of each recorded nondisturbance and
 169 notice to creditors instrument.

170 c. One of the following:

171 (I) A copy of a memorandum of agreement, as defined in s.
 172 721.05, together with satisfactory evidence that the original
 173 memorandum of agreement has been irretrievably delivered for
 174 recording to the appropriate official responsible for

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maintaining the public records in the county in which the subject accommodations and facilities are located. The original memorandum of agreement must be recorded within 180 days after the date on which the purchaser executed her or his purchase agreement.

(II) A notice delivered for recording to the appropriate official responsible for maintaining the public records in each county in which the subject accommodations and facilities are located notifying all persons of the identity of an independent escrow agent or trustee satisfying the requirements of subparagraph 4. that shall maintain separate books and records, in accordance with good accounting practices, for the timeshare plan in which timeshare licenses are to be sold. The books and records shall indicate each accommodation and facility that is subject to such a timeshare plan and each purchaser of a timeshare license in the timeshare plan.

2. Timeshare estates.—If the timeshare plan is one in which timeshare estates are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

b. If the timeshare estate is sold by agreement for deed, a certified copy of the recorded nondisturbance and notice to creditors instrument, as described in this section.

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c. Evidence that each accommodation and facility:

(I) Is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevocably made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument;

(II) Is the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3) and s. 721.17; or

(III) Has been transferred into a trust satisfying the requirements of subparagraph 4.

d. Evidence that the timeshare estate:

(I) Is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevocably made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument; or

(II) Is the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3) and s. 721.17.

3. Personal property timeshare interests.—If the timeshare plan is one in which personal property timeshare interests are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

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233 (III) Closing.

234 b. If the personal property timeshare interest is sold by

235 agreement for transfer, evidence that the agreement for transfer

236 complies fully with s. 721.06 and this section.

237 c. Evidence that one of the following has occurred:

238 (I) Transfer by the owner of the underlying personal

239 property of legal title to the subject accommodations and

240 facilities or all use rights therein into a trust satisfying the

241 requirements of subparagraph 4.; or

242 (II) Transfer by the owner of the underlying personal

243 property of legal title to the subject accommodations and

244 facilities or all use rights therein into an owners' association

245 satisfying the requirements of subparagraph 5.

246 d. Evidence of compliance with ~~the provisions of~~

247 subparagraph 6., if required.

248 e. If a personal property timeshare plan is created with

249 respect to accommodations and facilities that are located on or

250 in an oceangoing vessel, including a "documented vessel" or a

251 "foreign vessel," as defined and governed by 46 U.S.C., chapter

252 301:

253 (I) In making the transfer required in sub-subparagraph c.,

254 the developer shall use as its transfer instrument a document

255 that establishes and protects the continuance of the use rights

256 in the subject accommodations and facilities in a manner that is

257 enforceable by the trust or owners' association.

258 (II) The transfer instrument must ~~shall~~ comply fully with

259 ~~the provisions of~~ this chapter, must ~~shall~~ be part of the

260 timeshare instrument, and must ~~shall~~ contain specific provisions

261 that:

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262 (A) Prohibit the vessel owner, the developer, any manager

263 or operator of the vessel, the owners' association or the

264 trustee, the managing entity, or any other person from incurring

265 any liens against the vessel except for liens that are required

266 for the operation and upkeep of the vessel, including liens for

267 fuel expenditures, repairs, crews' wages, and salvage, and

268 except as provided in sub-sub-subparagraphs 4.b.(III) and

269 5.b.(III). All expenses, fees, and taxes properly incurred in

270 connection with the creation, satisfaction, and discharge of any

271 such permitted lien, or a prorated portion thereof if less than

272 all of the accommodations on the vessel are subject to the

273 timeshare plan, shall be common expenses of the timeshare plan.

274 (B) Grant a lien against the vessel in favor of the owners'

275 association or trustee to secure the full and faithful

276 performance of the vessel owner and developer of all of their

277 obligations to the purchasers.

278 (C) Establish governing law in a jurisdiction that

279 recognizes and will enforce the timeshare instrument and the

280 laws of the jurisdiction of registry of the vessel.

281 (D) Require that a description of the use rights of

282 purchasers be posted and displayed on the vessel in a manner

283 that will give notice of such rights to any party examining the

284 vessel. This notice must identify the owners' association or

285 trustee and include a statement disclosing the limitation on

286 incurring liens against the vessel described in sub-sub-sub-

287 subparagraph (A).

288 (E) Include the nondisturbance and notice to creditors

289 instrument for the vessel owner and any other interestholders.

290 (F) The owners' association created under subparagraph 5.

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or trustee created under subparagraph 4. shall have access to any certificates of classification in accordance with the timeshare instrument.

(III) If the vessel is a foreign vessel, the vessel must be registered in a jurisdiction that permits a filing evidencing the use rights of purchasers in the subject accommodations and facilities, offers protection for such use rights against unfiled and inferior claims, and recognizes the document or instrument creating such use rights as a lien against the vessel.

(IV) In addition to the disclosures required by s. 721.07(5), the public offering statement and purchase contract must contain a disclosure in conspicuous type in substantially the following form:

The laws of the State of Florida govern the offering of this timeshare plan in this state. There are inherent risks in purchasing a timeshare interest in this timeshare plan because the accommodations and facilities of the timeshare plan are located on a vessel that will sail into international waters and into waters governed by many different jurisdictions. Therefore, the laws of the State of Florida cannot fully protect your purchase of an interest in this timeshare plan. Specifically, management and operational issues may need to be addressed in the jurisdiction in which the vessel is registered, which is (insert jurisdiction in which vessel is registered) . Concerns of purchasers may be sent to (insert name of applicable regulatory agency and address) .

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4. Trust.—

a. If the subject accommodations or facilities, or all use rights therein, are to be transferred into a trust in order to comply with this paragraph, ~~the such transfer must shall~~ take place pursuant to this subparagraph. If the accommodations or facilities included in such transfer are subject to a lease, the unexpired term of the lease must be disclosed as the term of the timeshare plan pursuant to s. 721.07(5)(f)4.

b. ~~Before~~ Prior to the transfer ~~by each interestholder~~ of the subject accommodations and facilities, or all use rights therein, to a trust, any lien or other encumbrance against such accommodations and facilities, or use rights therein, ~~must shall~~ be made subject to a nondisturbance and notice to creditors instrument pursuant to subsection (3). ~~A~~ No transfer pursuant to this subparagraph ~~does not shall~~ become effective until the trustee accepts ~~the such~~ transfer and the responsibilities set forth herein. A trust established pursuant to this subparagraph ~~must shall~~ comply with the following provisions:

(I) The trustee ~~must shall~~ be an individual or a business entity authorized and qualified to conduct trust business in this state. Any corporation authorized to do business in this state may act as trustee in connection with a timeshare plan pursuant to this chapter. The trustee must be independent from any developer or managing entity of the timeshare plan or any interestholder of any accommodation or facility of such plan.

(II) The trust ~~must shall~~ be irrevocable so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

(III) The trustee ~~may shall~~ not convey, hypothecate,

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349 mortgage, assign, lease, or otherwise transfer or encumber in
 350 any fashion any interest in or portion of the timeshare property
 351 with respect to which any purchaser has a right of use or
 352 occupancy unless the timeshare plan is terminated pursuant to
 353 the timeshare instrument, or such conveyance, hypothecation,
 354 mortgage, assignment, lease, transfer, or encumbrance is
 355 approved by a vote of two-thirds of all voting interests of the
 356 timeshare plan. Subject to s. 721.552, a vote of the voting
 357 interests of the timeshare plan is not required for substitution
 358 or for automatic deletion of accommodations or facilities and
 359 such decision is declared by a court of competent jurisdiction
 360 to be in the best interests of the purchasers of the timeshare
 361 plan. The trustee shall notify the division in writing within 10
 362 days after receiving notice of the filing of any petition
 363 relating to obtaining such a court order. The division shall
 364 have standing to advise the court of the division's
 365 interpretation of the statute as it relates to the petition.

366 (IV) All purchasers of the timeshare plan or the owners'
 367 association of the timeshare plan must shall be the express
 368 beneficiaries of the trust. The trustee must shall act as a
 369 fiduciary to the beneficiaries of the trust. The personal
 370 liability of the trustee must shall be governed by ss.
 371 736.08125, 736.08163, 736.1013, and 736.1015. The agreement
 372 establishing the trust must shall set forth the duties of the
 373 trustee. The trustee must shall be required to furnish promptly
 374 to the division upon request a copy of the complete list of the
 375 names and addresses of the owners in the timeshare plan and a
 376 copy of any other books and records of the timeshare plan
 377 required to be maintained pursuant to s. 721.13 that are in the

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378 possession, custody, or control of the trustee. All expenses
 379 reasonably incurred by the trustee in the performance of its
 380 duties, together with any reasonable compensation of the
 381 trustee, ~~must shall~~ be common expenses of the timeshare plan.

382 (V) The trustee ~~may shall~~ not resign upon less than 90
 383 days' prior written notice to the managing entity and the
 384 division. ~~A No~~ resignation does not shall become effective until
 385 a substitute trustee, approved by the division, is appointed by
 386 the managing entity and accepts the appointment.

387 (VI) The documents establishing the trust arrangement must
 388 shall constitute a part of the timeshare instrument.

389 (VII) For trusts holding property in a timeshare plan
 390 located outside this state, the trust and trustee holding such
 391 property are shall be deemed in compliance with the requirements
 392 of this subparagraph if the such trust and trustee are
 393 authorized and qualified to conduct trust business under the
 394 laws of the such jurisdiction and the agreement or law governing
 395 the such trust arrangement provides substantially similar
 396 protections for the purchaser as are required in this
 397 subparagraph for trusts holding property in a timeshare plan in
 398 this state.

399 (VIII) The trustee must shall have appointed a registered
 400 agent in this state for service of process. In the event such a
 401 registered agent is not appointed, service of process may be
 402 served pursuant to s. 721.265.

403 5. Owners' association.—

404 a. If the subject accommodations or facilities, or all use
 405 rights therein, are to be transferred into an owners'
 406 association in order to comply with this paragraph, such

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transfer must ~~shall~~ take place pursuant to this subparagraph.

b. Prior to the transfer ~~by each interestholder~~ of the subject accommodations and facilities, or all use rights therein, to an owners' association, any lien or other encumbrance against such accommodations and facilities, or use rights therein, must ~~shall~~ be made subject to a nondisturbance and notice to creditors instrument pursuant to subsection (3). A ~~No~~ transfer pursuant to this subparagraph does not ~~shall~~ become effective until the owners' association accepts the ~~such~~ transfer and the responsibilities set forth herein. An owners' association established pursuant to this subparagraph must ~~shall~~ comply with the following provisions:

(I) The owners' association must ~~shall~~ be a business entity authorized and qualified to conduct business in this state. Control of the board of directors of the owners' association must be independent from any developer or managing entity of the timeshare plan or any interestholder.

(II) The bylaws of the owners' association must ~~shall~~ provide that the corporation may not be voluntarily dissolved without the unanimous vote of all owners of personal property timeshare interests so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

(III) The owners' association may ~~shall~~ not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interest in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy, unless the timeshare plan is terminated pursuant to the timeshare instrument, or unless such

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conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by a vote of two-thirds of all voting interests of the association and the ~~such~~ decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan. The owners' association must ~~shall~~ notify the division in writing within 10 days after receiving notice of the filing of any petition relating to obtaining such a court order. The division has ~~shall~~ ~~have~~ standing to advise the court of the division's interpretation of the statute as it relates to the petition.

(IV) All purchasers of the timeshare plan must ~~shall~~ be members of the owners' association and must ~~shall~~ be entitled to vote on matters requiring a vote of the owners' association as provided in this chapter or the timeshare instrument. The owners' association must ~~shall~~ act as a fiduciary to the purchasers of the timeshare plan. The articles of incorporation establishing the owners' association must ~~shall~~ set forth the duties of the owners' association. All expenses reasonably incurred by the owners' association in the performance of its duties, together with any reasonable compensation of the officers or directors of the owners' association, must ~~shall~~ be common expenses of the timeshare plan.

(V) The documents establishing the owners' association must ~~shall~~ constitute a part of the timeshare instrument.

(VI) For owners' associations holding property in a timeshare plan located outside this state, the owners' association holding the ~~such~~ property is ~~shall be~~ deemed in compliance with the requirements of this subparagraph if such owners' association is authorized and qualified to conduct

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owners' association business under the laws of such jurisdiction and the agreement or law governing such arrangement provides substantially similar protections for the purchaser as are required in this subparagraph for owners' associations holding property in a timeshare plan in this state.

(VII) The owners' association ~~must~~ shall have appointed a registered agent in this state for service of process. In the event such a registered agent cannot be located, service of process may be made pursuant to s. 721.265.

6. Personal property subject to certificate of title.—If any personal property that is an accommodation or facility of a timeshare plan is subject to a certificate of title in this state pursuant to chapter 319 or chapter 328, the following notation must be made on such certificate of title pursuant to s. 319.27(1) or s. 328.15(1):

The further transfer or encumbrance of the property subject to this certificate of title, or any lien or encumbrance thereon, is subject to the requirements of section 721.17, Florida Statutes, and the transferee or lienor agrees to be bound by all of the obligations set forth therein.

7. Certified document copies.—If the developer has previously provided a certified copy of any document required by this paragraph, she or he may for all subsequent disbursements substitute a true and correct copy of the certified copy, provided no changes to the document have been made or are required to be made.

8. Rights transferred into trust or owners' association.—In

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the event that use rights relating to an accommodation or facility are transferred into a trust pursuant to subparagraph 4. or into an owners' association pursuant to subparagraph 5., all other interestholders, including the owner of the underlying fee or underlying personal property, must execute a nondisturbance and notice to creditors instrument pursuant to subsection (3).

Section 4. Section 721.125, Florida Statutes, is created to read:

721.125 Extension or termination of timeshare plans.—

(1) Unless the timeshare instrument provides otherwise, the vote or written consent, or both, of at least 60 percent of all of the voting interests in the timeshare plan may extend or terminate the term of a timeshare plan at any time. If the term of a timeshare plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan. If a timeshare plan terminates pursuant to this section, the termination has immediate effect pursuant to applicable law and the timeshare instrument as if the effective date of the termination were the original date of termination.

(2) If a termination or extension vote or consent pursuant to subsection (1) is proposed for a component site of a multisite timeshare plan located in this state, the proposed termination or extension is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also

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approves the termination or extension.

(3) This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of the termination or extension vote or consent required by subsection (1).

Section 5. Subsection (4) of section 721.14, Florida Statutes, is amended to read:

721.14 Discharge of managing entity.—

(4)(a) An owners' association and a manager or management firm may, in the management contract or other written document, agree to the transition procedures and related time periods to be followed in the event the manager or management firm is discharged pursuant to this section. If there is no written agreement between the parties which covers the matters set forth in paragraphs (b) and (c), the provisions of paragraphs (b) and (c) shall apply.

(b) Within 90 days after the date on which the manager or management firm is notified by the owners' association of the successful termination vote pursuant to subsection (1), the terminated managing entity shall transfer to the owners' association or the new manager or management firm all relevant data held by the managing entity and related to any reservation system for the timeshare plan, including, but not limited to:

1. The names, addresses, and reservation status of all accommodations.

2. The names and addresses of all purchasers of timeshare interests.

3. All outstanding confirmed reservations and reservation requests.

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4. Such other records and information as are necessary to permit the uninterrupted operation and administration of the timeshare plan. However, the information required to be transferred does not include private information of the terminated managing entity which is not directly related to operation and management of the timeshare plan.

(c) All reasonable costs incurred by the terminated managing entity in carrying out the transfer of information required by this subsection shall be reimbursed to the terminated managing entity as a common expense of the timeshare plan within 10 days after the completed transfer of the data described in paragraph (b). This section shall not apply to personal property timeshare plans.

Section 6. Section 721.27, Florida Statutes, is amended to read:

721.27 Annual managing entity fee for each timeshare unit in plan.—For each timeshare unit On January 1 of each year, each managing entity of a timeshare plan located in this state, the managing entity must shall collect as a common expense and pay to the division on January 1 of each year an annual fee of \$2 for each 7 days of annual use availability that exist within the timeshare plan at that time. Only one fee is due and payable for any 7 days of annual use availability that is included within both a single-site timeshare plan under this part and a multisite timeshare plan under part II, subject to any limitations on the amount of such annual fee pursuant to s. 721.58. If any portion of the annual fee is not paid by March 1, the managing entity may be assessed a penalty pursuant to s. 721.26.

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581 Section 7. Subsections (5) and (7) of section 721.52,
582 Florida Statutes, are amended to read:

583 721.52 Definitions.—As used in this chapter, the term:

584 (5) "Nonspecific multisite timeshare plan" means a
585 multisite timeshare plan ~~containing timeshare licenses or~~
586 ~~personal property timeshare interests~~, with respect to which a
587 purchaser receives a right to use all of the accommodations and
588 facilities, if any, of the multisite timeshare plan through the
589 reservation system, but no specific right to use any particular
590 accommodations and facilities for the remaining term of the
591 multisite timeshare plan in the event that the reservation
592 system is terminated for any reason prior to the expiration of
593 the term of the multisite timeshare plan.

594 (7) "Specific multisite timeshare plan" means a multisite
595 timeshare plan ~~containing timeshare licenses or personal~~
596 ~~property timeshare interests~~, with respect to which a purchaser
597 receives a specific right to use accommodations and facilities,
598 if any, at one component site of a multisite timeshare plan,
599 together with use rights in the other accommodations and
600 facilities of the multisite timeshare plan created by or
601 acquired through the reservation system.

602 Section 8. Paragraph (e) of subsection (1) of section
603 721.53, Florida Statutes, is amended to read:

604 721.53 Subordination instruments; alternate security
605 arrangements.—

606 (1) With respect to each accommodation or facility of a
607 multisite timeshare plan, the developer shall provide the
608 division with satisfactory evidence that one of the following
609 has occurred with respect to each interestholder prior to

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610 offering the accommodation or facility as a part of the
611 multisite timeshare plan:

612 (e) The interestholder has transferred the subject
613 accommodation or facility or all use rights therein to a trust
614 that complies with this paragraph. If the accommodation or
615 facility included in such transfer is subject to a lease, the
616 unexpired term of the lease must be disclosed as the term of
617 that component site pursuant to s. 721.55(4)(a). Prior to the
618 ~~such~~ transfer, any lien or other encumbrance against the ~~such~~
619 accommodation or facility must ~~shall~~ be made subject to a
620 nondisturbance and notice to creditors instrument pursuant to
621 paragraph (a) or a subordination and notice to creditors
622 instrument pursuant to paragraph (b). A ~~No~~ transfer pursuant to
623 this paragraph does not ~~shall~~ become effective until the trust
624 accepts the ~~such~~ transfer and the responsibilities set forth
625 herein. A trust established pursuant to this paragraph must
626 ~~shall~~ comply with the following provisions:

627 1. The trustee must ~~shall~~ be an individual or a business
628 entity authorized and qualified to conduct trust business in
629 this state. Any corporation authorized to do business in this
630 state may act as trustee in connection with a timeshare plan
631 pursuant to this chapter. The trustee must be independent from
632 any developer or managing entity of the timeshare plan or any
633 interestholder of any accommodation or facility of such plan.
634 The same trustee may hold the accommodations and facilities, or
635 use rights therein, for one or more of the component sites of
636 the timeshare plan.

637 2. The trust must ~~shall~~ be irrevocable so long as any
638 purchaser has a right to occupy any portion of the timeshare

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property pursuant to the timeshare plan.

3. The trustee ~~may shall~~ not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interests in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy unless the timeshare plan is terminated pursuant to the timeshare instrument, or the timeshare property held in trust is deleted from a multisite timeshare plan pursuant to s. 721.552(3), or such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by vote of two-thirds of all voting interests of the timeshare plan. Subject to s. 721.552, a vote of the voting interests of the timeshare plan is not required for substitution or for automatic deletion of accommodations or facilities and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan.

4. All purchasers of the timeshare plan or the owners' association of the timeshare plan must shall be express beneficiaries of the trust. The trustee must shall act as a fiduciary to the beneficiaries of the trust. The personal liability of the trustee must shall be governed by ss. 736.08125, 736.08163, 736.1013, and 736.1015. The agreement establishing the trust must shall set forth the duties of the trustee. The trustee must shall be required to furnish promptly to the division upon request a copy of the complete list of the names and addresses of the owners in the timeshare plan and a copy of any other books and records of the timeshare plan required to be maintained pursuant to s. 721.13 which that are in the possession of the trustee. All expenses reasonably

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incurred by the trustee in the performance of its duties, together with any reasonable compensation of the trustee, must shall be common expenses of the timeshare plan.

5. The trustee ~~may shall~~ not resign upon less than 90 days' prior written notice to the managing entity and the division. A ~~No~~ resignation is not shall become effective until a substitute trustee, approved by the division, is appointed by the managing entity and accepts the appointment.

6. The documents establishing the trust arrangement must shall constitute a part of the timeshare instrument.

7. For trusts holding property in component sites located outside this state, the trust holding such property is shall be deemed in compliance with the requirements of this paragraph, if the such trust is authorized and qualified to conduct trust business under the laws of the such jurisdiction and the agreement or law governing the such trust arrangement provides substantially similar protections for the purchaser as are required in this paragraph for trusts holding property in a component site located in this state.

8. The trustee must appoint shall have appointed a registered agent in this state for service of process. In the event ~~such~~ a registered agent is not appointed, service of process may be served pursuant to s. 721.265.

Section 9. Section 721.54, Florida Statutes, is amended to read:

~~721.54 Term of nonspecific multisite timeshare plans.—It shall be a violation of this part to represent to a purchaser of a nonspecific multisite timeshare plan as defined in s. 721.52(5) that the term of the plan for that purchaser is longer~~

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697 ~~than the shortest term of availability of any of the~~
 698 ~~accommodations included within the plan at the time of purchase.~~

699 Section 10. Paragraphs (a) and (h) of subsection (4),
 700 subsection (5), and paragraph (1) of subsection (7) of section
 701 721.55, Florida Statutes, are amended to read:

702 721.55 Multisite timeshare plan public offering statement.—
 703 Each filed public offering statement for a multisite timeshare
 704 plan shall contain the information required by this section and
 705 shall comply with the provisions of s. 721.07, except as
 706 otherwise provided therein. The division is authorized to
 707 provide by rule the method by which a developer must provide
 708 such information to the division. Each multisite timeshare plan
 709 filed public offering statement shall contain the following
 710 information and disclosures:

711 (4) A text, which shall include, where applicable, the
 712 information and disclosures set forth in paragraphs (a)-(1).

713 (a) A description of the multisite timeshare plan,
 714 including its term, legal structure, ~~and~~ form of ownership, and—
 715 ~~For multisite timeshare plans in which the purchaser will~~
 716 ~~receive a timeshare estate pursuant to s. 721.57 and for~~
 717 ~~specific multisite timeshare plans, the description must also~~
 718 ~~include the term of each component site within the multisite~~
 719 ~~timeshare plan. The term of each component site which is shorter~~
 720 ~~than the term of the multisite timeshare plan must be disclosed~~
 721 in conspicuous type.

722 (h) A description of the purchaser's liability for common
 723 expenses of the multisite timeshare plan, including the
 724 following:

725 1. A description of the common expenses of the plan,

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726 including the method of allocation and assessment of such common
 727 expenses, whether component site common expenses and real estate
 728 taxes are included within the total common expense assessment of
 729 the multisite timeshare plan, and, if not, the manner in which
 730 timely payment of component site common expenses and real estate
 731 taxes will ~~shall~~ be accomplished.

732 2. A description of any cap imposed upon the level of
 733 common expenses payable by the purchaser.

734 a. In no event shall The total common expense assessment
 735 for the multisite timeshare plan in a given calendar year may
 736 not exceed 125 percent of the total common expense assessment
 737 for the plan in the previous calendar year.

738 b. Component site common expenses and ad valorem taxes may
 739 not be included in calculating the total common expense
 740 assessment under sub-subparagraph a.

741 3. A description of the entity responsible for the
 742 determination of the common expenses of the multisite timeshare
 743 plan, as well as any entity which may increase the level of
 744 common expenses assessed against the purchaser at the multisite
 745 timeshare plan level.

746 4. A description of the method used to collect common
 747 expenses, including the entity responsible for such collections,
 748 and the lien rights of any entity for nonpayment of common
 749 expenses. If the common expenses of any component site are
 750 collected by the managing entity of the multisite timeshare
 751 plan, a statement to that effect together with the identity and
 752 address of the escrow agent required by s. 721.56(3).

753 5. If the purchaser will receive an interest in a
 754 nonspecific multisite timeshare plan, a statement that a

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multisite timeshare plan budget is attached to the public offering statement as an exhibit pursuant to paragraph (7)(c). The multisite timeshare plan budget ~~must shall~~ comply with the ~~provisions of~~ s. 721.07(5)(t).

6. If the developer intends to guarantee the level of assessments for the multisite timeshare plan, ~~the such~~ guarantee must be based upon a good faith estimate of the revenues and expenses of the multisite timeshare plan. The guarantee must include a description of the following:

a. The specific time period, measured in one or more calendar or fiscal years, during which the guarantee will be in effect.

b. A statement that the developer will pay all common expenses incurred in excess of the total revenues of the multisite timeshare plan, if the developer is to be excused from the payment of assessments during the guarantee period.

c. The level, expressed in total dollars, at which the developer guarantees the assessments. If the developer has reserved the right to extend or increase the guarantee level, a disclosure must be included to that effect.

7. If required under applicable law, the developer must ~~shall~~ also disclose the following matters for each component site:

a. Any limitation upon annual increases in common expenses;

b. The existence of any bad debt or working capital reserve; and

c. The existence of any replacement or deferred maintenance reserve.

(5) (a) ~~Such~~ Other information as the division determines is

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necessary to fairly, meaningfully, and effectively disclose all aspects of the multisite timeshare plan, including, but not limited to, any disclosures made necessary by the operation of s. 721.03(8).

~~(b) However,~~ If a developer has, in good faith, attempted to comply with the requirements of this chapter section, and if, ~~in fact,~~ the developer has substantially complied with the ~~disclosure~~ requirements of this chapter, nonmaterial errors or omissions are shall not be actionable, are not violations of this chapter, and do not give rise to any purchaser cancellation right.

(7) The following documents must shall be included as exhibits to the filed public offering statement, if applicable:

(1)1. If the multisite timeshare plan contains any component sites located in this state, the information required by s. 721.07(5) pertaining to each such component site unless exempt pursuant to s. 721.03.

2. If the purchaser receives ~~will receive a timeshare estate pursuant to s. 721.57, or~~ an interest in a specific multisite timeshare plan, ~~in a~~ component site that is located outside of this state but that which is offered in this state, the information required by s. 721.07(5) pertaining to that component site, provided, however, that ~~the provisions of~~ s. 721.07(5)(t) must shall only require disclosure of information related to the estimated budget for the timeshare plan and purchaser's expenses as required by the jurisdiction in which the component site is located.

Section 11. Paragraph (c) of subsection (2) of section 721.551, Florida Statutes, is amended to read:

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813 721.551 Delivery of multisite timeshare plan purchaser
814 public offering statement.—

815 (2) The developer shall furnish each purchaser with the
816 following:

817 (c) If the purchaser receives ~~will receive a timeshare~~
818 ~~estate pursuant to s. 721.57, or~~ an interest in a specific
819 multisite timeshare plan, ~~in a~~ component site located in this
820 state, the developer must ~~shall~~ also furnish the purchaser with
821 the information required to be delivered pursuant to s.
822 721.07(6)(a) and (b) for that ~~the~~ component site ~~in which the~~
823 ~~purchaser will receive an estate or interest in a specific~~
824 ~~multisite timeshare plan.~~

825 Section 12. Subsection (2) and paragraph (c) of subsection
826 (3) of section 721.552, Florida Statutes, are amended to read:
827 721.552 Additions, substitutions, or deletions of component
828 site accommodations or facilities; purchaser remedies for
829 violations.—Additions, substitutions, or deletions of component
830 site accommodations or facilities may be made only in accordance
831 with the following:

832 (2) SUBSTITUTIONS.—

833 (a) Substitutions are available only for nonspecific
834 multisite timeshare plans. Specific multisite timeshare plans ~~or~~
835 ~~plans offering timeshare estates pursuant to s. 721.57~~ may not
836 contain an accommodation substitution right.

837 (b) The timeshare instrument must ~~shall~~ provide for the
838 following:

839 1. The basis upon which new accommodations and facilities
840 may be substituted for existing accommodations and facilities of
841 the multisite timeshare plan; by whom substitutions may be made;

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842 and the basis upon which the determination may be made to cause
843 the ~~such~~ substitutions to occur.

844 2. The replacement accommodations and facilities must
845 provide purchasers with an opportunity to enjoy a substantially
846 similar or improved vacation experience as compared to the
847 experience as was available at ~~with~~ the replaced accommodation
848 or facility. In determining whether the replacement
849 accommodations and facilities will provide a substantially
850 similar or improved vacation experience, all relevant factors
851 must be considered, including, but not limited to, some or all
852 of the following: size, capacity, furnishings, maintenance,
853 location (geographic, topographic, and scenic), demand, ~~and~~
854 availability for purchaser use, and recreational capabilities.

855 3. The extent, if any, to which purchasers will have the
856 right to consent to any proposed substitutions.

857 (c) ~~No~~ Substitutions may not be made during the first year
858 after the developer begins to offer the multisite timeshare
859 plan.

860 (d) 1. If the timeshare instrument provides that the
861 developer, acting unilaterally, is the person authorized to make
862 substitutions, the developer may not substitute ~~No more than 25~~
863 ~~percent of the~~ available accommodations in the multisite
864 timeshare plan at a given component site may undergo
865 substitution in a given calendar year pursuant to paragraph (e)
866 if the number of such substituted accommodations provides more
867 than 10 percent of the total annual use availability in the
868 multisite timeshare plan calculated in 7-day increments in which
869 substitution is permitted. This paragraph shall be interpreted
870 to permit the substitution of an entire component site over a 4-

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871 ~~year period.~~

872 2. If the timeshare instrument provides that the managing
 873 entity is the person authorized to make substitutions and if the
 874 managing entity is under common ownership or control with the
 875 developer, the managing entity may not substitute available
 876 accommodations in the multisite timeshare plan in a given
 877 calendar year pursuant to paragraph (e) if the number of the
 878 substituted accommodations provides more than 10 percent of the
 879 total annual use availability in the multisite timeshare plan
 880 calculated in 7-day increments.

881 3. If the timeshare instrument provides that the managing
 882 entity is the person authorized to make substitutions and if the
 883 managing entity is not under common ownership or control with
 884 the developer, the managing entity may not substitute available
 885 accommodations in the multisite timeshare plan in a given
 886 calendar year pursuant to paragraph (e) if the number of the
 887 substituted accommodations provides more than 25 percent of the
 888 total annual use availability in the multisite timeshare plan
 889 calculated in 7-day increments.

890 4. If the person authorized to make substitutions receives,
 891 within 21 days after the date of the notice of substitution
 892 required by paragraph (e), a written objection to the proposed
 893 substitution from at least 10 percent of all purchasers in the
 894 multisite timeshare plan, the managing entity must conduct a
 895 meeting of the purchasers within 30 days after the end of the
 896 21-day period. The proposed substitution is deemed ratified
 897 unless a majority of purchasers voting in person or by proxy at
 898 the meeting reject the proposed substitution, provided that at
 899 least 25 percent of all purchasers cast votes. This subparagraph

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900 does not apply if the timeshare instrument provides that
 901 purchasers will have no right to consent to any proposed
 902 substitution.

903 5. This paragraph does not apply if the proposed
 904 substitution has been approved in advance pursuant to paragraph
 905 (f).

906 (e) The person authorized to make substitutions ~~must~~ shall
 907 notify all purchasers of the multisite timeshare plan in writing
 908 of her or his intention to delete accommodations or facilities
 909 ~~at a given component site~~ and to substitute them with other
 910 specified accommodations or facilities pursuant to this
 911 subsection. This notice must be given at least 6 months in
 912 advance of the date that the proposed substitution will occur;
 913 must state the last day after the end of the 6-month period on
 914 which reservations will be accepted from purchasers for use of
 915 the accommodations to be deleted; and must state that purchasers
 916 shall have 21 days after the date of the notice of substitution
 917 to file a written objection with the person authorized to make
 918 substitutions. ~~7 and the notice must inform the purchasers that~~
 919 ~~they may reserve the use of the accommodations to be deleted~~
 920 ~~during this 6-month period. At the end of the 6-month period,~~
 921 The person authorized to make substitutions may delete
 922 accommodations for substitution only after there are no longer
 923 any pending purchaser reservations for those accommodations only
 924 ~~to the extent that they were not reserved during the 6-month~~
 925 ~~period.~~

926 (f) The person authorized to make substitutions may make
 927 unlimited substitutions ~~if the managing entity of a multisite~~
 928 ~~timeshare plan includes an owners' association composed of all~~

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929 ~~purchasers or a corporation which owns or controls the~~
 930 ~~accommodations and facilities of the plan, the board of~~
 931 ~~administration of either of which is comprised of a majority of~~
 932 ~~board members elected by purchasers other than the developer,~~
 933 ~~and if such managing entity has the right to make substitutions~~
 934 ~~pursuant to the timeshare instrument, all of the available~~
 935 ~~accommodations at a given component site may undergo~~
 936 ~~substitution in a given year without compliance with paragraphs~~
 937 ~~(d) and (e) if a proposed written plan of substitution is~~
 938 ~~provided to each purchaser has been approved in advance by a~~
 939 ~~majority of the purchasers of the multisite timeshare plan~~
 940 ~~voting in person or by proxy at a meeting called for that~~
 941 ~~purpose, provided that at least 25 percent of the total number~~
 942 ~~of purchasers cast votes the board of administration and by a~~
 943 ~~majority of all purchasers in the plan. The plan of substitution~~
 944 ~~must:~~
 945 ~~1. Specifically identify the component site being replaced~~
 946 ~~and the proposed substitute component site.~~
 947 ~~2. Contain information regarding prior demand for purchaser~~
 948 ~~use of the component site being replaced.~~
 949 ~~3. Provide the results of a survey of purchaser attitudes~~
 950 ~~regarding the component site being replaced and the proposed~~
 951 ~~substitute component site.~~
 952 ~~4. Explain the practical and business reasons for effecting~~
 953 ~~a total substitution within the given calendar year.~~
 954 ~~5. Provide a plan for handling reservation requests during~~
 955 ~~the substitution period for both the component site being~~
 956 ~~replaced and the proposed substitute component site.~~
 957

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958 Substitutions made pursuant to this paragraph are ~~shall~~ not be
 959 subject to the provisions of subparagraph (b)2.
 960 (g) If the person authorized to make substitutions has
 961 complied with this subsection and the timeshare instrument, the
 962 trustee of a timeshare trust qualified under s. 721.53(1)(e) may
 963 convey title to any accommodation and facility that has been
 964 designated or approved for substitution when directed by the
 965 person authorized to make substitutions without any further vote
 966 or other authorization of the purchasers of the multisite
 967 timeshare plan.
 968 (h) The person who is authorized by the timeshare
 969 instrument to make substitutions to the multisite timeshare plan
 970 pursuant to this subsection must ~~shall~~ act as a fiduciary ~~in~~
 971 ~~such capacity~~ in the best interests of the purchasers of the
 972 plan as a whole and must ~~shall~~ adhere to the demand balancing
 973 standard set forth in s. 721.56(6) in connection with the ~~such~~
 974 substitutions. Substitutions that are otherwise permitted may be
 975 made only so long as a one-to-one use right to use night
 976 requirement ratio is maintained at all times.
 977 (3) DELETIONS.—
 978 (c) *Automatic deletion.*—The timeshare instrument may
 979 provide that a component site will be automatically deleted upon
 980 the expiration of its term ~~in a timeshare plan other than a~~
 981 ~~nonspecific multisite timeshare plan~~ or as otherwise provided in
 982 the timeshare instrument. However, the timeshare instrument must
 983 also provide that in the event a component site is deleted from
 984 the plan in this manner, either a sufficient number of
 985 purchasers of the plan will also be deleted, or a sufficient
 986 number of replacement accommodations and facilities that comply

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with subparagraph (2)(b)2. will be substituted for the deleted accommodations and facilities, so as to maintain no greater than a one-to-one use right to use night requirement ratio.

Section 13. Subsection (5) of section 721.56, Florida Statutes, is amended to read:

721.56 Management of multisite timeshare plans; reservation systems; demand balancing.—

(5)(a)1. ~~The reservation system is a facility of any nonspecific multisite timeshare plan. The reservation system is not a facility of any specific multisite timeshare plan, nor is it a facility of any multisite timeshare plan in which timeshare estates are offered pursuant to s. 721.57.~~

2. ~~The reservation system of any multisite timeshare plan shall include any computer software and hardware employed for the purpose of enabling or facilitating the operation of the reservation system. Nothing contained in this part precludes shall preclude~~ a manager or management firm that is serving as managing entity of a multisite timeshare plan from providing in its contract with the purchasers or owners' association of the multisite timeshare plan or in the timeshare instrument that the manager or management firm owns the reservation system and that the managing entity will ~~shall~~ continue to own the reservation system in the event the purchasers discharge the managing entity pursuant to s. 721.14.

~~(b) In the event of a termination of a managing entity of a nonspecific multisite timeshare plan, which managing entity owns the reservation system, irrespective of whether the termination is voluntary or involuntary and irrespective of the cause of such termination, in addition to any other remedies available to~~

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~~purchasers in this part, the terminated managing entity shall, prior to such termination, establish a trust meeting the criteria set forth in this paragraph. It is the intent of the Legislature that this trust arrangement provide for an adequate period of continued operation of the reservation system of the multisite timeshare plan, during which period the new managing entity shall make provision for the acquisition of a substitute reservation system.~~

~~1. The trust shall be established with an independent trustee. Both the terminated managing entity and the new managing entity shall attempt to agree on an acceptable trustee. In the event they cannot agree on an acceptable trustee, they shall each designate a nominee, and the two nominees shall select the trustee.~~

~~2. The terminated managing entity shall take all steps necessary to enable the trustee or the trustee's designee to operate the reservation system in the same manner as provided in the timeshare instrument and the public offering statement. The trustee may, but shall not be required to, contract with the terminated managing entity for the continued operation of the reservation system. In the event the trustee elects to contract with the terminated managing entity, that managing entity shall be required to operate the reservation system and shall be entitled to payment for that service. The payment shall in no event exceed the amount previously paid to the terminated managing entity for operation of the reservation system.~~

~~3. The trust shall remain in effect for a period of no longer than 1 year following the date of termination of the managing entity.~~

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4. ~~Nothing contained in this subsection shall abrogate or otherwise interfere with any proprietary rights in the reservation system that have been reserved by the discharged managing entity, in its management contract or otherwise, so long as such proprietary rights are not asserted in a manner that would prevent the continued operation of the reservation system as contemplated in this subsection.~~

~~(c) In the event of a termination of a managing entity of a timeshare estate or specific multisite timeshare plan, which managing entity owns the reservation system, irrespective of whether the termination is voluntary or involuntary and irrespective of the cause of such termination, in addition to any other remedies available to purchasers in this part, the terminated managing entity shall, prior to such termination, promptly transfer to each component site managing entity all relevant data contained in the reservation system with respect to that component site, including, but not limited to:~~

~~1. The names, addresses, and reservation status of component site accommodations.~~

~~2. The names and addresses of all purchasers of timeshare interests at that component site.~~

~~3. All outstanding confirmed reservations and reservation requests for that component site.~~

~~4. Such other component site records and information as are necessary, in the reasonable discretion of the component site managing entity, to permit the uninterrupted operation and administration of the component site, provided that a given component site managing entity shall not be entitled to any information regarding other component sites or regarding the~~

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~~terminated multisite timeshare plan managing entity.~~

~~All reasonable costs incurred by the terminated managing entity in effecting the transfer of information required by this paragraph shall be reimbursed to the terminated managing entity on a pro rata basis by each component site, and the amount of such reimbursement shall constitute a common expense of each component site.~~

Section 14. Section 721.57, Florida Statutes, is amended to read:

721.57 Offering of timeshare estates in specific multisite timeshare plans; required provisions in the timeshare instrument.—

(1) In addition to meeting all the requirements of part I, timeshare estates offered in a specific multisite timeshare plan must meet the requirements of subsection (2). Any offering of timeshare estates in a specific multisite timeshare plan that does not comply with these requirements shall be deemed to be an offering of a timeshare license.

(2) The timeshare instrument of a specific multisite timeshare plan in which timeshare estates are offered, ~~other than a trust meeting the requirements of s. 721.08,~~ must contain or provide for all of the following matters:

(a) The purchaser will receive a timeshare estate as defined in s. 721.05 in one of the component sites of the specific multisite timeshare plan. The use rights in the other component sites of the multisite timeshare plan must ~~shall~~ be made available to the purchaser through the reservation system pursuant to the timeshare instrument.

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1103 (b) In the event that the reservation system is terminated
 1104 or otherwise becomes unavailable for any reason prior to the
 1105 expiration of the term of the specific multisite timeshare plan:

1106 1. The purchaser will be able to continue to use the
 1107 accommodations and facilities of the component site in which she
 1108 or he has been conveyed a timeshare estate in the manner
 1109 described in the timeshare instrument for that component site
 1110 for the remaining term of the timeshare estate; and

1111 2. Any use rights in that component site which had
 1112 previously been made available through the reservation system to
 1113 purchasers of the specific multisite timeshare plan who were not
 1114 offered a timeshare estate at that component site will terminate
 1115 when the reservation system is terminated or otherwise becomes
 1116 unavailable for any reason.

1117 Section 15. Section 721.58, Florida Statutes, is amended to
 1118 read:

1119 721.58 Filing fee; ~~annual fee.~~

1120 ~~(1)~~ The developer of the multisite timeshare plan must
 1121 ~~shall~~ pay the filing fee required by s. 721.07(4) (a); however,
 1122 the maximum amount of such filing fee is ~~shall be~~ \$25,000 or the
 1123 total filing fee due with respect to the timeshare units in the
 1124 multisite timeshare plan that are located in this state pursuant
 1125 to s. 721.07(4) (a), whichever is greater.

1126 ~~(2) The managing entity of the multisite timeshare plan~~
 1127 ~~shall pay the annual fee required by s. 721.27; provided,~~
 1128 ~~however, that the maximum amount of such annual fee shall be~~
 1129 ~~\$25,000 or the total annual fee due with respect to the~~
 1130 ~~timeshare units in the multisite timeshare plan that are located~~
 1131 ~~in this state calculated pursuant to s. 721.07(4) (a), whichever~~

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

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1132 ~~is greater.~~

1133 Section 16. This act shall take effect July 1, 2015.

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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)

4/20/15
Meeting Date

SB 932
Bill Number (if applicable)

Topic Timeshares

Amendment Barcode (if applicable)

Name Chris Stewart

Job Title Director, State Government Affairs

Address 4901 Vineland Rd. #635
Street

Phone 407-245-7601

Orlando
City

FL
State

32811
Zip

Email cstewart@arda.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The American Resort Development 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:

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 1, 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 932, related to *Timeshares*, 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". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

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



453372

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2015	.	
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	.	
	.	

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

Senate Amendment

Delete line 140
and insert:
320.08058(3), Florida NASCAR license plates established under s.
320.08058(60), and specialty license plates that have statutory



969762

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
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	.	
	.	

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

Senate Amendment (with directory amendment)

Between lines 175 and 176
insert:

(48) LIVE THE DREAM LICENSE PLATES.—

(b) The proceeds of the annual use fee shall be distributed to the Living the Dream Foundation, Inc. The Living the Dream Foundation, Inc., shall retain the first \$60,000 in proceeds from the annual use fees as reimbursement for administrative costs, startup costs, and costs incurred in the approval



969762

process. Thereafter, up to 25 percent shall be used for continuing promotion and marketing of the license plate and concept. The remaining funds shall be used in the following manner:

1. Twenty-five percent shall be distributed to the Sickie Cell Disease Association of Florida, Inc., to be distributed equally among the sickle cell organizations that are Florida members of the Sickie Cell Disease Association of America, Inc., for programs that provide research, care, and treatment for sickle cell disease.

2. Twenty-five percent shall be distributed to the Miami Children's Initiative, Inc., Florida chapter of the March of Dimes for programs and services that improve the health of babies through the prevention of birth defects and infant mortality and provide a unified system of support, education, and care that begins before birth and continues through college and career.

3. Ten percent shall be distributed to the Florida Association of Healthy Start Coalitions, Inc., to decrease racial disparity in infant mortality and to increase healthy birth outcomes. Funding will be used by local Healthy Start Coalitions to provide services and increase screening rates for high-risk pregnant women, children under 4 years of age, and women of childbearing age.

4. Ten percent shall be distributed to the Chapman Partnership, Inc., ~~Community Partnership for Homeless, Inc.,~~ for programs that provide relief from poverty, hunger, and homelessness.

5. Five percent of the proceeds shall be used by the



969762

foundation for administrative costs directly associated with
operations as they relate to the management and distribution of
the proceeds.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 165

and insert:

Section 3. Paragraph (b) of subsection (48), subsection
(61), paragraph (b) of present



702840

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
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	.	
	.	

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

Senate Amendment to Amendment (969762)

Delete lines 23 - 25
and insert:
~~Dimes for programs and services that improve the health of
babies through the prevention of birth defects and infant
mortality~~ to provide a unified system of support, education,



293048

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with directory amendment)

Delete lines 438 - 1069
and insert:

(ggggg) Go Green license plate, \$25.

Section 5. Effective October 1, 2015, subsection (9) of section 320.08058, Florida Statutes, is amended, and subsections (84) through (104) are added to that section, to read:

320.08058 Specialty license plates.—

(9) FLORIDA PROFESSIONAL SPORTS TEAM LICENSE PLATES.—



293048

(a) The Department of Highway Safety and Motor Vehicles shall develop a Florida Professional Sports Team license plate as provided in this section for Major League Baseball, National Basketball Association, National Football League, Arena Football League Teams, and National Hockey League, Major League Soccer, and North American Soccer League teams domiciled in this state. However, any Florida Professional Sports Team license plate created or established after January 1, 1997, must comply with the requirements of s. 320.08053 and be specifically authorized by an act of the Legislature. Florida Professional Sports Team license plates must bear the colors and design approved by the department and must include the official league or team logo, or both, as appropriate for each team. The word "Florida" must appear at the top of the plate.

(b) The license plate annual use fees are to be annually distributed as follows:

1. Fifty-five percent of the proceeds from the Florida Professional Sports Team plate must be deposited into the Professional Sports Development Trust Fund within the Department of Economic Opportunity. These funds must be used solely to attract and support major sports events in this state. As used in this subparagraph, the term "major sports events" means, but is not limited to, championship or all-star contests of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, Major League Soccer, the North American Soccer League, the men's and women's National Collegiate Athletic Association Final Four basketball championship, or a horseracing or dogracing Breeders' Cup. All funds must be used to support and promote major



293048

40 sporting events, and the uses must be approved by the Department
41 of Economic Opportunity.

42 2. The remaining proceeds of the Florida Professional
43 Sports Team license plate must be allocated to Enterprise
44 Florida, Inc. These funds must be deposited into the
45 Professional Sports Development Trust Fund within the Department
46 of Economic Opportunity. These funds must be used by Enterprise
47 Florida, Inc., to promote the economic development of the sports
48 industry; to distribute licensing and royalty fees to
49 participating professional sports teams; to promote education
50 programs in Florida schools that provide an awareness of the
51 benefits of physical activity and nutrition standards; to
52 partner with the Department of Education and the Department of
53 Health to develop a program that recognizes schools whose
54 students demonstrate excellent physical fitness or fitness
55 improvement; to institute a grant program for communities
56 bidding on minor sporting events that create an economic impact
57 for the state; to distribute funds to Florida-based charities
58 designated by Enterprise Florida, Inc., and the participating
59 professional sports teams; and to fulfill the sports promotion
60 responsibilities of the Department of Economic Opportunity.

61 3. Enterprise Florida, Inc., shall provide an annual
62 financial audit in accordance with s. 215.981 of its financial
63 accounts and records by an independent certified public
64 accountant pursuant to the contract established by the
65 Department of Economic Opportunity. The auditor shall submit the
66 audit report to the Department of Economic Opportunity for
67 review and approval. If the audit report is approved, the
68 Department of Economic Opportunity shall certify the audit



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report to the Auditor General for review.

4. Notwithstanding the provisions of subparagraphs 1. and 2., proceeds from the Professional Sports Development Trust Fund may also be used for operational expenses of Enterprise Florida, Inc., and financial support of the Sunshine State Games.

(84) BONEFISH AND TARPON TRUST LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Bonefish and Tarpon Trust license plate as provided in this section and s. 320.08053. Bonefish and Tarpon Trust license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Bonefish and Tarpon Trust" must appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the balance of the fees shall be distributed to the Bonefish and Tarpon Trust, which:

1. May use a maximum of 10 percent of the proceeds to promote and market the Bonefish and Tarpon Trust license plate.

2. Shall invest and reinvest the remainder of the proceeds and use the interest earnings to conserve and enhance Florida bonefish and tarpon fisheries and their respective environments through stewardship, research, education, and advocacy.

(85) ROTARY'S CAMP FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,



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and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Rotary's Camp Florida license plate as provided in this section and s. 320.08053. Rotary's Camp Florida license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Rotary's Camp Florida" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to Rotary's Camp Florida, which may use a maximum of 10 percent of the proceeds for administrative costs and for marketing the plate. Thereafter, up to 23 percent shall be distributed as grants for Florida Rotary Districts that provide camp services to children in this state, and the balance of the proceeds shall be used by Rotary's Camp Florida for direct support to the programs and services provided to children who attend the camp.

(86) SUPPORT DOWN SYNDROME LICENSE PLATES.-

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Support Down Syndrome license plate as provided in this section and s. 320.08053. Support Down Syndrome license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support Down Syndrome" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to Olivia's Angels Foundation, Inc., to fund its activities, programs, and projects within this state. Olivia's Angels Foundation, Inc., may retain all revenues from the annual use



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fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 10 percent of the annual use fee revenues may be used for administrative costs and promotion and marketing of the specialty license plate.

(87) SAFE AND FREE FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Safe and Free Florida license plate as provided in this section and s. 320.08053. Safe and Free Florida license plates must bear the colors and design approved by the department. The word "Florida" must appear at the bottom of the plate, and the words "End Human Trafficking" must appear at the top of the plate.

(b) The license plate annual use fees shall be distributed to the Statewide Council on Human Trafficking, with a report that specifies the ratio that the annual use fees collected by each county bear to the total fees collected for the plates statewide. The council may retain all revenues from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 15 percent of the annual use fee revenues may be used for administrative costs and for promotion and marketing of the specialty license plate. The council shall distribute the remaining funds to nongovernmental, not-for-profit agencies within each county in this state which assist sexually abused, exploited, or trafficked victims. Funds may not be distributed to an agency that charges victims for services received.

1. An agency that receives the funds must use the funds



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for:

a. The material needs of sexually abused, exploited, or trafficked victims, including, but not limited to, clothing, housing, medical care, food, utilities, and transportation.

b. Detoxification services.

c. Prenatal and postnatal care and services for infants awaiting placement with adoptive parents.

d. Real estate purchases to facilitate a safe house or a transitional care or recovery care center.

e. Counseling, training, awareness, and prevention programs and advertisement.

2. An agency that receives funds may not use the funds for administrative or legal expenses, or for capital expenditures other than those specified in sub-subparagraph 1.d.

3. Each year, any unused funds that exceed 10 percent of the total amount received by an agency must be returned to the Statewide Council on Human Trafficking to be redistributed by the council to other qualified agencies.

4. Each agency that receives funds from the Statewide Council on Human Trafficking must submit an annual attestation to the council.

5. If no qualified agency applies to receive funds in a county in any year, that county's share of the funds shall be distributed pro rata to the qualified agencies that apply and maintain a place of business within a 100-mile radius of the county seat of that county. If no qualified agency within the 100-mile radius applies, the funds shall be distributed to other qualified agencies within the state.

(88) SUN SEA SMILES LICENSE PLATES.—



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(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Sun Sea Smiles license plate as provided in this section and s. 320.08053. Sun Sea Smiles license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Sun Sea Smiles" must appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the license plate annual use fees shall be distributed as follows:

1. Five percent shall be distributed to the Florida Caribbean Charitable Foundation, Inc., for marketing the Sun Sea Smiles license plate.

2. Thirty percent shall be distributed to the Florida Caribbean Charitable Foundation, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used as follows:

a. Sixty percent shall be used for a college scholarship program.

b. Fifteen percent shall be used to promote health and wellness among Florida residents of Caribbean descent.

c. Twenty-five percent shall be used to promote awareness of Caribbean culture within the state.

3. Twenty percent shall be distributed to the American Friends of Jamaica, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer



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Services and incorporated in New York, for use as grants to promote social and community development among residents of this state. Of this amount, up to 5 percent may be used for administrative and marketing expenses.

4. Ten percent shall be distributed to Haitian Neighborhood Center Sant La, Inc., to promote social and community development. Of this amount, up to 5 percent may be used for administrative expenses.

5. Ten percent shall be distributed to Fanm Ayisyen nan Miyami, Inc., to promote social and community development. Of this amount, up to 10 percent may be used for administrative expenses.

6. Twenty percent shall be distributed to Greater Caribbean American Cultural Coalition, Inc., to promote awareness of Caribbean culture within this state. Of this amount, up to 5 percent may be used for administrative expenses.

7. Five percent shall be distributed to Little Haiti Optimist Foundation, Inc., to promote awareness of Caribbean culture and youth development within this state. Of this amount, up to 5 percent may be used for administrative expenses.

(89) TAKE STOCK IN CHILDREN LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Take Stock in Children license plate as provided in this section and s. 320.08053. Take Stock in Children license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Take Stock in Children" must appear at the



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bottom of the plate.

(b) The license plate annual use fees shall be distributed to Take Stock in Children, Inc., to fund its activities, scholarship and mentoring programs, and projects. Take Stock in Children, Inc., may retain all revenues from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 10 percent of the annual use fee revenue may be used for administrative costs directly associated with the corporation's programs and the specialty license plate, and up to 15 percent may be used for promotion and marketing of the specialty license plate.

(90) PADDLE FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Paddle Florida license plate as provided in this section and s. 320.08053. Paddle Florida license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and words approved by the department must appear at the bottom of the plate.

(b) The department shall retain all license plate annual use fees until the startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be distributed to Paddle Florida, Inc., which may use up to 10 percent of the proceeds for administrative costs and marketing of the plate. The balance of the fees shall be used by the Florida Forever grant program to support activities that further outdoor recreation and natural resource protection.



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(91) ORLANDO CITY SOCCER CLUB LICENSE PLATES.—

Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop an Orlando City Soccer Club license plate as provided in subsection (9).

(92) DOGS MAKING A DIFFERENCE LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Dogs Making a Difference license plate as provided in this section and s. 320.08053. Dogs Making a Difference license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Dogs Making a Difference" must appear at the bottom of the plate.

(b) The department may retain all license plate annual use fees until the startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be distributed to Southeastern Guide Dogs, Inc., which may use up to 10 percent of the proceeds for administrative costs and marketing of the plate. The balance of the fees shall be used by Southeastern Guide Dogs, Inc., for the training and promotion of dogs for use by veterans and citizens who are blind.

(93) DUCKS UNLIMITED LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department



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shall develop a Ducks Unlimited license plate as provided in this section and s. 320.08053. Ducks Unlimited license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Conserving Florida's Wetlands" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to Ducks Unlimited, Inc., a not-for-profit corporation under s. 501(c)(3) of the Internal Revenue Code. The proceeds must be used to support Ducks Unlimited's mission and conservation efforts in this state as follows:

1. Up to 5 percent may be used for administrative costs and marketing of the plate.

2. A minimum of 95 percent shall be used to support Ducks Unlimited's mission and efforts for the conservation, restoration, and management of Florida wetlands and associated habitats for the benefit of waterfowl, other wildlife, and people.

(94) TEAM HAMMY LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Team Hammy license plate as provided in this section and s. 320.08053. Team Hammy license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Team Hammy" must appear at the bottom of the plate.

(b) The department shall retain all license plate annual use fees until all startup costs for developing and issuing the



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plates have been recovered. Thereafter, the license plate annual use fees shall be distributed to Team Hammy, Inc., a Florida not-for-profit corporation, which may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used by Team Hammy, Inc., to grant wishes to families living with amyotrophic lateral sclerosis (ALS), to provide continuing education to caregivers and physicians, and to increase awareness of ALS in the community.

(95) FLORIDA BAY FOREVER LICENSE PLATES.—

(a) Notwithstanding s. 45 of chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Florida Bay Forever license plate as provided in this section and s. 320.08053. Florida Bay Forever license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Florida Bay Forever" must appear at the bottom of the plate.

(b) The department shall retain all license plate annual use fees until all startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be distributed to the Florida National Park Association, Inc., which may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used to supplement the Everglades National Park budgets and to support educational, interpretive, historical, and scientific research relating to the Everglades National Park.



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(96) JACKSONVILLE ARMADA FOOTBALL CLUB LICENSE PLATES.—
Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as
amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45,
chapter 2014-216, Laws of Florida, the department shall develop
a Jacksonville Armada Football Club license plate as provided in
subsection (9).

(97) TAMPA BAY ROWDIES LICENSE PLATES.—Notwithstanding s.
45, chapter 2008-176, Laws of Florida, as amended by s. 21,
chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216,
Laws of Florida, the department shall develop a Tampa Bay
Rowdies license plate as provided in subsection (9).

(98) FURRY FRIENDS LICENSE PLATES.—

(a) Notwithstanding s. 45 of chapter 2008-176, Laws of
Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
and s. 45, chapter 2014-216, Laws of Florida, the department
shall develop a Furry Friends license plate as provided in this
section and s. 320.08053, upon application by Furry Friends of
Florida, Inc. Furry Friends license plates must bear the colors
and design approved by the department. The word "Florida" must
appear at the top of the plate, and words approved by the
department must appear at the bottom of the plate.

(b) The department shall retain all revenue from the sale
of such plates until the startup costs for developing and
issuing the plates have been recovered. Thereafter, the annual
use fees shall be distributed monthly to Furry Friends of
Florida, Inc., which may use up to 15 percent of such revenue
for administrative, handling, and disbursement contracts and
expenses, and up to 10 percent for promotion, advertising, and
marketing contracts and costs. The balance of the fees shall be



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used by Furry Friends of Florida, Inc., for activities,
programs, and projects, including, but not limited to, pet
rescue, animal shelters, pet vaccination, veterinary services,
and service animals.

(99) SAVE OUR SHORES FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of
Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
and s. 45, chapter 2014-216, Laws of Florida, the department
shall develop a Save Our Shores Florida license plate as
provided in this section and s. 320.08053. Save Our Shores
Florida license plates must bear the colors and design approved
by the department. The word "Florida" must appear at the top of
the plate, and the words "Save Our Shores" must appear at the
bottom of the plate.

(b) The department shall retain all annual use fees from
the sale of such plates until startup costs for developing and
issuing the plates have been recovered. Thereafter, the annual
use fees shall be distributed to Adore the Shore, Inc., which
may retain all of such revenue until the startup costs to
develop and establish the license plate program have been
recovered. Thereafter, Adore the Shore, Inc., may use the
proceeds as follows:

1. A maximum of 15 percent may be used for administrative
costs of the organization.

2. A maximum of 10 percent may be used for promotion and
marketing costs of the license plate program.

3. The remainder shall be used to fund activities,
programs, and projects that provide for cleanup activities on
Florida's beaches following natural or manmade occurrences that



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threaten the pristine nature of Florida's beaches and any other legal purpose as allowed by the Internal Revenue Code.

(100) SUPPORT OUR CONSTITUTION LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Support Our Constitution license plate as provided in this section and s. 320.08053. Support Our Constitution license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support Our Constitution" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to The Constitution Foundation, Inc., which may retain all proceeds from the annual use fees until the startup costs for developing and issuing the license plates have been recovered. Thereafter, The Constitution Foundation, Inc., may use the proceeds as follows:

1. A maximum of 15 percent may be used for administrative costs of the organization.

2. A maximum of 10 percent may be used for promotion and marketing costs of the license plate.

3. The remainder shall be used to fund the activities, programs, and projects of The Constitution Foundation, Inc.

(101) PAN-HELLENIC LICENSE PLATES.—Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223 and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Pan-Hellenic Sorority or Fraternity license plate as provided in this section and s. 320.08053 for



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each of the following sororities and fraternities. Pan-Hellenic Sorority or Fraternity license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the name of the respective sorority or fraternity must appear at the bottom of the plate:

(a) Alpha Phi Alpha Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to the Florida Federation of Alpha Phi Alpha Fraternity Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Alpha Phi Alpha Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to the Florida Federation of Alpha Phi Alpha Fraternity Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(b) Omega Psi Phi Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the



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plate shall be distributed as follows:

1. Ten percent shall be distributed to Omega Friendship Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Omega Psi Phi Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to Omega Friendship Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(c) Kappa Alpha Psi Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to the Southern Province Kappa Alpha Psi Fraternity, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Kappa Alpha Psi Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to the Southern Province Kappa Alpha Psi Fraternity, Inc., to promote community awareness and action through educational, economic, and cultural



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service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for the Florida residents attending historically black colleges and universities.

(d) Phi Beta Sigma Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to TmB Charitable Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Phi Beta Sigma Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to the TmB Charitable Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(e) Zeta Phi Beta Sorority, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:



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1. Ten percent shall be distributed to Florida Pearls, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Zeta Phi Beta Sorority, Inc., license plate.

2. Eighty-five percent shall be distributed to Florida Pearls, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(f) Delta Sigma Theta Sorority, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to Delta Research and Educational Foundation, a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code, strictly for marketing the Delta Sigma Theta Sorority, Inc., license plate.

2. Eighty-five percent shall be distributed to Delta Research and Educational Foundation to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida



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residents attending historically black colleges and universities.

(g) Alpha Kappa Alpha Sorority, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. A maximum of 10 percent shall be distributed to Alpha Kappa Alpha Sorority Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, for administrative costs and marketing the Alpha Kappa Alpha Sorority, Inc., license plate.

2. The balance of the fees shall be used to supplement the Alpha Kappa Alpha Educational Advancement Foundation, Inc., budgets and to promote lifelong learning by awarding scholarships, fellowships, and grants.

(h) Sigma Gamma Rho Sorority, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to National Education Fund, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code, strictly for marketing the Sigma Gamma Rho Sorority, Inc., license plate.

2. Eighty-five percent shall be distributed to National Education Fund, Inc., to promote community awareness and action



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through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(102) PLAY BALL LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Play Ball license plate as provided in this section and s. 320.08053. Play Ball license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Play Ball" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to American Dream Baseball, Inc., which may retain all proceeds from the annual use fees until the startup costs for developing and issuing the license plates have been recovered. Thereafter, American Dream Baseball, Inc., may use the proceeds as follows:

1. A maximum of 15 percent may be used for administrative costs of the organization associated with implementing the programs funded by proceeds derived from sales of the specialty license plate.

2. A maximum of 10 percent may be used for promotion and marketing costs of the license plate.

3. The remainder shall be used to fund the activities, programs, and projects of American Dream Baseball, Inc.

(103) MEDICAL PROFESSIONALS WHO CARE.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of



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Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Medical Professionals Who Care license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Medical Professionals Who Care" must appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of the plate until all startup costs for developing and issuing the plate have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed to Florida Benevolent Group, Inc., a Florida nonprofit corporation, which may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used by Florida Benevolent Group, Inc., to assist low income individuals in obtaining a medical education and career through scholarships, support, and guidance.

(104) GO GREEN LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Go Green license plate as provided in this section and s. 320.08053. Go Green license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Go Green" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Coalition for Renewable Energy Solutions, Inc., which may retain



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all proceeds from the annual use fees until the startup costs
for developing and issuing the license plates have been
recovered. Thereafter, Coalition for Renewable Energy Solutions,
Inc., may use the proceeds as follows:

1. A maximum of 15 percent may be used for administrative
costs of the organization associated with implementing the
programs funded by proceeds derived from sales of the specialty
license plate.

2. A maximum of 10 percent may be used for promotion and
marketing costs of the license plate.

3. The remainder shall be used to fund the activities,
programs and projects of Coalition for Renewable Energy
Solutions, Inc., that educate, implement, or publicize renewable
energy solutions and encourage a cleaner and safer environmental
future for Floridians.

==== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 405

and insert:

through (ggggg) are added to subsection (4) of section



946600

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
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	.	
	.	

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

Senate Amendment (with directory amendment)

Delete lines 438 - 1069

and insert:

(ggggg) National Wild Turkey Federation license plate, \$25.

Section 5. Effective October 1, 2015, subsection (9) of section 320.08058, Florida Statutes, is amended, and subsections (84) through (104) are added to that section, to read:

320.08058 Specialty license plates.—

(9) FLORIDA PROFESSIONAL SPORTS TEAM LICENSE PLATES.—



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(a) The Department of Highway Safety and Motor Vehicles shall develop a Florida Professional Sports Team license plate as provided in this section for Major League Baseball, National Basketball Association, National Football League, Arena Football League Teams, and National Hockey League, Major League Soccer, and North American Soccer League teams domiciled in this state. However, any Florida Professional Sports Team license plate created or established after January 1, 1997, must comply with the requirements of s. 320.08053 and be specifically authorized by an act of the Legislature. Florida Professional Sports Team license plates must bear the colors and design approved by the department and must include the official league or team logo, or both, as appropriate for each team. The word "Florida" must appear at the top of the plate.

(b) The license plate annual use fees are to be annually distributed as follows:

1. Fifty-five percent of the proceeds from the Florida Professional Sports Team plate must be deposited into the Professional Sports Development Trust Fund within the Department of Economic Opportunity. These funds must be used solely to attract and support major sports events in this state. As used in this subparagraph, the term "major sports events" means, but is not limited to, championship or all-star contests of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, Major League Soccer, the North American Soccer League, the men's and women's National Collegiate Athletic Association Final Four basketball championship, or a horseracing or dogracing Breeders' Cup. All funds must be used to support and promote major



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40 sporting events, and the uses must be approved by the Department
41 of Economic Opportunity.

42 2. The remaining proceeds of the Florida Professional
43 Sports Team license plate must be allocated to Enterprise
44 Florida, Inc. These funds must be deposited into the
45 Professional Sports Development Trust Fund within the Department
46 of Economic Opportunity. These funds must be used by Enterprise
47 Florida, Inc., to promote the economic development of the sports
48 industry; to distribute licensing and royalty fees to
49 participating professional sports teams; to promote education
50 programs in Florida schools that provide an awareness of the
51 benefits of physical activity and nutrition standards; to
52 partner with the Department of Education and the Department of
53 Health to develop a program that recognizes schools whose
54 students demonstrate excellent physical fitness or fitness
55 improvement; to institute a grant program for communities
56 bidding on minor sporting events that create an economic impact
57 for the state; to distribute funds to Florida-based charities
58 designated by Enterprise Florida, Inc., and the participating
59 professional sports teams; and to fulfill the sports promotion
60 responsibilities of the Department of Economic Opportunity.

61 3. Enterprise Florida, Inc., shall provide an annual
62 financial audit in accordance with s. 215.981 of its financial
63 accounts and records by an independent certified public
64 accountant pursuant to the contract established by the
65 Department of Economic Opportunity. The auditor shall submit the
66 audit report to the Department of Economic Opportunity for
67 review and approval. If the audit report is approved, the
68 Department of Economic Opportunity shall certify the audit



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report to the Auditor General for review.

4. Notwithstanding the provisions of subparagraphs 1. and 2., proceeds from the Professional Sports Development Trust Fund may also be used for operational expenses of Enterprise Florida, Inc., and financial support of the Sunshine State Games.

(84) BONEFISH AND TARPON TRUST LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Bonefish and Tarpon Trust license plate as provided in this section and s. 320.08053. Bonefish and Tarpon Trust license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Bonefish and Tarpon Trust" must appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the balance of the fees shall be distributed to the Bonefish and Tarpon Trust, which:

1. May use a maximum of 10 percent of the proceeds to promote and market the Bonefish and Tarpon Trust license plate.

2. Shall invest and reinvest the remainder of the proceeds and use the interest earnings to conserve and enhance Florida bonefish and tarpon fisheries and their respective environments through stewardship, research, education, and advocacy.

(85) ROTARY'S CAMP FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,



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and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Rotary's Camp Florida license plate as provided in this section and s. 320.08053. Rotary's Camp Florida license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Rotary's Camp Florida" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to Rotary's Camp Florida, which may use a maximum of 10 percent of the proceeds for administrative costs and for marketing the plate. Thereafter, up to 23 percent shall be distributed as grants for Florida Rotary Districts that provide camp services to children in this state, and the balance of the proceeds shall be used by Rotary's Camp Florida for direct support to the programs and services provided to children who attend the camp.

(86) SUPPORT DOWN SYNDROME LICENSE PLATES.-

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Support Down Syndrome license plate as provided in this section and s. 320.08053. Support Down Syndrome license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support Down Syndrome" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to Olivia's Angels Foundation, Inc., to fund its activities, programs, and projects within this state. Olivia's Angels Foundation, Inc., may retain all revenues from the annual use



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fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 10 percent of the annual use fee revenues may be used for administrative costs and promotion and marketing of the specialty license plate.

(87) SAFE AND FREE FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Safe and Free Florida license plate as provided in this section and s. 320.08053. Safe and Free Florida license plates must bear the colors and design approved by the department. The word "Florida" must appear at the bottom of the plate, and the words "End Human Trafficking" must appear at the top of the plate.

(b) The license plate annual use fees shall be distributed to the Statewide Council on Human Trafficking, with a report that specifies the ratio that the annual use fees collected by each county bear to the total fees collected for the plates statewide. The council may retain all revenues from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 15 percent of the annual use fee revenues may be used for administrative costs and for promotion and marketing of the specialty license plate. The council shall distribute the remaining funds to nongovernmental, not-for-profit agencies within each county in this state which assist sexually abused, exploited, or trafficked victims. Funds may not be distributed to an agency that charges victims for services received.

1. An agency that receives the funds must use the funds



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for:

a. The material needs of sexually abused, exploited, or trafficked victims, including, but not limited to, clothing, housing, medical care, food, utilities, and transportation.

b. Detoxification services.

c. Prenatal and postnatal care and services for infants awaiting placement with adoptive parents.

d. Real estate purchases to facilitate a safe house or a transitional care or recovery care center.

e. Counseling, training, awareness, and prevention programs and advertisement.

2. An agency that receives funds may not use the funds for administrative or legal expenses, or for capital expenditures other than those specified in sub-subparagraph 1.d.

3. Each year, any unused funds that exceed 10 percent of the total amount received by an agency must be returned to the Statewide Council on Human Trafficking to be redistributed by the council to other qualified agencies.

4. Each agency that receives funds from the Statewide Council on Human Trafficking must submit an annual attestation to the council.

5. If no qualified agency applies to receive funds in a county in any year, that county's share of the funds shall be distributed pro rata to the qualified agencies that apply and maintain a place of business within a 100-mile radius of the county seat of that county. If no qualified agency within the 100-mile radius applies, the funds shall be distributed to other qualified agencies within the state.

(88) SUN SEA SMILES LICENSE PLATES.—



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(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Sun Sea Smiles license plate as provided in this section and s. 320.08053. Sun Sea Smiles license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Sun Sea Smiles" must appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the license plate annual use fees shall be distributed as follows:

1. Five percent shall be distributed to the Florida Caribbean Charitable Foundation, Inc., for marketing the Sun Sea Smiles license plate.

2. Thirty percent shall be distributed to the Florida Caribbean Charitable Foundation, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used as follows:

a. Sixty percent shall be used for a college scholarship program.

b. Fifteen percent shall be used to promote health and wellness among Florida residents of Caribbean descent.

c. Twenty-five percent shall be used to promote awareness of Caribbean culture within the state.

3. Twenty percent shall be distributed to the American Friends of Jamaica, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer



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Services and incorporated in New York, for use as grants to promote social and community development among residents of this state. Of this amount, up to 5 percent may be used for administrative and marketing expenses.

4. Ten percent shall be distributed to Haitian Neighborhood Center Sant La, Inc., to promote social and community development. Of this amount, up to 5 percent may be used for administrative expenses.

5. Ten percent shall be distributed to Fanm Ayisyen nan Miyami, Inc., to promote social and community development. Of this amount, up to 10 percent may be used for administrative expenses.

6. Twenty percent shall be distributed to Greater Caribbean American Cultural Coalition, Inc., to promote awareness of Caribbean culture within this state. Of this amount, up to 5 percent may be used for administrative expenses.

7. Five percent shall be distributed to Little Haiti Optimist Foundation, Inc., to promote awareness of Caribbean culture and youth development within this state. Of this amount, up to 5 percent may be used for administrative expenses.

(89) TAKE STOCK IN CHILDREN LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Take Stock in Children license plate as provided in this section and s. 320.08053. Take Stock in Children license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Take Stock in Children" must appear at the



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bottom of the plate.

(b) The license plate annual use fees shall be distributed to Take Stock in Children, Inc., to fund its activities, scholarship and mentoring programs, and projects. Take Stock in Children, Inc., may retain all revenues from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 10 percent of the annual use fee revenue may be used for administrative costs directly associated with the corporation's programs and the specialty license plate, and up to 15 percent may be used for promotion and marketing of the specialty license plate.

(90) PADDLE FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Paddle Florida license plate as provided in this section and s. 320.08053. Paddle Florida license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and words approved by the department must appear at the bottom of the plate.

(b) The department shall retain all license plate annual use fees until the startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be distributed to Paddle Florida, Inc., which may use up to 10 percent of the proceeds for administrative costs and marketing of the plate. The balance of the fees shall be used by the Florida Forever grant program to support activities that further outdoor recreation and natural resource protection.



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(91) ORLANDO CITY SOCCER CLUB LICENSE PLATES.—

Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop an Orlando City Soccer Club license plate as provided in subsection (9).

(92) DOGS MAKING A DIFFERENCE LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Dogs Making a Difference license plate as provided in this section and s. 320.08053. Dogs Making a Difference license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Dogs Making a Difference" must appear at the bottom of the plate.

(b) The department may retain all license plate annual use fees until the startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be distributed to Southeastern Guide Dogs, Inc., which may use up to 10 percent of the proceeds for administrative costs and marketing of the plate. The balance of the fees shall be used by Southeastern Guide Dogs, Inc., for the training and promotion of dogs for use by veterans and citizens who are blind.

(93) DUCKS UNLIMITED LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department



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shall develop a Ducks Unlimited license plate as provided in this section and s. 320.08053. Ducks Unlimited license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Conserving Florida's Wetlands" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to Ducks Unlimited, Inc., a not-for-profit corporation under s. 501(c)(3) of the Internal Revenue Code. The proceeds must be used to support Ducks Unlimited's mission and conservation efforts in this state as follows:

1. Up to 5 percent may be used for administrative costs and marketing of the plate.

2. A minimum of 95 percent shall be used to support Ducks Unlimited's mission and efforts for the conservation, restoration, and management of Florida wetlands and associated habitats for the benefit of waterfowl, other wildlife, and people.

(94) TEAM HAMMY LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Team Hammy license plate as provided in this section and s. 320.08053. Team Hammy license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Team Hammy" must appear at the bottom of the plate.

(b) The department shall retain all license plate annual use fees until all startup costs for developing and issuing the



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plates have been recovered. Thereafter, the license plate annual
use fees shall be distributed to Team Hammy, Inc., a Florida
not-for-profit corporation, which may use up to 10 percent of
such fees for administrative costs and marketing of the plate.
The balance of the fees shall be used by Team Hammy, Inc., to
grant wishes to families living with amyotrophic lateral
sclerosis (ALS), to provide continuing education to caregivers
and physicians, and to increase awareness of ALS in the
community.

(95) FLORIDA BAY FOREVER LICENSE PLATES.—

(a) Notwithstanding s. 45 of chapter 2008-176, Laws of
Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
and s. 45, chapter 2014-216, Laws of Florida, the department
shall develop a Florida Bay Forever license plate as provided in
this section and s. 320.08053. Florida Bay Forever license
plates must bear the colors and design approved by the
department. The word "Florida" must appear at the top of the
plate, and the words "Florida Bay Forever" must appear at the
bottom of the plate.

(b) The department shall retain all license plate annual
use fees until all startup costs for developing and issuing the
plates have been recovered. Thereafter, the annual use fees
shall be distributed to the Florida National Park Association,
Inc., which may use up to 10 percent of such fees for
administrative costs and marketing of the plate. The balance of
the fees shall be used to supplement the Everglades National
Park budgets and to support educational, interpretive,
historical, and scientific research relating to the Everglades
National Park.



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(96) JACKSONVILLE ARMADA FOOTBALL CLUB LICENSE PLATES.—
Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as
amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45,
chapter 2014-216, Laws of Florida, the department shall develop
a Jacksonville Armada Football Club license plate as provided in
subsection (9).

(97) TAMPA BAY ROWDIES LICENSE PLATES.—Notwithstanding s.
45, chapter 2008-176, Laws of Florida, as amended by s. 21,
chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216,
Laws of Florida, the department shall develop a Tampa Bay
Rowdies license plate as provided in subsection (9).

(98) FURRY FRIENDS LICENSE PLATES.—

(a) Notwithstanding s. 45 of chapter 2008-176, Laws of
Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
and s. 45, chapter 2014-216, Laws of Florida, the department
shall develop a Furry Friends license plate as provided in this
section and s. 320.08053, upon application by Furry Friends of
Florida, Inc. Furry Friends license plates must bear the colors
and design approved by the department. The word "Florida" must
appear at the top of the plate, and words approved by the
department must appear at the bottom of the plate.

(b) The department shall retain all revenue from the sale
of such plates until the startup costs for developing and
issuing the plates have been recovered. Thereafter, the annual
use fees shall be distributed monthly to Furry Friends of
Florida, Inc., which may use up to 15 percent of such revenue
for administrative, handling, and disbursement contracts and
expenses, and up to 10 percent for promotion, advertising, and
marketing contracts and costs. The balance of the fees shall be



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used by Furry Friends of Florida, Inc., for activities,
programs, and projects, including, but not limited to, pet
rescue, animal shelters, pet vaccination, veterinary services,
and service animals.

(99) SAVE OUR SHORES FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of
Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
and s. 45, chapter 2014-216, Laws of Florida, the department
shall develop a Save Our Shores Florida license plate as
provided in this section and s. 320.08053. Save Our Shores
Florida license plates must bear the colors and design approved
by the department. The word "Florida" must appear at the top of
the plate, and the words "Save Our Shores" must appear at the
bottom of the plate.

(b) The department shall retain all annual use fees from
the sale of such plates until startup costs for developing and
issuing the plates have been recovered. Thereafter, the annual
use fees shall be distributed to Adore the Shore, Inc., which
may retain all of such revenue until the startup costs to
develop and establish the license plate program have been
recovered. Thereafter, Adore the Shore, Inc., may use the
proceeds as follows:

1. A maximum of 15 percent may be used for administrative
costs of the organization.

2. A maximum of 10 percent may be used for promotion and
marketing costs of the license plate program.

3. The remainder shall be used to fund activities,
programs, and projects that provide for cleanup activities on
Florida's beaches following natural or manmade occurrences that



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threaten the pristine nature of Florida's beaches and any other legal purpose as allowed by the Internal Revenue Code.

(100) SUPPORT OUR CONSTITUTION LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Support Our Constitution license plate as provided in this section and s. 320.08053. Support Our Constitution license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support Our Constitution" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to The Constitution Foundation, Inc., which may retain all proceeds from the annual use fees until the startup costs for developing and issuing the license plates have been recovered. Thereafter, The Constitution Foundation, Inc., may use the proceeds as follows:

1. A maximum of 15 percent may be used for administrative costs of the organization.

2. A maximum of 10 percent may be used for promotion and marketing costs of the license plate.

3. The remainder shall be used to fund the activities, programs, and projects of The Constitution Foundation, Inc.

(101) PAN-HELLENIC LICENSE PLATES.—Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223 and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Pan-Hellenic Sorority or Fraternity license plate as provided in this section and s. 320.08053 for



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each of the following sororities and fraternities. Pan-Hellenic Sorority or Fraternity license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the name of the respective sorority or fraternity must appear at the bottom of the plate:

(a) Alpha Phi Alpha Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to the Florida Federation of Alpha Phi Alpha Fraternity Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Alpha Phi Alpha Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to the Florida Federation of Alpha Phi Alpha Fraternity Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(b) Omega Psi Phi Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the



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plate shall be distributed as follows:

1. Ten percent shall be distributed to Omega Friendship Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Omega Psi Phi Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to Omega Friendship Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(c) Kappa Alpha Psi Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to the Southern Province Kappa Alpha Psi Fraternity, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Kappa Alpha Psi Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to the Southern Province Kappa Alpha Psi Fraternity, Inc., to promote community awareness and action through educational, economic, and cultural



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service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for the Florida residents attending historically black colleges and universities.

(d) Phi Beta Sigma Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to TmB Charitable Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Phi Beta Sigma Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to the TmB Charitable Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(e) Zeta Phi Beta Sorority, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:



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1. Ten percent shall be distributed to Florida Pearls, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Zeta Phi Beta Sorority, Inc., license plate.

2. Eighty-five percent shall be distributed to Florida Pearls, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(f) Delta Sigma Theta Sorority, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to Delta Research and Educational Foundation, a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code, strictly for marketing the Delta Sigma Theta Sorority, Inc., license plate.

2. Eighty-five percent shall be distributed to Delta Research and Educational Foundation to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida



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residents attending historically black colleges and universities.

(g) Alpha Kappa Alpha Sorority, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. A maximum of 10 percent shall be distributed to Alpha Kappa Alpha Sorority Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, for administrative costs and marketing the Alpha Kappa Alpha Sorority, Inc., license plate.

2. The balance of the fees shall be used to supplement the Alpha Kappa Alpha Educational Advancement Foundation, Inc., budgets and to promote lifelong learning by awarding scholarships, fellowships, and grants.

(h) Sigma Gamma Rho Sorority, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to National Education Fund, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code, strictly for marketing the Sigma Gamma Rho Sorority, Inc., license plate.

2. Eighty-five percent shall be distributed to National Education Fund, Inc., to promote community awareness and action



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through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(102) PLAY BALL LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Play Ball license plate as provided in this section and s. 320.08053. Play Ball license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Play Ball" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to American Dream Baseball, Inc., which may retain all proceeds from the annual use fees until the startup costs for developing and issuing the license plates have been recovered. Thereafter, American Dream Baseball, Inc., may use the proceeds as follows:

1. A maximum of 15 percent may be used for administrative costs of the organization associated with implementing the programs funded by proceeds derived from sales of the specialty license plate.

2. A maximum of 10 percent may be used for promotion and marketing costs of the license plate.

3. The remainder shall be used to fund the activities, programs, and projects of American Dream Baseball, Inc.

(103) MEDICAL PROFESSIONALS WHO CARE.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of



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Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
and s. 45, chapter 2014-216, Laws of Florida, the department
shall develop a Medical Professionals Who Care license plate as
provided in this section and s. 320.08053. The plate must bear
the colors and design approved by the department. The word
"Florida" must appear at the top of the plate, and the words
"Medical Professionals Who Care" must appear at the bottom of
the plate.

(b) The department shall retain all annual use fees from
the sale of the plate until all startup costs for developing and
issuing the plate have been recovered. Thereafter, the annual
use fees from the sale of the plate shall be distributed to
Florida Benevolent Group, Inc., a Florida nonprofit corporation,
which may use up to 10 percent of such fees for administrative
costs and marketing of the plate. The balance of the fees shall
be used by Florida Benevolent Group, Inc., to assist low income
individuals in obtaining a medical education and career through
scholarships, support, and guidance.

(104) NATIONAL WILD TURKEY FEDERATION LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of
Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
and s. 45, chapter 2014-216, Laws of Florida, the department
shall develop a National Wild Turkey Federation license plate as
provided in this section and s. 320.08053. The plate must bear
the colors and design approved by the department. The word
"Florida" must appear at the top of the plate, and the words
"National Wild Turkey Federation" must appear at the bottom of
the plate.

(b) The department shall retain all annual use fees from



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the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the license plate annual use fees shall be distributed to the Florida State Chapter of the National Wild Turkey Federation, a 501(c)(3) citizen support organization created for education and scientific research on and the conservation, preservation, and restoration of Florida's wild turkeys.

(c) At least 75 percent of the funds received by the Florida State Chapter of the National Wild Turkey Federation must be used to fund programs and projects within the state that promote conservation or that improve or increase turkey wildlife habitat. To the extent feasible, turkey wildlife habitat projects shall be coordinated with the Florida Fish and Wildlife Conservation Commission. Up to 25 percent of the funds received by the Florida State Chapter of the National Wild Turkey Federation may be used for marketing of the license plate, for promotion and education regarding this state's hunting heritage, and for administrative costs directly associated with operation of the chapter.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 405

and insert:

through (ggggg) are added to subsection (4) of section



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 563 - 615
and insert:

(87) SAFE AND FREE FLORIDA LICENSE PLATES.-

(a) Notwithstanding s. 45, chapter 2008-176, Laws of
Florida, as amended by s. 21, chapter 2010-223 and s. 45,
chapter 2014-216, Laws of Florida, the department shall develop
a Safe and Free Florida license plate as provided in this
section and s. 320.08053. The word "Florida" must appear at the
top of the plate, and the words "End Human Trafficking" must



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appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed to the Department of Legal Affairs, which:

1. May use up to 15 percent of the proceeds to promote and market the license plate.

2. Shall establish a program to award grants to nongovernmental organizations that shall use the awarded funds:

a. To provide for the material needs of sexually abused, exploited, or trafficked victims, including, but not limited to, clothing, housing, medical care, food, utilities, and transportation.

b. For detoxification services.

c. For prenatal and postnatal care and to provide services for infants awaiting placement with adoptive parents.

d. To purchase or lease real estate to facilitate a safe house or a transitional care or recovery care center.

e. For counseling, training, awareness, and prevention programs for sexually abused, exploited, or trafficked victims.

f. To provide emergency legal advocacy to sexually abused or trafficked victims at a rate established by the Department of Legal Affairs.

(c) The Department of Legal Affairs may not distribute funds under paragraph (b) to any nongovernmental organization that charges victims for services received through this funding. An organization that receives the funds may not use the funds for administrative or capital expenditures. Each organization



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41 that receives funds must submit an annual attestation to the
42 Department of Legal Affairs no later than December 31. The
43 Department of Legal Affairs shall adopt and enforce rules to
44 implement this 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: PCS/SB 7072 (340976)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Transportation Committee

SUBJECT: Specialty License Plates

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Jones	Eichin		TR Submitted as Committee Bill
1.	Wells	Miller	ATD	Recommend: Fav/CS
2.	Hrdlicka	Hrdlicka	FP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7072 makes revisions to the specialty license plate program. Specifically, it:

- Removes certain obsolete requirements for establishing a specialty license plate;
- Directs the Department of Highway Safety and Motor Vehicles (DHSMV) to develop 27 new specialty license plates;
- Provides established annual use fees and distribution of fees for each new specialty license plate;
- Increases the minimum pre-sale requirement for a new specialty license plate from 1,000 to 4,000 vouchers, with the exception of specialty license plates that have statutory eligibility limitations for purchase;
- Provides that, beginning July 1, 2020, the DHSMV must discontinue the issuance of a specialty license plate if the number of such specialty plate registrations falls below 4,000 for at least 12 consecutive months, with the exception of specialty license plates that have statutory eligibility limitations for purchase;
- Modifies the distribution and use of annual use fees for the “In God We Trust” specialty license plate;
- Adds Major League Soccer and the North American Soccer League to the Florida Professional Sports Team license plates;
- Removes three specialty license plates that have been discontinued by the DHSMV; and
- Provides conforming cross-references to reflect the changes made in this bill.

According to the DHSMV, the cost for the minimum required number of each specialty license plate to be designed and manufactured is \$11,280. The DHSMV also estimates that the programming costs to develop all 27 specialty license plates is \$162,640. The DHSMV is authorized to retain revenues from the first proceeds of specialty license plate sales to defray departmental expenditures related to the specialty license plate program.

II. Present Situation:

Presently, there are over 120 specialty license plates available for purchase, and 7 in the pre-sale phase. Specialty license plates are available to an owner or lessee of a motor vehicle who is willing to pay an annual use fee, ranging from \$15 to \$25, paid in addition to required license taxes and service fees.¹ The annual use fees are distributed to an organization in support of a particular cause or charity signified in the plate's design and designated in statute.²

The specialty plate application process, as it existed in 2009, was found to be unconstitutional.³ That process included an application fee and a short and long-term marketing strategy. The pre-sale methodology, established in 2010,⁴ replaced the application process. However, the application process including the fee and marketing strategy language still exists in statute.⁵

Currently, the recognized process for establishing a specialty license plate requires the plate to first be approved by law. Upon being approved by law:

- Within 60 days, the organization must submit an art design for the plate, in a medium prescribed by the DHSMV;
- Within 120 days, the DHSMV must establish a method to issue pre-sale vouchers for the approved specialty license plate; and
- Within 24 months after the pre-sale vouchers are established, the organization must obtain a minimum of 1,000 voucher sales before manufacturing may begin.

If, at the end of the 24-month pre-sale period, the minimum sales requirements have not been met, the department will de-authorize the specialty plate, discontinue development, and discontinue issuance of the pre-sale voucher.

Department of Highway Safety and Motor Vehicles (DHSMV) Costs Defrayed

The DHSMV retains sufficient annual use fees, from the sale of the specialty license plates, to defray its costs for inventory, distribution, and other direct costs associated with the specialty license plate program. The remainder of the proceeds collected are distributed as provided by law.⁶

¹ Section 320.08056, F.S.

² Section 320.08058, F.S.

³ *Sons of Confederate Veterans, Florida Div., Inc. v. Atwater*, No. 6:09-CV-134-ORL-28 (M.D. Fla. Mar. 30, 2011).

⁴ Ch. 2010-223, s. 22, L.O.F.

⁵ See s. 320.08053(1), F.S.

⁶ Section 320.08056(7), F.S.

Discontinuance of Specialty Plate

The DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates. Collegiate plates are exempt from the 1,000 minimum plate requirement.⁷ Additionally, the specialty license plate must be discontinued if the organization no longer exists, stops providing services that are authorized to be funded from the annual use fee proceeds, or pursuant to an organizational recipient's request.⁸

Organizations must adhere to certain accountability requirements, including an annual attestation document affirming that funds received have been spent in accordance with applicable statutes.⁹

Moratorium

Currently, there is a statutory moratorium on the issuance of new specialty license plates. Except for a specialty license plate proposal which has submitted a letter of intent to the DHSMV prior to May 2, 2008, and which has submitted a survey, marketing strategy, and application fee prior to October 1, 2008, or which was included in a bill filed during the 2008 Legislative Session, the DHSMV may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2016.¹⁰ However, in recent years the Legislature has approved numerous new specialty license plates by notwithstanding the moratorium provisions.

Florida Professional Sports Team License Plates

Section 320.08058(9), F.S., directs the DHSMV to develop Florida Professional Sports Team license plates for Major League Baseball, National Basketball Association, National Football League, Arena Football League, and National Hockey teams domiciled in this state. Fifty-five percent of the annual use fee proceeds from these plates is distributed to the Professional Sports Development Trust Fund within the Department of Economic Opportunity to attract and support major sports events in the state. The remaining proceeds are allocated to Enterprise Florida, Inc., to:

- Promote the economic development of the sports industry;
- Distribute licensing and royalty fees to participating professional sports teams;
- Promote education programs in Florida schools that provide an awareness of the benefits of physical activity and nutrition standards;
- Recognize schools whose students demonstrate excellent physical fitness or fitness improvement;
- Institute a grant program for communities bidding on minor sporting events that create an economic impact for the state;

⁷ Section 320.08056(8)(a), F.S.

⁸ Section 320.08056(8)(b), F.S.

⁹ Section 320.08062, F.S.

¹⁰ Section 45, ch. 2008-176, L.O.F., as amended by s. 21, ch. 2010-223 and s. 45, ch. 2014-216, L.O.F.

- Distribute funds to Florida based charities designated by Enterprise Florida and the participating professional sports teams; and
- Fulfill the sports promotion responsibilities of the Department of Economic Opportunity.

Organizations

Bonefish and Tarpon Trust¹¹

The Bonefish and Tarpon Trust is a non-profit organization dedicated to conserving and enhancing global bonefish, tarpon, and permit fisheries and their environments. The trust does this through stewardship, research, education, and advocacy, including funding studies and providing educational materials to the public and fisherman on bonefish, tarpon, and permit fisheries. The trust also works with regulatory authorities and the public to ensure protection of these species is enforced.

Rotary's Camp Florida¹²

Rotary's Camp Florida is a non-profit organization providing camping facilities to children and adults with special needs. The facility is a 21-acre camp located in Brandon, Florida, which provides user groups with clean, safe, and barrier-free camping. The facility meets the full standards of the Americans with Disabilities Act. Half of the cost to rent the camp is paid by the disability user group and half is subsidized by Rotary Clubs throughout Florida. There is no charge to a child attending the camp.

Olivia's Angels Foundation, Inc. (Support Down Syndrome)¹³

Olivia's Angels Foundation is a Florida non-profit organization focused on education, awareness, and support for the Down Syndrome community. Its stated mission is to bring awareness of challenges associated with Down Syndrome, faced by parents and caretakers, through the development of advocacy programs and funding support for self-sustenance educational programs.

Statewide Council on Human Trafficking (Safe and Free Florida)

The Statewide Council on Human Trafficking is a 15-member council chaired by Florida's Attorney General.¹⁴ The council was created by legislation passed in 2014, and is outlined in s. 16.617, F.S.¹⁵ Membership includes law enforcement, prosecutors, legislators, and experts in the fields of health, education, and social services. The council's purpose is to:

- Develop recommendations for comprehensive programs and services for victims of human trafficking;
- Make recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses;
- Hold an annual statewide policy summit with an institute of higher learning;

¹¹ See Bonefish & Tarpon Trust website at <https://www.bonefishtarpontrust.org/> (last visited 4/16/2015).

¹² See Rotary's Camp Florida website at <http://www.rotaryscampflorida.org/> (last visited 4/16/2015).

¹³ See Olivia's Angels Foundation website at <http://www.oafl.org/> (last visited 4/16/2015).

¹⁴ Office of the Attorney General, *Statewide Council on Human Trafficking*, <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last visited 4/16/2015).

¹⁵ Chapter 2014-161, s. 6, L.O.F.

- Work with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county; and
- Develop policy recommendations that further the efforts to combat human trafficking in this state.

Florida Caribbean, Haitian, and Jamaican Organizations (Sun Sea Smiles)

The Florida Caribbean Charitable Foundation, Inc., a civic and social organization, is a domestic non-profit corporation located in North Miami Beach, established in 2007.

American Friends of Jamaica, Inc., is a non-profit organization “dedicated to supporting Jamaican charitable organizations and social initiatives targeted at improving the lives of Jamaicans through systemic development in the areas of education, healthcare, and economic development.”¹⁶

The mission of Haitian Neighborhood Center Sant La, Inc., is to “empower, strengthen, and stabilize South Florida’s Haitian community, through access for free services and resources, to ensure its successful integration.”¹⁷ This is accomplished through services such as citizenship assistance, college scholarships, community outreach, employment services, community partnerships, and educational services.

Fanm Ayisyen nan Miyami, Inc., also known as Haitian Women of Miami, has a mission to empower Haitian women and their families socially and politically, and to facilitate their adjustments to South Florida.¹⁸ The organization has provided counseling, outreach, education, and access to care and advocacy service to low and moderate-income families for the last 16 years.

The Greater Caribbean American Cultural Coalition, Inc., is “an umbrella organization serving the Caribbean people and other members of the community, by bringing together the various Caribbean countries and islands, and their rich cultural heritage.”¹⁹ The coalition’s mission is to enrich the cultural environment by fostering multicultural understanding through an appreciation of Caribbean cultures.

Little Haiti Optimist Foundation, Inc., is a charitable organization located in Miami, established in 2010 to provide assistance, guidance, and programs to the youth of Little Haiti. The mission of the foundation is “to make a difference in the lives of youth by providing education, mentorship, athletics, arts and cultural programming.”²⁰

Take Stock in Children, Inc.²¹

Take Stock in Children, Inc., is a non-profit organization in Florida, established in 1995, that offers low-income students volunteer mentors and college scholarships. The organization works

¹⁶ See The American Friends of Jamaica website at: <http://www.theamericanfriendsofjamaica.org/> (last visited 4/16/2015).

¹⁷ See Haitian Neighborhood Center Sant La website at <http://santla.org> (last visited 4/16/2015).

¹⁸ See Fanm Ayisyen Miyami website at <http://www.fanm.org/> (last visited 4/16/2015).

¹⁹ See Greater Caribbean American Cultural Coalition website at <http://unifestlive.com/about-gcacc/> (last visited 4/16/2015).

²⁰ See The Little Haiti Optimist Foundation website at <http://www.littlehaitioptimist.org/> (last visited Mar. 21, 2015).

²¹ See Take Stock in Children website at <http://www.takestockinchildren.org/index> (last visited Mar. 21, 2015).

with low-income and at-risk students starting in middle school, through high school, and their transition into college, to provide support, motivation, and accountability. To date, Take Stock in Children has served over 24,000 children throughout Florida, has over 8,200 mentors, and is the largest non-profit purchaser of Florida Prepaid Foundation Scholarships.

***Paddle Florida, Inc.*²²**

Paddle Florida, Inc., is a non-profit organization that supports canoeing and kayaking in Florida. The organization holds events to “expose paddlers to Florida’s natural beauty and rich cultural heritage while promoting water conservation, wildlife preservation, springs restoration, and waterways protection.” Paddle Florida also promotes Florida as an international destination for nature-based tourism, by providing trips featuring Florida’s most scenic rivers, canoe trails, and coastal environments.

***Orlando City Soccer Club*²³**

The Orlando City Soccer Club is a professional Major League Soccer team based in Orlando, Florida. The team was formed in 2010, and became the league’s twenty-first franchise on November 19, 2013.

***Southeastern Guide Dogs, Inc.*²⁴ (*Dogs Making a Difference*)**

Southeastern Guide Dogs, Inc., is a non-profit organization located in Palmetto, Florida. The organization is accredited by the International Guide Dog Federation and Assistance Dogs International. It was founded in 1982, and “employs the latest in canine development and behavior research to create and nurture partnerships between visually impaired individuals and extraordinary guide dogs.” Southeastern Guide Dogs has matched over 2,700 guide dogs with individuals, and continues to place more than 100 dogs each year to help people with visual impairments, and veterans. The charity provides its services free of charge and receives no government funding.

***Ducks Unlimited, Inc.*²⁵**

Ducks Unlimited, Inc., is a non-profit and volunteer-based organization whose mission is to conserve, restore, and manage wetlands and associated habitats for North America’s waterfowl. According to the Ducks Unlimited website, it is the world’s largest and most effective waterfowl and wetlands conservation organization. In the past fiscal year, 82 percent of the organization’s expenditures went to waterfowl and wetlands conservation and education. The organization currently has habitat projects in all 50 states, every Canadian province, and key areas of Mexico.

***Team Hammy*²⁶**

Team Hammy is an organization created in the name of Hamilton Vance Paris, who was diagnosed with amyotrophic lateral sclerosis (ALS) in July of 2010. Team Hammy strives to

²² See Paddle Florida website at <http://www.paddleflorida.org/> (last visited 4/16/2015).

²³ See Orlando City Soccer Club website at <http://www.orlandocitysc.com/> (last visited 4/16/2015).

²⁴ See Southeastern Guide Dogs website at <http://www.guidedogs.org/> (last visited 4/16/2015).

²⁵ See Ducks Unlimited website at <http://www.ducks.org/> (last visited 4/16/2015).

²⁶ See Team Hammy website at <http://teamhammy.org/about-us/> (last visited 4/16/2015).

bring awareness, education, and hope to people with ALS and their families through fundraising and participating in events.

Florida National Park Association, Inc.²⁷ (Florida Bay Forever)

The Florida National Park Association, also known as the Everglades Association, is a non-profit organization founded in 1951 to support educational, interpretive, and historical and scientific research responsibilities to help support the Everglades National Park, Big Cypress National Preserve, Biscayne National Park, and Dry Tortugas National Park. The association has provided more than 2.5 million dollars in aid to the National Park Service areas of south Florida.

Jacksonville Armada Football Club²⁸

The Jacksonville Armada Football Club is an American professional soccer team. The team is part of the North American Soccer League (NASL) and based in Jacksonville, Florida. The team was established in 2013, and will be competing in the 2015 spring season.

Tampa Bay Rowdies²⁹

The Tampa Bay Rowdies is an American professional soccer team. The Rowdies are part of the NASL, and play home games in St. Petersburg, Florida. The team was originally established in 1975 and won the NASL Soccer Bowl in its inaugural year. It was reestablished in 2008, began playing in 2010, and won the NASL Soccer Bowl Championship in 2012.

Furry Friends of Florida, Inc.³⁰

According to corporate filings with the Department of State, the principal address of Furry Friends of Florida, Inc., is 180 Park Avenue, N., Suite 2A, Winter Park, Florida. The articles of incorporation of the organization state that it is a not-for-profit corporation whose purpose is “to conduct activities that are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, or preventing cruelty to children or animals.”

Adore the Shore, Inc.³¹

According to corporate filings with the Department of State, the principal address of Adore the Shore, Inc., is 180 Park Avenue, N., Suite 2A, Winter Park, Florida. The articles of incorporation

²⁷ See Florida National Parks Association, *Everglades Association* website at <http://www.evergladesassociation.org/index.html> (last visited 4/16/2015).

²⁸ See Jacksonville Armada Football Club website at <http://www.armadafc.com/page/slug/history#.VRMhwfnF91A> (last visited 4/16/2015).

²⁹ See Tampa Bay Rowdies website at <http://www.rowdiessoccer.com/> (last visited 4/16/2015).

³⁰ See Department of State website at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FURRYFRIENDSFLOIDA%20N150000014680&aggregateId=domnp-n15000001468-5f3d3312-7531-405e-98bc-81930943daa7&searchTerm=furry%20friends&listNameOrder=FURRYFRIENDS%20J092690> (last visited on 4/16/2015).

³¹ See Department of State website at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=ADORESHORES%20N150000014610&aggregateId=domnp-n15000001461-ca990b64-7f04-41d4-bb5b->

of the organization state that it is a not-for-profit corporation whose purpose is “to conduct activities that are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, or preventing cruelty to children or animals.”

***The Constitution Foundation, Inc.*³²**

The Constitution Foundation, Inc., is a non-partisan educational organization founded in 2011 in Kissimmee, Florida. The foundation’s mission is to increase awareness and understanding of the United States Constitution in Florida’s schools, recruit and train leaders to make presentations in each school district, and provide to each student, at no cost, learning materials and a pocket Constitution.

***United Negro College Fund (UNCF)*³³**

The United Negro College Fund is the nation’s largest minority education organization. UNCF provides operating funds for historically black colleges and universities, scholarships and internships for students, and provides for faculty and administrative professional training.

***Florida Federation of Alpha Phi Alpha Fraternity Foundation*³⁴**

Founded in 1906 at Cornell University, the website for the Alpha Phi Alpha Fraternity’s states its vision: “The objectives of this Fraternity shall be: to stimulate the ambition of its members; to prepare them for the greatest usefulness in the causes of humanity, freedom, and dignity of the individual; to encourage the highest and noblest form of manhood; and to aid down-trodden humanity in its efforts to achieve higher social, economic and intellectual status.”

***Omega Friendship Foundation, Inc.*³⁵**

Omega Psi Phi Fraternity, Inc., was the first international fraternal organization to be founded on the campus of a historically black college. Founded in 1911 at Howard University, “Manhood, Scholarship, Perseverance and Uplift” were adopted as Cardinal Principles.

***Southern Province Kappa Alpha Psi Fraternity, Inc.*³⁶**

Kappa Alpha Psi was founded on the campus of Indiana University at Bloomington, Indiana in 1911. The objectives of this fraternity are to:

- Unite men of culture, patriotism, and honor in a bond of Fraternity;
- Encourage honorable achievement in every field of human endeavor;
- Promote the spiritual, social, intellectual, and moral welfare of members;
- Assist the aims and purposes of Colleges and Universities; and
- Inspire service in the public interest.

[1ce89a9b6e12&searchTerm=adore%20the%20shore&listNameOrder=ADORESHORES%20N150000014610](http://www.adore.org/1ce89a9b6e12&searchTerm=adore%20the%20shore&listNameOrder=ADORESHORES%20N150000014610) (last visited on 4/16/2015).

³² See The Constitution Foundation, Inc., website at <http://constitutionfoundation.org/about/> (last visited on 4/16/2015).

³³ See United Negro College Fund website at <http://www.uncf.org/sections/WhoWeAre/index.asp> (last visited on 4/16/2015).

³⁴ See Alpha Phi Alpha Fraternity Foundation at <http://flfederation.org/about-us/history/> (last visited on 4/16/2015).

³⁵ See Omega Friendship Foundation, Inc. website http://oppf.org/about_omega.asp (last visited on 4/16/2015).

³⁶ See Southern Province Kappa Alpha Psi Fraternity, Inc. website <http://southernprovince.org/> (last visited on 4/16/2015).

TmB Charitable Foundation, Inc.³⁷

According to corporate filings with the Department of State the principal address is 1117 Sandler Ridge Road, Tallahassee, Florida. TmB Charitable Foundation, Inc., is a not-for-profit corporation “operated exclusively for charitable purposes, including, without limitation, acting as an instrument to which youth are encouraged and inspired to achieve academic success through mentoring.”

The Florida Pearls, Incorporated³⁸

According to corporate filings with the Department of State, the principal address is 1346 W. 15th Street, Jacksonville, FL. Florida Pearls, Inc., is a not-for-profit corporation organized “to provide Scholarships, Educational, Cultural, Community Workshops and Training Programs in the State of Florida.”

Delta Research and Educational Foundation³⁹

Delta Sigma Theta Sorority established the Delta Research and Educational Foundation in 1967. The foundation’s mission statement is “Delta Research and Educational Foundation promotes research which identifies and fashions solutions to issues affecting African American women and their families, nationally and globally through funding and support of public service programs of Delta Sigma Theta Sorority, Incorporated and collaborative organizations.”

Alpha Kappa Alpha Education Advancement Foundation, Inc.⁴⁰

The Education Advancement Foundation was created in 1980 by the Alpha Kappa Alpha Sorority, Inc. “The mission of the Alpha Kappa Alpha Educational Advancement Foundation is to promote lifelong learning. This is accomplished by securing charitable contributions, gifts and endowed funds to award scholarships, fellowships and grants.”

National Education Fund, Inc.⁴¹

The mission of the National Education Fund, Inc., is to provide scholarship aid to needy students both male and female of all races and to conduct educational programs, workshops, symposiums, and forums to enhance the quality of life.

³⁷ See Department of State website at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=TMBCCHARITABLEFOUNDATION%20N140000034860&aggregateId=domnp-n14000003486-56a0b616-3df9-4932-85ac-e743b00892b1&searchTerm=TmB%20Charitable%20Foundation%2C%20Inc&listNameOrder=TMBCCHARITABLEFOUNDATION%20N140000034860> (last visited on 4/16/2015).

³⁸ See Department of State website at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FLORIDAPEARLS%20N090000120790&aggregateId=domnp-n09000012079-33437139-5337-4d63-9f77-93ae514744a1&searchTerm=florida%20pearls&listNameOrder=FLORIDAPEARLS%20N090000120790> (last visited on 4/16/2015).

³⁹ See Delta Research and Educational Foundation website at http://www.deltasigmatheta.org/programs_delta_foundation.html (last visited on 4/16/2015).

⁴⁰ See Alpha Kappa Alpha Education Advancement Foundation, Inc., website at <http://www.akaef.org/> (last visited on 4/16/2015).

⁴¹ See National Education Fund, Inc., website at <http://www.sgrho1922.org/foundations> (last visited on 4/16/2015).

American Dream Baseball, Inc.⁴²

American Dream Baseball, Inc., is a not-for-profit organization that teaches the fundamentals of baseball, as well as discipline, character, respect, perseverance, work ethic, sacrifice and passion to underprivileged children. Their mission statement is: “The American Dream Baseball, Inc. strives to teach baseball fundamentals to kids of all ages that aspire to achieve success, higher education and other opportunities through baseball.”

Florida Benevolent Group, Inc.⁴³

With a nationwide shortage of trained medical professionals, the Florida Benevolent Group provides scholarships to individuals who are interested in a career in the medical profession. Their mission statement is: “Florida Benevolent Group, a 501(c)(3) tax-exempt, not-for-profit organization, is to assist academically motivated individuals interested in pursuing a medical career.”

III. Effect of Proposed Changes:

The bill repeals specialty license plate application requirements listed in s. 320.08053(1), F.S., which were found to be unconstitutional in 2010.

Three specialty license plates are repealed from statute because they have been discontinued by the DHSMV for failure to maintain 1,000 active plates or not meeting pre-sale requirements. Those plates are the:

- Corrections Foundation license plate;
- Children First license plate; and
- Veterans of Foreign Wars license plate.

The minimum pre-sale requirement for a new specialty license plate is changed from 1,000 plates to 4,000 plates. Beginning, July 1, 2020, the DHSMV must discontinue the issuance of an approved specialty plate if the number of valid specialty plate registrations falls below 4,000 plates for at least 12 consecutive months. These 4,000 plate minimum requirements do not apply to specialty license plates that have statutory eligibility limitations for purchase. The only specialty license plate affected in s. 320.08056, F.S., and s. 320.08058, F.S., is the Fraternal Order of Police license plate which may only be issued to organization members and their family.⁴⁴

The distribution and use of annual use fees of the “In God We Trust” specialty license plate⁴⁵ are modified to allow a *maximum* of 10 percent of annual use fees to be used to offset marketing, administration, and promotion of the specialty license plate. The bill repeals provisions requiring the fees to be used for the children of public safety employees and U.S. military members who have died in the line of duty who are not covered by existing state law. Instead, the fees will be

⁴² See American Dream Baseball, Inc., website at <http://americandreambaseball.org/> (last visited on 4/16/2015).

⁴³ See Florida Benevolent Group, Inc., website at <http://www.flbenevolentgroup.com/> (last visited on 4/16/2015).

⁴⁴ Sections 320.08056(4)(www) and 320.08058(75), F.S.

⁴⁵ Section 320.08058(67), F.S.

used to address the needs of military service members and public safety employees, their spouses, and dependents, in addition to uses already in statute.

The bill adds Major League Soccer and the North American Soccer League to the Florida Professional Sports Team specialty license plates, effective October 1, 2015.

Additionally, effective October 1, 2015, the bill directs the DHSMV to establish 27 new specialty plates, each having an annual use fee of \$25.

Proposed Specialty Plates (*effective October 1, 2015*)

Florida Professional Sports Team License Plates

The bill directs the DHSMV to create three new Florida Professional Sports Team specialty license plates for the:

- Orlando City Soccer Club;
- Jacksonville Armada Football Club; and
- Tampa Bay Rowdies.

Annual use fees are to be distributed under the provisions of existing professional sports teams plates.

Bonefish and Tarpon Trust License Plate

Specialty plate annual use fees will be distributed to the Bonefish Tarpon Trust to conserve and enhance Florida bonefish and tarpon fisheries and their respective environments.

Rotary's Camp Florida

Specialty plate annual use fees will be distributed to Rotary's Camp Florida to be used as grants for Florida Rotary Districts that provide camp services to children throughout Florida, and direct support to the programs and services provided to children who attend the camp.

Support Down Syndrome

Specialty plate annual use fees will be distributed to Olivia's Angels Foundation, Inc., to fund its activities, programs, and projects within the state.

Safe and Free Florida

Specialty plate annual use fees will be distributed to the Statewide Council on Human Trafficking, to distribute to nongovernmental, not-for-profit agencies within each Florida county that assist sexually abused, exploited, or trafficked victims. Funds may not be distributed to an agency that charges victims for services received. An agency receiving such funds must use them to provide material needs, detoxification services, prenatal and postnatal care, safe houses or recovery care centers, or counseling programs for victims.

Sun Sea Smiles

Specialty plate annual use fees will be distributed as follows:

- 5 percent to the Florida Caribbean Charitable Foundation, Inc., strictly for marketing the specialty license plate;
- 30 percent to the Florida Caribbean Charitable Foundation, Inc., to be used for a college scholarship program, promotion of health and wellness among Florida residents of Caribbean descent, and to promote awareness of Caribbean culture within the state;
- 20 percent to the American Friends of Jamaica, Inc., for use as grants to promote social and community development among Florida residents;
- 10 percent to the Haitian Neighborhood Center Sant La, Inc., to promote social and community development;
- 10 percent to Fanm Ayisyen Nan Miyami, Inc., to promote social and community development;
- 20 percent to Greater Caribbean American Cultural Coalition, Inc., to promote awareness of Caribbean culture within the state; and
- 5 percent to Little Haiti Optimist Foundation, Inc., to promote awareness of Caribbean culture and youth development within the state.

Take Stock in Children

Specialty plate annual use fees will be distributed to Take Stock in Children, Inc., to fund its activities, scholarship and mentoring programs, and projects.

Paddle Florida

Specialty plate annual use fees will be distributed to Paddle Florida, Inc., to be used by the Florida Forever grant program to support activities that further outdoor recreation and natural resource protection.

Dogs Making a Difference

Specialty plate annual use fees will be distributed to Southeastern Guide Dogs, Inc., for the training and promotion of dogs for use by veterans and citizens who are blind.

Ducks Unlimited

Specialty plate annual use fees will be distributed to Ducks Unlimited, Inc., to support the organization's mission and efforts for the conservation, restoration, and management of Florida wetlands and associated habitats for the benefit of waterfowl, other wildlife, and people.

Team Hammy

Specialty plate annual use fees will be distributed to Team Hammy, Inc., to grant wishes to families living with ALS, provide continuing education to caretakers and physicians, and create awareness of ALS in the community.

Florida Bay Forever

Specialty plate annual use fees will be distributed to the Florida National Park Association, Inc., to supplement the Everglades National Park service's budgets and to support educational, interpretive, historical, and scientific research relating to the Everglades National Park.

Furry Friends

Specialty plate annual use fees will be distributed to Furry Friends of Florida, Inc., who will use such fees for activities, programs, and projects, including pet rescue, animal shelters, pet vaccination, veterinary services, and service animals.

Save Our Shores Florida

Specialty plate annual use fees will be distributed to Adore the Shore, Inc., to be used to fund activities, programs, and projects that provide for clean-up activities on Florida's beaches following natural or man-made occurrences and any other legal purpose.

Support Our Constitution

Specialty plate annual use fees will be distributed to The Constitution Foundation, Inc., to fund the activities, programs, and projects of the foundation.

Pan-Hellenic

- Proceeds from the sales of the Alpha Phi Alpha Fraternity, Inc., license plates will benefit the Florida Federation of Alpha Phi Alpha Fraternity Foundation to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Omega Psi Phi Fraternity, Inc., license plates will benefit the Omega Friendship Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Kappa Alpha Fraternity, Inc., license plates will benefit the Southern Province Kappa Alpha Psi Fraternity, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Phi Beta Sigma Fraternity, Inc., license plates will benefit the TmB Charitable Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Zeta Phi Beta Sorority, Inc., license plates will benefit the Florida Pearls, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Delta Sigma Theta Sorority, Inc., license plates will benefit the Delta Research and Educational Foundation to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Alpha Kappa Alpha Sorority, Inc., license plates will benefit the Alpha Kappa Alpha Education Advancement Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Sigma Gamma Rho Sorority, Inc., license plates will benefit the National Education Fund, Inc., to promote community awareness and action through educational, economic, and cultural awareness and action.

The United Negro College Fund will receive 5 percent from the sales of all of the Pan-Hellenic License Plates.

Play Ball

The license plate annual use fees shall be distributed to American Dream Baseball, Inc., which may retain all proceeds from annual use fees to fund the activities, programs and projects of the organization.

Medical Professionals Who Care

The license plate annual use fees shall be distributed to the Florida Benevolent Group, Inc., to assist low income individuals in obtaining a medical education and career through scholarships, support, and guidance.

Except as otherwise expressly provided, this act 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:

Individuals who choose to purchase a specialty license plate created in the bill will pay a \$25 annual use fee in addition to appropriate license taxes and fees. The organization designated to receive those fees, after retention of funds by the DHSMV to defray departmental expenditures, will receive revenue from each purchase.

Proposed specialty plates must meet the new minimum pre-sale requirements. Furthermore, existing specialty plates that do not meet the new minimum sale requirements by July 1, 2020, will be discontinued by the DHSMV.

C. Government Sector Impact:

According to the DHSMV, the cost for the minimum required number of each specialty license plate to be designed and manufactured is \$11,280. The department also estimates that the programming costs to develop all 27 specialty license plates is \$162,640. The

DHSMV is authorized to retain revenues from the first proceeds of specialty license plate sales to defray departmental expenditures related to the specialty license plate program.⁴⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08056 and 320.08058.

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 14, 2015:

The committee substitute:

- Adds 9 specialty license plates.
- Exempts specialty license plates that have statutory eligibility limitations for purchase from:
 - The minimum pre-sale requirement of 4,000 vouchers before a specialty license plate can be produced.
 - The discontinuation of a specialty license plate if the number of valid registrations fall below 4,000 plates for at least 12 consecutive months.

B. Amendments:

None.

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

⁴⁶ Section 320.08056(7), F.S.



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Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Transportation, Tourism, and
Economic Development)

A bill to be entitled

An act relating to specialty license plates; amending
s. 320.08053, F.S., relating to requirements for
requests to establish a specialty license plate;
deleting application requirements; revising presale
requirements; providing an exception to the presale
requirements for certain specialty plates; amending s.
320.08056, F.S.; authorizing a request for a specialty
plate to be made annually to an authorized agent
serving on behalf of the Department of Highway Safety
and Motor Vehicles; deleting certain specialty license
plates from the list of license plates for which an
annual use fee must be collected; revising the minimum
requirements to continue issuance of certain specialty
plates; providing an exception to the minimum
requirements for certain specialty plates; conforming
cross-references; amending s. 320.08058, F.S.;
deleting specified specialty license plates; revising
provisions relating to specified specialty license
plates; conforming cross-references; amending ss.
320.08056 and 320.08058, F.S.; directing the
Department of Highway Safety and Motor Vehicles to
develop certain specialty license plates; establishing
an annual use fee for the plates; providing for
distribution and use of fees collected from the sale
of the plates; providing effective dates.



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

Section 1. Section 320.08053, Florida Statutes, is amended
to read:

320.08053 Establishment of Requirements for requests to
establish specialty license plates.-

~~(1) An organization that seeks authorization to establish a~~
~~new specialty license plate for which an annual use fee is to be~~
~~charged must submit to the department:~~

~~(a) A request for the particular specialty license plate~~
~~being sought, describing the proposed specialty license plate in~~
~~specific terms, including a sample plate that conforms to the~~
~~specifications set by the department and this chapter, and that~~
~~is in substantially final form.~~

~~(b) An application fee, not to exceed \$60,000, to defray~~
~~the department's cost for reviewing the application and~~
~~developing the specialty license plate, if authorized. State~~
~~funds may not be used to pay the application fee, except for~~
~~collegiate specialty license plates authorized in s.~~
~~320.08058(3) and (13). All applications requested on or after~~
~~the effective date of this act must meet the requirements of~~
~~this act.~~

~~(c) A marketing strategy outlining short-term and long-term~~
~~marketing plans for the requested specialty license plate and a~~
~~financial analysis outlining the anticipated revenues and the~~
~~planned expenditures of the revenues to be derived from the sale~~
~~of the requested specialty license plates.~~



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~~The information required under this subsection must be submitted to the department at least 90 days before the convening of the next regular session of the Legislature.~~

~~(1)(2) If a the specialty license plate requested by an the organization is approved by law, the organization must submit the proposed art design for the specialty license plate to the department, in a medium prescribed by the department, as soon as practicable, but no later than 60 days after the act approving the specialty license plate becomes a law. If the specialty license plate requested by the organization is not approved by the Legislature or does not meet the presale requirements in subsection (3), the application fee shall be refunded to the requesting organization.~~

~~(2)(3)(a) Within 120 days following the specialty license plate becoming law, the department shall establish a method to issue a specialty license plate voucher to allow for the presale of the specialty license plate. The processing fee as prescribed in s. 320.08056, the service charge and branch fee as prescribed in s. 320.04, and the annual use fee as prescribed in s. 320.08056 shall be charged for the voucher. All other applicable fees shall be charged at the time of issuance of the license plates.~~

~~(b) Within 24 months after the presale specialty license plate voucher is established, the approved specialty license plate organization must record with the department a minimum of 4,000 1,000 voucher sales before manufacture of the license plate may commence. If, at the conclusion of the 24-month presale period, the minimum sales requirements have not been met, the specialty plate is deauthorized and the department~~



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shall discontinue development of the plate and discontinue issuance of the presale vouchers. Upon deauthorization of the license plate, a purchaser of the license plate voucher may use the annual use fee collected as a credit towards any other specialty license plate or apply for a refund on a form prescribed by the department. This paragraph does not apply to specialty license plates that have statutory eligibility limitations for purchase.

~~(c) An organization that meets the requirements of this subsection shall be deemed to have submitted a valid survey for purposes of s. 45, chapter 2008-176, Laws of Florida, as amended.~~

Section 2. Subsection (3), paragraphs (iii), (ttt), and (uuu) of subsection (4), subsection (8), and paragraph (a) of subsection (10) of section 320.08056, Florida Statutes, are amended to read:

320.08056 Specialty license plates.—

(3) Each request must be made annually to the department or an authorized agent serving on behalf of the department, accompanied by the following tax and fees:

(a) The license tax required for the vehicle as set forth in s. 320.08.

(b) A processing fee of \$5, to be deposited into the Highway Safety Operating Trust Fund.

(c) A license plate fee as required by s. 320.06(1)(b).

(d) A license plate annual use fee as required in subsection (4).

A request may be made any time during a registration period. If



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a request is made for a specialty license plate to replace a current valid license plate, the specialty license plate must be issued with appropriate decals attached at no tax for the plate, but all fees and service charges must be paid. If a request is made for a specialty license plate at the beginning of the registration period, the tax, together with all applicable fees and service charges, must be paid.

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

~~(iii) Corrections Foundation license plate, \$25.~~

~~(ttt) Children First license plate, \$25.~~

~~(uuu) Veterans of Foreign Wars license plate, \$25.~~

(8) (a) The department must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter shall be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates. Beginning July 1, 2020, the department shall discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 4,000 for at least 12 consecutive months. A warning letter shall be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 4,000 plates. This paragraph does not apply to collegiate license plates established under s. 320.08058(3) or specialty license plates that have statutory eligibility limitations for purchase.

(b) The department is authorized to discontinue the



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issuance of a specialty license plate and distribution of associated annual use fee proceeds if the organization no longer exists, if the organization has stopped providing services that are authorized to be funded from the annual use fee proceeds, if the organization does not meet the presale requirements as prescribed in s. 320.08053(2) ~~s. 320.08053(3)~~, or pursuant to an organizational recipient's request. Organizations shall notify the department immediately to stop all warrants for plate sales if any of the conditions in this section exist and must meet the requirements of s. 320.08062 for any period of operation during a fiscal year.

(10) (a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraphs (4) (d), (bb), (ll), (kkk), and (yyy) ~~(lll), (uuu), and (bbb)~~ and s. 320.0891.

Section 3. Subsection (61), paragraph (b) of present subsection (67), paragraph (b) of present subsection (70), paragraph (d) of present subsection (71), present subsections (72) and (73), paragraph (a) of present subsection (79), paragraph (a) of present subsection (80), paragraph (a) of present subsection (81), paragraph (a) of present subsection (82), paragraph (a) of present subsection (83), paragraph (a) of



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present subsection (84), paragraph (a) of present subsection (85), and paragraph (a) of present subsection (86) of section 320.08058, Florida Statutes, are amended to read:

320.08058 Specialty license plates.—

~~(61) CORRECTIONS FOUNDATION LICENSE PLATES.—~~

~~(a) The department shall develop a Corrections Foundation license plate as provided in this section. The word "Florida" must appear at the top of the plate, the words "Corrections Foundation" must appear at the bottom of the plate, and the Corrections Foundation logo must appear to the left of the numerals.~~

~~(b) The annual use fees shall be distributed to Corrections Foundation, Inc., a direct-support organization created pursuant to s. 944.802, and shall be used to continue and expand the charitable work of the foundation, as provided in s. 944.802 and the articles of incorporation of the foundation.~~

~~(66)(67) IN GOD WE TRUST LICENSE PLATES.—~~

(b) The annual use fees from the plate shall be distributed to the In God We Trust Foundation, Inc., which may use a maximum of 10 percent to offset marketing, administration, and promotion expenses and which may use the balance of the fees to address the needs of military servicemembers and their spouses and dependents, provide education in public and private schools regarding the historical significance of religion in American and Florida history, provide educational grants in public and private schools, address the needs of public safety employees and their spouses and dependents, and foster self-reliance and stability in Florida's children and families.

~~(b) The license plate annual use fees shall be distributed~~



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~~to the In God We Trust Foundation, Inc., to fund educational scholarships for the children of Florida residents who are members of the United States Armed Forces, the National Guard, and the United States Armed Forces Reserve and for the children of public safety employees who have died in the line of duty who are not covered by existing state law. Funds shall also be distributed to other s. 501(c)(3) organizations that may apply for grants and scholarships and to provide educational grants to public and private schools to promote the historical and religious significance of American and Florida history. The In God We Trust Foundation, Inc., shall distribute the license plate annual use fees in the following manner:~~

~~1. The In God We Trust Foundation, Inc., shall retain all revenues from the sale of such plates until all startup costs for developing and establishing the plate have been recovered.~~

~~2. Ten percent of the funds received by the In God We Trust Foundation, Inc., shall be expended for administrative costs, promotion, and marketing of the license plate directly associated with the operations of the In God We Trust Foundation, Inc.~~

~~3. All remaining funds shall be expended by the In God We Trust Foundation, Inc., for programs.~~

~~(69)(70) ST. JOHNS RIVER LICENSE PLATES.—~~

(b) The requirements of s. 320.08053 must be met prior to the issuance of the plate. Thereafter, the license plate annual use fees shall be distributed to the St. Johns River Alliance, Inc., a s. 501(c)(3) nonprofit organization, which shall administer the fees as follows:

1. The St. Johns River Alliance, Inc., shall retain the



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first \$60,000 of the annual use fees as direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process. Thereafter, up to 10 percent of the annual use fee revenue may be used for administrative costs directly associated with education programs, conservation, research, and grant administration of the organization, and up to 10 percent may be used for promotion and marketing of the specialty license plate.

2. At least 30 percent of the fees shall be available for competitive grants for targeted community-based or county-based research or projects for which state funding is limited or not currently available. The remaining 50 percent shall be directed toward community outreach and access programs. The competitive grants shall be administered and approved by the board of directors of the St. Johns River Alliance, Inc. A grant advisory committee shall be composed of six members chosen by the St. Johns River Alliance board members.

3. Any remaining funds shall be distributed with the approval of and accountability to the board of directors of the St. Johns River Alliance, Inc., and shall be used to support activities contributing to education, outreach, and springs conservation.

4. Effective July 1, 2014, the St. Johns River license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b) ~~s. 320.08053(3)(b)~~. The St. Johns River Alliance, Inc., shall have 24 months to record a minimum of 1,000 sales of the license plates. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing



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plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the St. Johns River specialty plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the development and issuance of the plate. This subparagraph is repealed June 30, 2016.

~~(70)(71)~~ HISPANIC ACHIEVERS LICENSE PLATES.—

(d) Effective July 1, 2014, the Hispanic Achievers license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b) ~~s. 320.08053(3)(b)~~. National Hispanic Corporate Achievers, Inc., shall have 24 months to record a minimum of 1,000 sales. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the Hispanic Achievers license plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the Hispanic Achievers license plate. This subsection is repealed June 30, 2016.

~~(72) CHILDREN FIRST LICENSE PLATES.—~~

~~(a) Upon Children First Florida, Inc., meeting the requirements of s. 320.08053, the department shall develop a Children First license plate as provided in this section. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Children First" must appear at the bottom~~



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~~of the plate.~~

~~(b) The proceeds from the license plate annual use fee shall be distributed to Children First Florida, Inc., which shall retain all proceeds until the startup costs to develop and establish the plates have been recovered. Thereafter, the proceeds shall be used as follows:~~

~~1. A maximum of 10 percent of the proceeds may be used to administer the license plate program, for direct administrative costs associated with the operations of Children First Florida, Inc., and to promote and market the license plates.~~

~~2. The remaining fees shall be used by Children First Florida, Inc., to fund public schools in this state, including teacher salaries.~~

~~(73) VETERANS OF FOREIGN WARS LICENSE PLATES.-~~

~~(a) Upon Veterans of Foreign Wars, Department of Florida, meeting the requirements of s. 320.08053, the department shall develop a Veterans of Foreign Wars license plate as provided in this section. The plates must bear the colors and design approved by the department and must incorporate the Great Seal of the Veterans of Foreign Wars of the United States as described in Art. VIII, s. 801 of the Congressional Charter and By-Laws of the Veterans of Foreign Wars of the United States. The word "Florida" must appear at the top of the plate, and the words "Veterans of Foreign Wars" must appear at the bottom of the plate.~~

~~(b) The Veterans of Foreign Wars, Department of Florida shall retain all revenues from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, 60 percent of the annual revenues shall~~



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~~be distributed to the Veterans of Foreign Wars, Department of Florida to support the Voice of Democracy and Patriots' Pen Scholarship programs, to support high school and college ROTC programs, and for administration and marketing the plate; 20 percent of the annual revenues shall be distributed to the direct support organization created under s. 292.055 under the Florida Department of Veterans' Affairs; and 20 percent of the annual revenues shall be distributed to the direct support organization created under s. 250.115 under the Department of Military Affairs. From the funds distributed to the Veterans of Foreign Wars, Department of Florida, an amount not to exceed 10 percent of the annual revenues received from the sale of the plate may be used for administration and marketing the plate.~~

~~(76)(79) FREEMASONRY LICENSE PLATES.-~~

~~(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 320.08053(1), the department shall develop a Freemasonry license plate as provided in this section and s. 320.08053 s. 320.08053(2) and (3). The word "Florida" must appear at the top of the plate, and the words "In God We Trust" must appear at the bottom of the plate.~~

~~(77)(80) AMERICAN LEGION LICENSE PLATES.-~~

~~(a) Notwithstanding s. 320.08053(1) and s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, the department shall develop an American Legion license plate as provided in s. 320.08053 s. 320.08053(2) and (3) and this section. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "American Legion"~~



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346 must appear at the bottom of the plate.

347 ~~(78)-(81)~~ LAUREN'S KIDS LICENSE PLATES.—

348 (a) Notwithstanding ~~s. 320.08053(1)~~ and s. 45, chapter
349 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-
350 223, Laws of Florida, the department shall develop a Lauren's
351 Kids, Prevent Child Sexual Abuse license plate as provided in s.
352 320.08053 ~~s. 320.08053(2) and (3)~~, and this section. The plate
353 must bear the colors and design approved by the department. The
354 word "Florida" must appear at the top of the plate, and the
355 words "Lauren's Kids" must appear at the bottom of the plate.

356 ~~(79)-(82)~~ BIG BROTHERS BIG SISTERS LICENSE PLATES.—

357 (a) Notwithstanding ~~s. 320.08053(1)~~ and s. 45, chapter
358 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-
359 223, Laws of Florida, the department shall develop a Big
360 Brothers Big Sisters license plate as provided in s. 320.08053
361 ~~s. 320.08053(2) and (3)~~, and this section. The plate must bear
362 the colors and design approved by the department. The word
363 "Florida" must appear at the top of the plate, and the words
364 "Big Brothers Big Sisters" must appear at the bottom of the
365 plate.

366 ~~(80)-(83)~~ FALLEN LAW ENFORCEMENT OFFICERS LICENSE PLATES.—

367 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
368 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
369 ~~and s. 320.08053(1)~~, the department shall develop a Fallen Law
370 Enforcement Officers license plate as provided in s. 320.08053
371 ~~s. 320.08053(2) and (3)~~ and this section. The plate must bear
372 the colors and design approved by the department. The word
373 "Florida" must appear at the top of the plate, and the words "A
374 Hero Remembered Never Dies" must appear at the bottom of the



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375 plate.

376 ~~(81)-(84)~~ FLORIDA SHERIFFS ASSOCIATION LICENSE PLATES.—

377 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
378 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
379 ~~and s. 320.08053(1)~~, the department shall develop a Florida
380 Sheriffs Association license plate as provided in s. 320.08053
381 ~~s. 320.08053(2) and (3)~~ and this section. The plate must bear
382 the colors and design approved by the department. A sheriff's
383 star must appear on the left side of the plate, the word
384 "Florida" must appear at the top of the plate, and the words
385 "Florida Sheriffs Association" must appear at the bottom of the
386 plate.

387 ~~(82)-(85)~~ KEISER UNIVERSITY LICENSE PLATES.—

388 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
389 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
390 ~~and s. 320.08053(1)~~, the department shall develop a Keiser
391 University license plate as provided in s. 320.08053 ~~s.~~
392 ~~320.08053(2) and (3)~~ and this section. The plate must bear the
393 colors and design approved by the department. The word "Florida"
394 must appear at the top of the plate, and the words "Keiser
395 University" must appear at the bottom of the plate.

396 ~~(83)-(86)~~ MOFFITT CANCER CENTER LICENSE PLATES.—

397 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
398 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
399 ~~and s. 320.08053(1)~~, the department shall develop a Moffitt
400 Cancer Center license plate as provided in s. 320.08053 ~~s.~~
401 ~~320.08053(2) and (3)~~ and this section. The word "Florida" must
402 appear at the top of the plate, and the words "Moffitt Cancer
403 Center" must appear at the bottom of the plate.



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404 Section 4. Effective October 1, 2015, paragraphs (ffff)
405 through (fffff) are added to subsection (4) of section
406 320.08056, Florida Statutes, to read:
407 320.08056 Specialty license plates.—
408 (4) The following license plate annual use fees shall be
409 collected for the appropriate specialty license plates:
410 (ffff) Bonefish and Tarpon Trust license plate, \$25.
411 (gggg) Rotary's Camp Florida license plate, \$25.
412 (hhhh) Support Down Syndrome license plate, \$25.
413 (iiii) Safe and Free Florida license plate, \$25.
414 (jjjj) Sun Sea Smiles license plate, \$25.
415 (kkkk) Take Stock in Children license plate, \$25.
416 (llll) Paddle Florida license plate, \$25.
417 (mmmm) Orlando City Soccer Club license plate, \$25.
418 (nnnn) Dogs Making a Difference license plate, \$25.
419 (oooo) Ducks Unlimited license plate, \$25.
420 (pppp) Team Hammy license plate, \$25.
421 (qqqq) Florida Bay Forever license plate, \$25.
422 (rrrr) Jacksonville Armada Football Club license plate,
423 \$25.
424 (ssss) Tampa Bay Rowdies license plate, \$25.
425 (tttt) Furry Friends license plate, \$25.
426 (uuuu) Save Our Shores Florida license plate, \$25
427 (vvvv) Support Our Constitution license plate, \$25.
428 (www) Alpha Phi Alpha Fraternity license plate, \$25.
429 (xxxx) Omega Psi Phi Fraternity license plate, \$25.
430 (yyyy) Kappa Alpha Psi Fraternity license plate, \$25.
431 (zzzz) Phi Beta Sigma Fraternity license plate, \$25.
432 (aaaa) Zeta Phi Beta Sorority license plate, \$25.



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433 (bbbb) Delta Sigma Theta Sorority license plate, \$25.
434 (cccc) Alpha Kappa Alpha Sorority license plate, \$25.
435 (dddd) Sigma Gamma Rho Sorority license plate, \$25.
436 (eeee) Play Ball license plate, \$25.
437 (ffff) Medical Professionals Who Care license plate, \$25.
438 Section 5. Effective October 1, 2015, subsection (9) of
439 section 320.08058, Florida Statutes, is amended, and subsections
440 (84) through (103) are added to that section, to read:
441 320.08058 Specialty license plates.—
442 (9) FLORIDA PROFESSIONAL SPORTS TEAM LICENSE PLATES.—
443 (a) The Department of Highway Safety and Motor Vehicles
444 shall develop a Florida Professional Sports Team license plate
445 as provided in this section for Major League Baseball, National
446 Basketball Association, National Football League, Arena Football
447 League Teams, and National Hockey League, Major League Soccer,
448 and North American Soccer League teams domiciled in this state.
449 However, any Florida Professional Sports Team license plate
450 created or established after January 1, 1997, must comply with
451 the requirements of s. 320.08053 and be specifically authorized
452 by an act of the Legislature. Florida Professional Sports Team
453 license plates must bear the colors and design approved by the
454 department and must include the official league or team logo, or
455 both, as appropriate for each team. The word "Florida" must
456 appear at the top of the plate.
457 (b) The license plate annual use fees are to be annually
458 distributed as follows:
459 1. Fifty-five percent of the proceeds from the Florida
460 Professional Sports Team plate must be deposited into the
461 Professional Sports Development Trust Fund within the Department



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462 of Economic Opportunity. These funds must be used solely to
463 attract and support major sports events in this state. As used
464 in this subparagraph, the term "major sports events" means, but
465 is not limited to, championship or all-star contests of Major
466 League Baseball, the National Basketball Association, the
467 National Football League, the National Hockey League, Major
468 League Soccer, the North American Soccer League, the men's and
469 women's National Collegiate Athletic Association Final Four
470 basketball championship, or a horseracing or dogracing Breeders'
471 Cup. All funds must be used to support and promote major
472 sporting events, and the uses must be approved by the Department
473 of Economic Opportunity.

474 2. The remaining proceeds of the Florida Professional
475 Sports Team license plate must be allocated to Enterprise
476 Florida, Inc. These funds must be deposited into the
477 Professional Sports Development Trust Fund within the Department
478 of Economic Opportunity. These funds must be used by Enterprise
479 Florida, Inc., to promote the economic development of the sports
480 industry; to distribute licensing and royalty fees to
481 participating professional sports teams; to promote education
482 programs in Florida schools that provide an awareness of the
483 benefits of physical activity and nutrition standards; to
484 partner with the Department of Education and the Department of
485 Health to develop a program that recognizes schools whose
486 students demonstrate excellent physical fitness or fitness
487 improvement; to institute a grant program for communities
488 bidding on minor sporting events that create an economic impact
489 for the state; to distribute funds to Florida-based charities
490 designated by Enterprise Florida, Inc., and the participating



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491 professional sports teams; and to fulfill the sports promotion
492 responsibilities of the Department of Economic Opportunity.

493 3. Enterprise Florida, Inc., shall provide an annual
494 financial audit in accordance with s. 215.981 of its financial
495 accounts and records by an independent certified public
496 accountant pursuant to the contract established by the
497 Department of Economic Opportunity. The auditor shall submit the
498 audit report to the Department of Economic Opportunity for
499 review and approval. If the audit report is approved, the
500 Department of Economic Opportunity shall certify the audit
501 report to the Auditor General for review.

502 4. Notwithstanding the provisions of subparagraphs 1. and
503 2., proceeds from the Professional Sports Development Trust Fund
504 may also be used for operational expenses of Enterprise Florida,
505 Inc., and financial support of the Sunshine State Games.

506 (84) BONEFISH AND TARPON TRUST LICENSE PLATES.—

507 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
508 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
509 and s. 45, chapter 2014-216, Laws of Florida, the department
510 shall develop a Bonefish and Tarpon Trust license plate as
511 provided in this section and s. 320.08053. Bonefish and Tarpon
512 Trust license plates must bear the colors and design approved by
513 the department. The word "Florida" must appear at the top of the
514 plate, and the words "Bonefish and Tarpon Trust" must appear at
515 the bottom of the plate.

516 (b) The department shall retain all annual use fees from
517 the sale of such plates until all startup costs for developing
518 and issuing the plates have been recovered. Thereafter, the
519 balance of the fees shall be distributed to the Bonefish and



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520 Tarpon Trust, which:

521 1. May use a maximum of 10 percent of the proceeds to
522 promote and market the Bonefish and Tarpon Trust license plate.

523 2. Shall invest and reinvest the remainder of the proceeds
524 and use the interest earnings to conserve and enhance Florida
525 bonefish and tarpon fisheries and their respective environments
526 through stewardship, research, education, and advocacy.

527 (85) ROTARY'S CAMP FLORIDA LICENSE PLATES.-

528 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
529 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
530 and s. 45, chapter 2014-216, Laws of Florida, the department
531 shall develop a Rotary's Camp Florida license plate as provided
532 in this section and s. 320.08053. Rotary's Camp Florida license
533 plates must bear the colors and design approved by the
534 department. The word "Florida" must appear at the top of the
535 plate, and the words "Rotary's Camp Florida" must appear at the
536 bottom of the plate.

537 (b) The license plate annual use fees shall be distributed
538 to Rotary's Camp Florida, which may use a maximum of 10 percent
539 of the proceeds for administrative costs and for marketing the
540 plate. Thereafter, up to 23 percent shall be distributed as
541 grants for Florida Rotary Districts that provide camp services
542 to children in this state, and the balance of the proceeds shall
543 be used by Rotary's Camp Florida for direct support to the
544 programs and services provided to children who attend the camp.

545 (86) SUPPORT DOWN SYNDROME LICENSE PLATES.-

546 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
547 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
548 and s. 45, chapter 2014-216, Laws of Florida, the department



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549 shall develop a Support Down Syndrome license plate as provided
550 in this section and s. 320.08053. Support Down Syndrome license
551 plates must bear the colors and design approved by the
552 department. The word "Florida" must appear at the top of the
553 plate, and the words "Support Down Syndrome" must appear at the
554 bottom of the plate.

555 (b) The license plate annual use fees shall be distributed
556 to Olivia's Angels Foundation, Inc., to fund its activities,
557 programs, and projects within this state. Olivia's Angels
558 Foundation, Inc., may retain all revenues from the annual use
559 fees until all startup costs for developing and establishing the
560 plate have been recovered. Thereafter, up to 10 percent of the
561 annual use fee revenues may be used for administrative costs and
562 promotion and marketing of the specialty license plate.

563 (87) SAFE AND FREE FLORIDA LICENSE PLATES.-

564 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
565 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
566 and s. 45, chapter 2014-216, Laws of Florida, the department
567 shall develop a Safe and Free Florida license plate as provided
568 in this section and s. 320.08053. Safe and Free Florida license
569 plates must bear the colors and design approved by the
570 department. The word "Florida" must appear at the bottom of the
571 plate, and the words "End Human Trafficking" must appear at the
572 top of the plate.

573 (b) The license plate annual use fees shall be distributed
574 to the Statewide Council on Human Trafficking, with a report
575 that specifies the ratio that the annual use fees collected by
576 each county bear to the total fees collected for the plates
577 statewide. The council may retain all revenues from the annual



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use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 15 percent of the annual use fee revenues may be used for administrative costs and for promotion and marketing of the specialty license plate. The council shall distribute the remaining funds to nongovernmental, not-for-profit agencies within each county in this state which assist sexually abused, exploited, or trafficked victims. Funds may not be distributed to an agency that charges victims for services received.

1. An agency that receives the funds must use the funds for:

a. The material needs of sexually abused, exploited, or trafficked victims, including, but not limited to, clothing, housing, medical care, food, utilities, and transportation.

b. Detoxification services.

c. Prenatal and postnatal care and services for infants awaiting placement with adoptive parents.

d. Real estate purchases to facilitate a safe house or a transitional care or recovery care center.

e. Counseling, training, awareness, and prevention programs and advertisement.

2. An agency that receives funds may not use the funds for administrative or legal expenses, or for capital expenditures other than those specified in sub-subparagraph 1.d.

3. Each year, any unused funds that exceed 10 percent of the total amount received by an agency must be returned to the Statewide Council on Human Trafficking to be redistributed by the council to other qualified agencies.

4. Each agency that receives funds from the Statewide



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Council on Human Trafficking must submit an annual attestation to the council.

5. If no qualified agency applies to receive funds in a county in any year, that county's share of the funds shall be distributed pro rata to the qualified agencies that apply and maintain a place of business within a 100-mile radius of the county seat of that county. If no qualified agency within the 100-mile radius applies, the funds shall be distributed to other qualified agencies within the state.

(88) SUN SEA SMILES LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Sun Sea Smiles license plate as provided in this section and s. 320.08053. Sun Sea Smiles license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Sun Sea Smiles" must appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the license plate annual use fees shall be distributed as follows:

1. Five percent shall be distributed to the Florida Caribbean Charitable Foundation, Inc., for marketing the Sun Sea Smiles license plate.

2. Thirty percent shall be distributed to the Florida Caribbean Charitable Foundation, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used as follows:



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636 a. Sixty percent shall be used for a college scholarship
637 program.
638 b. Fifteen percent shall be used to promote health and
639 wellness among Florida residents of Caribbean descent.
640 c. Twenty-five percent shall be used to promote awareness
641 of Caribbean culture within the state.
642 3. Twenty percent shall be distributed to the American
643 Friends of Jamaica, Inc., a charitable, not-for-profit
644 organization under s. 501(c)(3) of the Internal Revenue Code
645 registered with the Department of Agriculture and Consumer
646 Services and incorporated in New York, for use as grants to
647 promote social and community development among residents of this
648 state. Of this amount, up to 5 percent may be used for
649 administrative and marketing expenses.
650 4. Ten percent shall be distributed to Haitian Neighborhood
651 Center Sant La, Inc., to promote social and community
652 development. Of this amount, up to 5 percent may be used for
653 administrative expenses.
654 5. Ten percent shall be distributed to Fanm Ayisyen nan
655 Miyami, Inc., to promote social and community development. Of
656 this amount, up to 10 percent may be used for administrative
657 expenses.
658 6. Twenty percent shall be distributed to Greater Caribbean
659 American Cultural Coalition, Inc., to promote awareness of
660 Caribbean culture within this state. Of this amount, up to 5
661 percent may be used for administrative expenses.
662 7. Five percent shall be distributed to Little Haiti
663 Optimist Foundation, Inc., to promote awareness of Caribbean
664 culture and youth development within this state. Of this amount,



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665 up to 5 percent may be used for administrative expenses.
666 (89) TAKE STOCK IN CHILDREN LICENSE PLATES.-
667 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
668 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
669 and s. 45, chapter 2014-216, Laws of Florida, the department
670 shall develop a Take Stock in Children license plate as provided
671 in this section and s. 320.08053. Take Stock in Children license
672 plates must bear the colors and design approved by the
673 department. The word "Florida" must appear at the top of the
674 plate, and the words "Take Stock in Children" must appear at the
675 bottom of the plate.
676 (b) The license plate annual use fees shall be distributed
677 to Take Stock in Children, Inc., to fund its activities,
678 scholarship and mentoring programs, and projects. Take Stock in
679 Children, Inc., may retain all revenues from the annual use fees
680 until all startup costs for developing and establishing the
681 plate have been recovered. Thereafter, up to 10 percent of the
682 annual use fee revenue may be used for administrative costs
683 directly associated with the corporation's programs and the
684 specialty license plate, and up to 15 percent may be used for
685 promotion and marketing of the specialty license plate.
686 (90) PADDLE FLORIDA LICENSE PLATES.-
687 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
688 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
689 and s. 45, chapter 2014-216, Laws of Florida, the department
690 shall develop a Paddle Florida license plate as provided in this
691 section and s. 320.08053. Paddle Florida license plates must
692 bear the colors and design approved by the department. The word
693 "Florida" must appear at the top of the plate, and words



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694 approved by the department must appear at the bottom of the
695 plate.

696 (b) The department shall retain all license plate annual
697 use fees until the startup costs for developing and issuing the
698 plates have been recovered. Thereafter, the annual use fees
699 shall be distributed to Paddle Florida, Inc., which may use up
700 to 10 percent of the proceeds for administrative costs and
701 marketing of the plate. The balance of the fees shall be used by
702 the Florida Forever grant program to support activities that
703 further outdoor recreation and natural resource protection.

704 (91) ORLANDO CITY SOCCER CLUB LICENSE PLATES.—
705 Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as
706 amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45,
707 chapter 2014-216, Laws of Florida, the department shall develop
708 an Orlando City Soccer Club license plate as provided in
709 subsection (9).

710 (92) DOGS MAKING A DIFFERENCE LICENSE PLATES.—

711 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
712 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
713 and s. 45, chapter 2014-216, Laws of Florida, the department
714 shall develop a Dogs Making a Difference license plate as
715 provided in this section and s. 320.08053. Dogs Making a
716 Difference license plates must bear the colors and design
717 approved by the department. The word "Florida" must appear at
718 the top of the plate, and the words "Dogs Making a Difference"
719 must appear at the bottom of the plate.

720 (b) The department may retain all license plate annual use
721 fees until the startup costs for developing and issuing the
722 plates have been recovered. Thereafter, the annual use fees



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723 shall be distributed to Southeastern Guide Dogs, Inc., which may
724 use up to 10 percent of the proceeds for administrative costs
725 and marketing of the plate. The balance of the fees shall be
726 used by Southeastern Guide Dogs, Inc., for the training and
727 promotion of dogs for use by veterans and citizens who are
728 blind.

729 (93) DUCKS UNLIMITED LICENSE PLATES.—

730 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
731 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
732 and s. 45, chapter 2014-216, Laws of Florida, the department
733 shall develop a Ducks Unlimited license plate as provided in
734 this section and s. 320.08053. Ducks Unlimited license plates
735 must bear the colors and design approved by the department. The
736 word "Florida" must appear at the top of the plate, and the
737 words "Conserving Florida's Wetlands" must appear at the bottom
738 of the plate.

739 (b) The license plate annual use fees shall be distributed
740 to Ducks Unlimited, Inc., a not-for-profit corporation under s.
741 501(c) (3) of the Internal Revenue Code. The proceeds must be
742 used to support Ducks Unlimited's mission and conservation
743 efforts in this state as follows:

744 1. Up to 5 percent may be used for administrative costs and
745 marketing of the plate.

746 2. A minimum of 95 percent shall be used to support Ducks
747 Unlimited's mission and efforts for the conservation,
748 restoration, and management of Florida wetlands and associated
749 habitats for the benefit of waterfowl, other wildlife, and
750 people.

751 (94) TEAM HAMMY LICENSE PLATES.—



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752 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
753 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
754 and s. 45, chapter 2014-216, Laws of Florida, the department
755 shall develop a Team Hammy license plate as provided in this
756 section and s. 320.08053. Team Hammy license plates must bear
757 the colors and design approved by the department. The word
758 "Florida" must appear at the top of the plate, and the words
759 "Team Hammy" must appear at the bottom of the plate.

760 (b) The department shall retain all license plate annual
761 use fees until all startup costs for developing and issuing the
762 plates have been recovered. Thereafter, the license plate annual
763 use fees shall be distributed to Team Hammy, Inc., a Florida
764 not-for-profit corporation, which may use up to 10 percent of
765 such fees for administrative costs and marketing of the plate.
766 The balance of the fees shall be used by Team Hammy, Inc., to
767 grant wishes to families living with amyotrophic lateral
768 sclerosis (ALS), to provide continuing education to caregivers
769 and physicians, and to increase awareness of ALS in the
770 community.

771 (95) FLORIDA BAY FOREVER LICENSE PLATES.-

772 (a) Notwithstanding s. 45 of chapter 2008-176, Laws of
773 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
774 and s. 45, chapter 2014-216, Laws of Florida, the department
775 shall develop a Florida Bay Forever license plate as provided in
776 this section and s. 320.08053. Florida Bay Forever license
777 plates must bear the colors and design approved by the
778 department. The word "Florida" must appear at the top of the
779 plate, and the words "Florida Bay Forever" must appear at the
780 bottom of the plate.



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781 (b) The department shall retain all license plate annual
782 use fees until all startup costs for developing and issuing the
783 plates have been recovered. Thereafter, the annual use fees
784 shall be distributed to the Florida National Park Association,
785 Inc., which may use up to 10 percent of such fees for
786 administrative costs and marketing of the plate. The balance of
787 the fees shall be used to supplement the Everglades National
788 Park budgets and to support educational, interpretive,
789 historical, and scientific research relating to the Everglades
790 National Park.

791 (96) JACKSONVILLE ARMADA FOOTBALL CLUB LICENSE PLATES.-
792 Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as
793 amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45,
794 chapter 2014-216, Laws of Florida, the department shall develop
795 a Jacksonville Armada Football Club license plate as provided in
796 subsection (9).

797 (97) TAMPA BAY ROWDIES LICENSE PLATES.-Notwithstanding s.
798 45, chapter 2008-176, Laws of Florida, as amended by s. 21,
799 chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216,
800 Laws of Florida, the department shall develop a Tampa Bay
801 Rowdies license plate as provided in subsection (9).

802 (98) FURRY FRIENDS LICENSE PLATES.-

803 (a) Notwithstanding s. 45 of chapter 2008-176, Laws of
804 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
805 and s. 45, chapter 2014-216, Laws of Florida, the department
806 shall develop a Furry Friends license plate as provided in this
807 section and s. 320.08053, upon application by Furry Friends of
808 Florida, Inc. Furry Friends license plates must bear the colors
809 and design approved by the department. The word "Florida" must



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810 appear at the top of the plate, and words approved by the
811 department must appear at the bottom of the plate.

812 (b) The department shall retain all revenue from the sale
813 of such plates until the startup costs for developing and
814 issuing the plates have been recovered. Thereafter, the annual
815 use fees shall be distributed monthly to Furry Friends of
816 Florida, Inc., which may use up to 15 percent of such revenue
817 for administrative, handling, and disbursement contracts and
818 expenses, and up to 10 percent for promotion, advertising, and
819 marketing contracts and costs. The balance of the fees shall be
820 used by Furry Friends of Florida, Inc., for activities,
821 programs, and projects, including, but not limited to, pet
822 rescue, animal shelters, pet vaccination, veterinary services,
823 and service animals.

824 (99) SAVE OUR SHORES FLORIDA LICENSE PLATES.-

825 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
826 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
827 and s. 45, chapter 2014-216, Laws of Florida, the department
828 shall develop a Save Our Shores Florida license plate as
829 provided in this section and s. 320.08053. Save Our Shores
830 Florida license plates must bear the colors and design approved
831 by the department. The word "Florida" must appear at the top of
832 the plate, and the words "Save Our Shores" must appear at the
833 bottom of the plate.

834 (b) The department shall retain all annual use fees from
835 the sale of such plates until startup costs for developing and
836 issuing the plates have been recovered. Thereafter, the annual
837 use fees shall be distributed to Adore the Shore, Inc., which
838 may retain all of such revenue until the startup costs to



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839 develop and establish the license plate program have been
840 recovered. Thereafter, Adore the Shore, Inc., may use the
841 proceeds as follows:

842 1. A maximum of 15 percent may be used for administrative
843 costs of the organization.

844 2. A maximum of 10 percent may be used for promotion and
845 marketing costs of the license plate program.

846 3. The remainder shall be used to fund activities,
847 programs, and projects that provide for cleanup activities on
848 Florida's beaches following natural or manmade occurrences that
849 threaten the pristine nature of Florida's beaches and any other
850 legal purpose as allowed by the Internal Revenue Code.

851 (100) SUPPORT OUR CONSTITUTION LICENSE PLATES.-

852 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
853 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
854 and s. 45, chapter 2014-216, Laws of Florida, the department
855 shall develop a Support Our Constitution license plate as
856 provided in this section and s. 320.08053. Support Our
857 Constitution license plates must bear the colors and design
858 approved by the department. The word "Florida" must appear at
859 the top of the plate, and the words "Support Our Constitution"
860 must appear at the bottom of the plate.

861 (b) The annual use fees shall be distributed to The
862 Constitution Foundation, Inc., which may retain all proceeds
863 from the annual use fees until the startup costs for developing
864 and issuing the license plates have been recovered. Thereafter,
865 The Constitution Foundation, Inc., may use the proceeds as
866 follows:

867 1. A maximum of 15 percent may be used for administrative



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costs of the organization.

2. A maximum of 10 percent may be used for promotion and marketing costs of the license plate.

3. The remainder shall be used to fund the activities, programs, and projects of The Constitution Foundation, Inc.

(101) PAN-HELLENIC LICENSE PLATES.—Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223 and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Pan-Hellenic Sorority or Fraternity license plate as provided in this section and s. 320.08053 for each of the following sororities and fraternities. Pan-Hellenic Sorority or Fraternity license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the name of the respective sorority or fraternity must appear at the bottom of the plate:

(a) Alpha Phi Alpha Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to the Florida Federation of Alpha Phi Alpha Fraternity Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Alpha Phi Alpha Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to the Florida Federation of Alpha Phi Alpha Fraternity Foundation, Inc., to



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promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(b) Omega Psi Phi Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the plate shall be distributed as follows:

1. Ten percent shall be distributed to Omega Friendship Foundation, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in Florida, strictly for marketing the Omega Psi Phi Fraternity, Inc., license plate.

2. Eighty-five percent shall be distributed to Omega Friendship Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.

3. Five percent shall be distributed to the United Negro College Fund to be used for college scholarships for Florida residents attending historically black colleges and universities.

(c) Kappa Alpha Psi Fraternity, Inc.—The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing plates have been recovered. Thereafter, the annual use fees from the sale of the



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926 plate shall be distributed as follows:

927 1. Ten percent shall be distributed to the Southern
928 Province Kappa Alpha Psi Fraternity, Inc., a charitable, not-
929 for-profit organization under s. 501(c)(3) of the Internal
930 Revenue Code registered with the Department of Agriculture and
931 Consumer Services and incorporated in Florida, strictly for
932 marketing the Kappa Alpha Psi Fraternity, Inc., license plate.

933 2. Eighty-five percent shall be distributed to the Southern
934 Province Kappa Alpha Psi Fraternity, Inc., to promote community
935 awareness and action through educational, economic, and cultural
936 service activities.

937 3. Five percent shall be distributed to the United Negro
938 College Fund to be used for college scholarships for the Florida
939 residents attending historically black colleges and
940 universities.

941 (d) Phi Beta Sigma Fraternity, Inc.-The department shall
942 retain all annual use fees from the sale of such plates until
943 all startup costs for developing and issuing plates have been
944 recovered. Thereafter, the annual use fees from the sale of the
945 plate shall be distributed as follows:

946 1. Ten percent shall be distributed to TmB Charitable
947 Foundation, Inc., a charitable, not-for-profit organization
948 under s. 501(c)(3) of the Internal Revenue Code registered with
949 the Department of Agriculture and Consumer Services and
950 incorporated in Florida, strictly for marketing the Phi Beta
951 Sigma Fraternity, Inc., license plate.

952 2. Eighty-five percent shall be distributed to the TmB
953 Charitable Foundation, Inc., to promote community awareness and
954 action through educational, economic, and cultural service



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955 activities.

956 3. Five percent shall be distributed to the United Negro
957 College Fund to be used for college scholarships for Florida
958 residents attending historically black colleges and
959 universities.

960 (e) Zeta Phi Beta Sorority, Inc.-The department shall
961 retain all annual use fees from the sale of such plates until
962 all startup costs for developing and issuing plates have been
963 recovered. Thereafter, the annual use fees from the sale of the
964 plate shall be distributed as follows:

965 1. Ten percent shall be distributed to Florida Pearls,
966 Inc., a charitable, not-for-profit organization under s.
967 501(c)(3) of the Internal Revenue Code registered with the
968 Department of Agriculture and Consumer Services and incorporated
969 in Florida, strictly for marketing the Zeta Phi Beta Sorority,
970 Inc., license plate.

971 2. Eighty-five percent shall be distributed to Florida
972 Pearls, Inc., to promote community awareness and action through
973 educational, economic, and cultural service activities.

974 3. Five percent shall be distributed to the United Negro
975 College Fund to be used for college scholarships for Florida
976 residents attending historically black colleges and
977 universities.

978 (f) Delta Sigma Theta Sorority, Inc.-The department shall
979 retain all annual use fees from the sale of such plates until
980 all startup costs for developing and issuing plates have been
981 recovered. Thereafter, the annual use fees from the sale of the
982 plate shall be distributed as follows:

983 1. Ten percent shall be distributed to Delta Research and



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984 Educational Foundation, a charitable, not-for-profit
985 organization under s. 501(c)(3) of the Internal Revenue Code,
986 strictly for marketing the Delta Sigma Theta Sorority, Inc.,
987 license plate.

988 2. Eighty-five percent shall be distributed to Delta
989 Research and Educational Foundation to promote community
990 awareness and action through educational, economic, and cultural
991 service activities.

992 3. Five percent shall be distributed to the United Negro
993 College Fund to be used for college scholarships for Florida
994 residents attending historically black colleges and
995 universities.

996 (g) Alpha Kappa Alpha Sorority, Inc.—The department shall
997 retain all annual use fees from the sale of such plates until
998 all startup costs for developing and issuing plates have been
999 recovered. Thereafter, the annual use fees from the sale of the
1000 plate shall be distributed as follows:

1001 1. A maximum of 10 percent shall be distributed to Alpha
1002 Kappa Alpha Sorority Foundation, Inc., a charitable, not-for-
1003 profit organization under s. 501(c)(3) of the Internal Revenue
1004 Code registered with the Department of Agriculture and Consumer
1005 Services and incorporated in Florida, for administrative costs
1006 and marketing the Alpha Kappa Alpha Sorority, Inc., license
1007 plate.

1008 2. The balance of the fees shall be used to supplement the
1009 Alpha Kappa Alpha Educational Advancement Foundation, Inc.,
1010 budgets and to promote lifelong learning by awarding
1011 scholarships, fellowships, and grants.

1012 (h) Sigma Gamma Rho Sorority, Inc.—The department shall



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1013 retain all annual use fees from the sale of such plates until
1014 all startup costs for developing and issuing plates have been
1015 recovered. Thereafter, the annual use fees from the sale of the
1016 plate shall be distributed as follows:

1017 1. Ten percent shall be distributed to National Education
1018 Fund, Inc., a charitable, not-for-profit organization under s.
1019 501(c)(3) of the Internal Revenue Code, strictly for marketing
1020 the Sigma Gamma Rho Sorority, Inc., license plate.

1021 2. Eighty-five percent shall be distributed to National
1022 Education Fund, Inc., to promote community awareness and action
1023 through educational, economic, and cultural service activities.

1024 3. Five percent shall be distributed to the United Negro
1025 College Fund to be used for college scholarships for Florida
1026 residents attending historically black colleges and
1027 universities.

1028 (102) PLAY BALL LICENSE PLATES.—

1029 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
1030 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
1031 and s. 45, chapter 2014-216, Laws of Florida, the department
1032 shall develop a Play Ball license plate as provided in this
1033 section and s. 320.08053. Play Ball license plates must bear the
1034 colors and design approved by the department. The word "Florida"
1035 must appear at the top of the plate, and the words "Play Ball"
1036 must appear at the bottom of the plate.

1037 (b) The license plate annual use fees shall be distributed
1038 to American Dream Baseball, Inc., which may retain all proceeds
1039 from the annual use fees until the startup costs for developing
1040 and issuing the license plates have been recovered. Thereafter,
1041 American Dream Baseball, Inc., may use the proceeds as follows:



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1042 1. A maximum of 15 percent may be used for administrative
1043 costs of the organization associated with implementing the
1044 programs funded by proceeds derived from sales of the specialty
1045 license plate.

1046 2. A maximum of 10 percent may be used for promotion and
1047 marketing costs of the license plate.

1048 3. The remainder shall be used to fund the activities,
1049 programs, and projects of American Dream Baseball, Inc.

1050 (103) MEDICAL PROFESSIONALS WHO CARE.—

1051 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
1052 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
1053 and s. 45, chapter 2014-216, Laws of Florida, the department
1054 shall develop a Medical Professionals Who Care license plate as
1055 provided in this section and s. 320.08053. The plate must bear
1056 the colors and design approved by the department. The word
1057 "Florida" must appear at the top of the plate, and the words
1058 "Medical Professionals Who Care" must appear at the bottom of
1059 the plate.

1060 (b) The department shall retain all annual use fees from
1061 the sale of the plate until all startup costs for developing and
1062 issuing the plate have been recovered. Thereafter, the annual
1063 use fees from the sale of the plate shall be distributed to
1064 Florida Benevolent Group, Inc., a Florida nonprofit corporation,
1065 which may use up to 10 percent of such fees for administrative
1066 costs and marketing of the plate. The balance of the fees shall
1067 be used by Florida Benevolent Group, Inc., to assist low income
1068 individuals in obtaining a medical education and career through
1069 scholarships, support, and guidance.

1070 Section 6. Except as otherwise expressly provided in this



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1071 act, 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 7072

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Transportation Committee

SUBJECT: Specialty License Plates

DATE: April 22, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Jones	Eichin		TR Submitted as Committee Bill
1.	Wells	Miller	ATD	Recommend: Fav/CS
2.	Jones	Hrdlicka	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7072 makes revisions to the specialty license plate program. Specifically, it:

- Removes certain obsolete requirements for establishing a specialty license plate;
- Directs the Department of Highway Safety and Motor Vehicles (DHSMV) to develop 29 new specialty license plates;
- Provides established annual use fees and distribution of fees for each new specialty license plate;
- Increases the minimum pre-sale requirement for a new specialty license plate from 1,000 to 4,000 vouchers, with the exception of specialty license plates that have statutory eligibility limitations for purchase;
- Provides that, beginning July 1, 2020, the DHSMV must discontinue the issuance of a specialty license plate if the number of such specialty plate registrations falls below 4,000 for at least 12 consecutive months, with the exception of specialty license plates that have statutory eligibility limitations for purchase;
- Modifies the distribution and use of annual use fees for the “In God We Trust” and “Live the Dream” specialty license plate;
- Adds Major League Soccer and the North American Soccer League to the Florida Professional Sports Team license plates;
- Removes three specialty license plates that have been discontinued by the DHSMV; and
- Provides conforming cross-references to reflect the changes made in this bill.

According to the DHSMV, the cost for the minimum required number of each specialty license plate to be designed and manufactured is \$11,280. The DHSMV also estimates that the programming costs to develop all 29 specialty license plates is \$196,600. The DHSMV is authorized to retain revenues from the first proceeds of specialty license plate sales to defray departmental expenditures related to the specialty license plate program.

II. Present Situation:

Presently, there are over 120 specialty license plates available for purchase, and 7 in the pre-sale phase. Specialty license plates are available to an owner or lessee of a motor vehicle who is willing to pay an annual use fee, ranging from \$15 to \$25, paid in addition to required license taxes and service fees.¹ The annual use fees are distributed to an organization in support of a particular cause or charity signified in the plate's design and designated in statute.²

The specialty plate application process, as it existed in 2009, was found to be unconstitutional.³ That process included an application fee and a short and long-term marketing strategy. The pre-sale methodology, established in 2010,⁴ replaced the application process. However, the application process including the fee and marketing strategy language still exists in statute.⁵

Currently, the recognized process for establishing a specialty license plate requires the plate to first be approved by law. Upon being approved by law:

- Within 60 days, the organization must submit an art design for the plate, in a medium prescribed by the DHSMV;
- Within 120 days, the DHSMV must establish a method to issue pre-sale vouchers for the approved specialty license plate; and
- Within 24 months after the pre-sale vouchers are established, the organization must obtain a minimum of 1,000 voucher sales before manufacturing may begin.

If, at the end of the 24-month pre-sale period, the minimum sales requirements have not been met, the department will de-authorize the specialty plate, discontinue development, and discontinue issuance of the pre-sale voucher.

Department of Highway Safety and Motor Vehicles (DHSMV) Costs Defrayed

The DHSMV retains sufficient annual use fees, from the sale of the specialty license plates, to defray its costs for inventory, distribution, and other direct costs associated with the specialty license plate program. The remainder of the proceeds collected are distributed as provided by law.⁶

¹ Section 320.08056, F.S.

² Section 320.08058, F.S.

³ *Sons of Confederate Veterans, Florida Div., Inc. v. Atwater*, No. 6:09-CV-134-ORL-28 (M.D. Fla. Mar. 30, 2011).

⁴ Ch. 2010-223, s. 22, L.O.F.

⁵ See s. 320.08053(1), F.S.

⁶ Section 320.08056(7), F.S.

Discontinuance of Specialty Plate

The DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates. Collegiate plates are exempt from the 1,000 minimum plate requirement.⁷ Additionally, the specialty license plate must be discontinued if the organization no longer exists, stops providing services that are authorized to be funded from the annual use fee proceeds, or pursuant to an organizational recipient's request.⁸

Organizations must adhere to certain accountability requirements, including an annual attestation document affirming that funds received have been spent in accordance with applicable statutes.⁹

Moratorium

Currently, there is a statutory moratorium on the issuance of new specialty license plates. Except for a specialty license plate proposal which has submitted a letter of intent to the DHSMV prior to May 2, 2008, and which has submitted a survey, marketing strategy, and application fee prior to October 1, 2008, or which was included in a bill filed during the 2008 Legislative Session, the DHSMV may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2016.¹⁰ However, in recent years the Legislature has approved numerous new specialty license plates by notwithstanding the moratorium provisions.

Florida Professional Sports Team License Plates

Section 320.08058(9), F.S., directs the DHSMV to develop Florida Professional Sports Team license plates for Major League Baseball, National Basketball Association, National Football League, Arena Football League, and National Hockey teams domiciled in this state. Fifty-five percent of the annual use fee proceeds from these plates is distributed to the Professional Sports Development Trust Fund within the Department of Economic Opportunity to attract and support major sports events in the state. The remaining proceeds are allocated to Enterprise Florida, Inc., to:

- Promote the economic development of the sports industry;
- Distribute licensing and royalty fees to participating professional sports teams;
- Promote education programs in Florida schools that provide an awareness of the benefits of physical activity and nutrition standards;
- Recognize schools whose students demonstrate excellent physical fitness or fitness improvement;
- Institute a grant program for communities bidding on minor sporting events that create an economic impact for the state;

⁷ Section 320.08056(8)(a), F.S.

⁸ Section 320.08056(8)(b), F.S.

⁹ Section 320.08062, F.S.

¹⁰ Section 45, ch. 2008-176, L.O.F., as amended by s. 21, ch. 2010-223 and s. 45, ch. 2014-216, L.O.F.

- Distribute funds to Florida based charities designated by Enterprise Florida and the participating professional sports teams; and
- Fulfill the sports promotion responsibilities of the Department of Economic Opportunity.

Organizations

Bonefish and Tarpon Trust¹¹

The Bonefish and Tarpon Trust is a non-profit organization dedicated to conserving and enhancing global bonefish, tarpon, and permit fisheries and their environments. The trust does this through stewardship, research, education, and advocacy, including funding studies and providing educational materials to the public and fisherman on bonefish, tarpon, and permit fisheries. The trust also works with regulatory authorities and the public to ensure protection of these species is enforced.

Rotary's Camp Florida¹²

Rotary's Camp Florida is a non-profit organization providing camping facilities to children and adults with special needs. The facility is a 21-acre camp located in Brandon, Florida, which provides user groups with clean, safe, and barrier-free camping. The facility meets the full standards of the Americans with Disabilities Act. Half of the cost to rent the camp is paid by the disability user group and half is subsidized by Rotary Clubs throughout Florida. There is no charge to a child attending the camp.

Olivia's Angels Foundation, Inc. (Support Down Syndrome)¹³

Olivia's Angels Foundation is a Florida non-profit organization focused on education, awareness, and support for the Down Syndrome community. Its stated mission is to bring awareness of challenges associated with Down Syndrome, faced by parents and caretakers, through the development of advocacy programs and funding support for self-sustenance educational programs.

Department of Legal Affairs (Safe and Free Florida)

The Department of Legal Affairs,¹⁴ also known as the Office of the Attorney General, is responsible for numerous duties, including conducting various programs to assist victims of crime. The Statewide Council on Human Trafficking is a 15-member council chaired by Florida's Attorney General.¹⁵ The council was created by legislation passed in 2014, to combat human trafficking and assist victims of human trafficking.¹⁶ Membership includes law

¹¹ See Bonefish & Tarpon Trust website at <https://www.bonefishtarpontrust.org/> (last visited 4/16/2015).

¹² See Rotary's Camp Florida website at <http://www.rotaryscampflorida.org/> (last visited 4/16/2015).

¹³ See Olivia's Angels Foundation website at <http://www.oafl.org/> (last visited 4/16/2015).

¹⁴ See Department of Legal Affairs website at <http://www.myfloridalegal.com/#> (last visited 4/21/2015).

¹⁵ Office of the Attorney General, *Statewide Council on Human Trafficking*, <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last visited 4/16/2015).

¹⁶ Chapter 2014-161, s. 6, L.O.F. See s. 16.617, F.S

enforcement, prosecutors, legislators, and experts in the fields of health, education, and social services. The council's purpose is to:

- Develop recommendations for comprehensive programs and services for victims of human trafficking;
- Make recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses;
- Hold an annual statewide policy summit with an institute of higher learning;
- Work with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county; and
- Develop policy recommendations that further the efforts to combat human trafficking in this state.

Florida Caribbean, Haitian, and Jamaican Organizations (Sun Sea Smiles)

The Florida Caribbean Charitable Foundation, Inc., a civic and social organization, is a domestic non-profit corporation located in North Miami Beach, established in 2007.

American Friends of Jamaica, Inc., is a non-profit organization “dedicated to supporting Jamaican charitable organizations and social initiatives targeted at improving the lives of Jamaicans through systemic development in the areas of education, healthcare, and economic development.”¹⁷

The mission of Haitian Neighborhood Center Sant La, Inc., is to “empower, strengthen, and stabilize South Florida’s Haitian community, through access for free services and resources, to ensure its successful integration.”¹⁸ This is accomplished through services such as citizenship assistance, college scholarships, community outreach, employment services, community partnerships, and educational services.

Fanm Ayisyen nan Miyami, Inc., also known as Haitian Women of Miami, has a mission to empower Haitian women and their families socially and politically, and to facilitate their adjustments to South Florida.¹⁹ The organization has provided counseling, outreach, education, and access to care and advocacy service to low and moderate-income families for the last 16 years.

The Greater Caribbean American Cultural Coalition, Inc., is “an umbrella organization serving the Caribbean people and other members of the community, by bringing together the various Caribbean countries and islands, and their rich cultural heritage.”²⁰ The coalition’s mission is to enrich the cultural environment by fostering multicultural understanding through an appreciation of Caribbean cultures.

Little Haiti Optimist Foundation, Inc., is a charitable organization located in Miami, established in 2010 to provide assistance, guidance, and programs to the youth of Little Haiti. The mission of

¹⁷ See The American Friends of Jamaica website at: <http://www.theamericanfriendsofjamaica.org/> (last visited 4/16/2015).

¹⁸ See Haitian Neighborhood Center Sant La website at <http://santla.org> (last visited 4/16/2015).

¹⁹ See Fanm Ayisyen Miyami website at <http://www.fanm.org/> (last visited 4/16/2015).

²⁰ See Greater Caribbean American Cultural Coalition website at <http://unifestlive.com/about-gcacc/> (last visited 4/16/2015).

the foundation is “to make a difference in the lives of youth by providing education, mentorship, athletics, arts and cultural programming.”²¹

Take Stock in Children, Inc.²²

Take Stock in Children, Inc., is a non-profit organization in Florida, established in 1995, that offers low-income students volunteer mentors and college scholarships. The organization works with low-income and at-risk students starting in middle school, through high school, and their transition into college, to provide support, motivation, and accountability. To date, Take Stock in Children has served over 24,000 children throughout Florida, has over 8,200 mentors, and is the largest non-profit purchaser of Florida Prepaid Foundation Scholarships.

Paddle Florida, Inc.²³

Paddle Florida, Inc., is a non-profit organization that supports canoeing and kayaking in Florida. The organization holds events to “expose paddlers to Florida’s natural beauty and rich cultural heritage while promoting water conservation, wildlife preservation, springs restoration, and waterways protection.” Paddle Florida also promotes Florida as an international destination for nature-based tourism, by providing trips featuring Florida’s most scenic rivers, canoe trails, and coastal environments.

Orlando City Soccer Club²⁴

The Orlando City Soccer Club is a professional Major League Soccer team based in Orlando, Florida. The team was formed in 2010, and became the league’s twenty-first franchise on November 19, 2013.

Southeastern Guide Dogs, Inc.²⁵ (*Dogs Making a Difference*)

Southeastern Guide Dogs, Inc., is a non-profit organization located in Palmetto, Florida. The organization is accredited by the International Guide Dog Federation and Assistance Dogs International. It was founded in 1982, and “employs the latest in canine development and behavior research to create and nurture partnerships between visually impaired individuals and extraordinary guide dogs.” Southeastern Guide Dogs has matched over 2,700 guide dogs with individuals, and continues to place more than 100 dogs each year to help people with visual impairments, and veterans. The charity provides its services free of charge and receives no government funding.

Ducks Unlimited, Inc.²⁶

Ducks Unlimited, Inc., is a non-profit and volunteer-based organization whose mission is to conserve, restore, and manage wetlands and associated habitats for North America’s waterfowl. According to the Ducks Unlimited website, it is the world’s largest and most effective waterfowl and wetlands conservation organization. In the past fiscal year, 82 percent of the organization’s

²¹ See The Little Haiti Optimist Foundation website at <http://www.littlehaitioptimist.org/> (last visited Mar. 21, 2015).

²² See Take Stock in Children website at <http://www.takestockinchildren.org/index> (last visited Mar. 21, 2015).

²³ See Paddle Florida website at <http://www.paddleflorida.org/> (last visited 4/16/2015).

²⁴ See Orlando City Soccer Club website at <http://www.orlandocitysc.com/> (last visited 4/16/2015).

²⁵ See Southeastern Guide Dogs website at <http://www.guidedogs.org/> (last visited 4/16/2015).

²⁶ See Ducks Unlimited website at <http://www.ducks.org/> (last visited 4/16/2015).

expenditures went to waterfowl and wetlands conservation and education. The organization currently has habitat projects in all 50 states, every Canadian province, and key areas of Mexico.

Team Hammy²⁷

Team Hammy is an organization created in the name of Hamilton Vance Paris, who was diagnosed with amyotrophic lateral sclerosis (ALS) in July of 2010. Team Hammy strives to bring awareness, education, and hope to people with ALS and their families through fundraising and participating in events.

Florida National Park Association, Inc.²⁸ (*Florida Bay Forever*)

The Florida National Park Association, also known as the Everglades Association, is a non-profit organization founded in 1951 to support educational, interpretive, and historical and scientific research responsibilities to help support the Everglades National Park, Big Cypress National Preserve, Biscayne National Park, and Dry Tortugas National Park. The association has provided more than 2.5 million dollars in aid to the National Park Service areas of south Florida.

Jacksonville Armada Football Club²⁹

The Jacksonville Armada Football Club is an American professional soccer team. The team is part of the North American Soccer League (NASL) and based in Jacksonville, Florida. The team was established in 2013, and will be competing in the 2015 spring season.

Tampa Bay Rowdies³⁰

The Tampa Bay Rowdies is an American professional soccer team. The Rowdies are part of the NASL, and play home games in St. Petersburg, Florida. The team was originally established in 1975 and won the NASL Soccer Bowl in its inaugural year. It was reestablished in 2008, began playing in 2010, and won the NASL Soccer Bowl Championship in 2012.

Furry Friends of Florida, Inc.³¹

According to corporate filings with the Department of State, the principal address of Furry Friends of Florida, Inc., is 180 Park Avenue, N., Suite 2A, Winter Park, Florida. The articles of incorporation of the organization state that it is a not-for-profit corporation whose purpose is “to conduct activities that are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, or preventing cruelty to children or animals.”

²⁷ See Team Hammy website at <http://teamhammy.org/about-us/> (last visited 4/16/2015).

²⁸ See Florida National Parks Association, *Everglades Association* website at <http://www.evergladesassociation.org/index.html> (last visited 4/16/2015).

²⁹ See Jacksonville Armada Football Club website at <http://www.armadafc.com/page/slug/history#.VRMhwfnF91A> (last visited 4/16/2015).

³⁰ See Tampa Bay Rowdies website at <http://www.rowdiessoccer.com/> (last visited 4/16/2015).

³¹ See Department of State website at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FURRYFRIENDSFLORIDA%20N150000014680&aggregateId=domnp-n15000001468-5f3d3312-7531-405e-98bc-81930943daa7&searchTerm=furry%20friends&listNameOrder=FURRYFRIENDS%20J092690> (last visited on 4/16/2015).

Adore the Shore, Inc.³²

According to corporate filings with the Department of State, the principal address of Adore the Shore, Inc., is 180 Park Avenue, N., Suite 2A, Winter Park, Florida. The articles of incorporation of the organization state that it is a not-for-profit corporation whose purpose is “to conduct activities that are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, or preventing cruelty to children or animals.”

The Constitution Foundation, Inc.³³

The Constitution Foundation, Inc., is a non-partisan educational organization founded in 2011 in Kissimmee, Florida. The foundation’s mission is to increase awareness and understanding of the United States Constitution in Florida’s schools, recruit and train leaders to make presentations in each school district, and provide to each student, at no cost, learning materials and a pocket Constitution.

United Negro College Fund (UNCF)³⁴

The United Negro College Fund is the nation’s largest minority education organization. UNCF provides operating funds for historically black colleges and universities, scholarships and internships for students, and provides for faculty and administrative professional training.

Florida Federation of Alpha Phi Alpha Fraternity Foundation³⁵

Founded in 1906 at Cornell University, the website for the Alpha Phi Alpha Fraternity’s states its vision: “The objectives of this Fraternity shall be: to stimulate the ambition of its members; to prepare them for the greatest usefulness in the causes of humanity, freedom, and dignity of the individual; to encourage the highest and noblest form of manhood; and to aid down-trodden humanity in its efforts to achieve higher social, economic and intellectual status.”

Omega Friendship Foundation, Inc.³⁶

Omega Psi Phi Fraternity, Inc., was the first international fraternal organization to be founded on the campus of a historically black college. Founded in 1911 at Howard University, “Manhood, Scholarship, Perseverance and Uplift” were adopted as Cardinal Principles.

³² See Department of State website at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=ADORESHORES%20N150000014610&aggregateId=domnp-n15000001461-ca990b64-7f04-41d4-bb5b-1ce89a9b6e12&searchTerm=adore%20the%20shore&listNameOrder=ADORESHORES%20N150000014610> (last visited on 4/16/2015).

³³ See The Constitution Foundation, Inc., website at <http://constitutionfoundation.org/about/> (last visited on 4/16/2015).

³⁴ See United Negro College Fund website at <http://www.uncf.org/sections/WhoWeAre/index.asp> (last visited on 4/16/2015).

³⁵ See Alpha Phi Alpha Fraternity Foundation at <http://flfederation.org/about-us/history/> (last visited on 4/16/2015).

³⁶ See Omega Friendship Foundation, Inc. website http://oppf.org/about_omega.asp (last visited on 4/16/2015).

Southern Province Kappa Alpha Psi Fraternity, Inc.³⁷

Kappa Alpha Psi was founded on the campus of Indiana University at Bloomington, Indiana in 1911. The objectives of this fraternity are to:

- Unite men of culture, patriotism, and honor in a bond of Fraternity;
- Encourage honorable achievement in every field of human endeavor;
- Promote the spiritual, social, intellectual, and moral welfare of members;
- Assist the aims and purposes of Colleges and Universities; and
- Inspire service in the public interest.

TmB Charitable Foundation, Inc.³⁸

According to corporate filings with the Department of State the principal address is 1117 Sandler Ridge Road, Tallahassee, Florida. TmB Charitable Foundation, Inc., is a not-for-profit corporation “operated exclusively for charitable purposes, including, without limitation, acting as an instrument to which youth are encouraged and inspired to achieve academic success through mentoring.”

The Florida Pearls, Incorporated³⁹

According to corporate filings with the Department of State, the principal address is 1346 W. 15th Street, Jacksonville, FL. Florida Pearls, Inc., is a not-for-profit corporation organized “to provide Scholarships, Educational, Cultural, Community Workshops and Training Programs in the State of Florida.”

Delta Research and Educational Foundation⁴⁰

Delta Sigma Theta Sorority established the Delta Research and Educational Foundation in 1967. The foundation’s mission statement is “Delta Research and Educational Foundation promotes research which identifies and fashions solutions to issues affecting African American women and their families, nationally and globally through funding and support of public service programs of Delta Sigma Theta Sorority, Incorporated and collaborative organizations.”

³⁷ See Southern Province Kappa Alpha Psi Fraternity, Inc. website <http://southernprovince.org/> (last visited on 4/16/2015).

³⁸ See Department of State website at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=TMBCCHARITABLEFOUNDATION%20N140000034860&aggregateId=domnp-n14000003486-56a0b616-3df9-4932-85ac-e743b00892b1&searchTerm=TmB%20Charitable%20Foundation%2C%20Inc&listNameOrder=TMBCCHARITABLEFOUNDATION%20N140000034860> (last visited on 4/16/2015).

³⁹ See Department of State website at <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FLORIDAPEARLS%20N090000120790&aggregateId=domnp-n09000012079-33437139-5337-4d63-9f77-93ae514744a1&searchTerm=florida%20pearls&listNameOrder=FLORIDAPEARLS%20N090000120790> (last visited on 4/16/2015).

⁴⁰ See Delta Research and Educational Foundation website at http://www.deltasigmatheta.org/programs_delta_foundation.html (last visited on 4/16/2015).

Alpha Kappa Alpha Education Advancement Foundation, Inc.⁴¹

The Education Advancement Foundation was created in 1980 by the Alpha Kappa Alpha Sorority, Inc. “The mission of the Alpha Kappa Alpha Educational Advancement Foundation is to promote lifelong learning. This is accomplished by securing charitable contributions, gifts and endowed funds to award scholarships, fellowships and grants.”

National Education Fund, Inc.⁴²

The mission of the National Education Fund, Inc., is to provide scholarship aid to needy students both male and female of all races and to conduct educational programs, workshops, symposiums, and forums to enhance the quality of life.

American Dream Baseball, Inc.⁴³

American Dream Baseball, Inc., is a not-for-profit organization that teaches the fundamentals of baseball, as well as discipline, character, respect, perseverance, work ethic, sacrifice and passion to underprivileged children. Their mission statement is: “The American Dream Baseball, Inc. strives to teach baseball fundamentals to kids of all ages that aspire to achieve success, higher education and other opportunities through baseball.”

Florida Benevolent Group, Inc.⁴⁴

With a nationwide shortage of trained medical professionals, the Florida Benevolent Group provides scholarships to individuals who are interested in a career in the medical profession. Their mission statement is: “Florida Benevolent Group, a 501(c)(3) tax-exempt, not-for-profit organization, is to assist academically motivated individuals interested in pursuing a medical career.”

Coalition for Renewable Energy Solutions, Inc.⁴⁵

The Coalition for Renewable Energy Solutions is a non-profit organization based in Palm Beach Gardens, Florida. Their mission statement is “to support innovative educational partnerships and programs that foster Green initiatives.” The organization’s stated goals are to enhance public knowledge and awareness of environmental citizenship and literacy, and create sustainable support for vital public environmental programs.

National Wild Turkey Federation

The National Wild Turkey Federation was founded in 1973. The organization is dedicated to the conservation of wild turkey habitat and preserving hunting heritage. According to its website, the organization has invested \$488 million in its mission, and has improved more than 17 million acres of wildlife habitat.⁴⁶ The Florida State Chapter of the organization is made up of officers

⁴¹ See Alpha Kappa Alpha Education Advancement Foundation, Inc., website at <http://www.akaef.org/> (last visited on 4/16/2015).

⁴² See National Education Fund, Inc., website at <http://www.sgrho1922.org/foundations> (last visited on 4/16/2015).

⁴³ See American Dream Baseball, Inc., website at <http://americandreambaseball.org/> (last visited on 4/16/2015).

⁴⁴ See Florida Benevolent Group, Inc., website at <http://www.flbenevolentgroup.com/> (last visited on 4/16/2015).

⁴⁵ See Coalition for Renewable Energy Solutions, Inc., website at <http://www.coalitionforrenewableenergysolutions.org/> (last visited on 4/21/2015).

⁴⁶ See National Wild Turkey Federation website at <http://www.nwtf.org/about/know-us/our-history> (last visited 4/20/2015).

and board of directors from local chapter members, and has a focus on local events and conservation projects around the state.⁴⁷

III. Effect of Proposed Changes:

Specialty License Plate Requirements

The bill repeals specialty license plate application requirements listed in s. 320.08053(1), F.S., which were found to be unconstitutional in 2010.

Three specialty license plates are repealed from statute because they have been discontinued by the DHSMV for failure to maintain 1,000 active plates or not meeting pre-sale requirements. Those plates are the:

- Corrections Foundation license plate;
- Children First license plate; and
- Veterans of Foreign Wars license plate.

The minimum pre-sale requirement for a new specialty license plate is changed from 1,000 plates to 4,000 plates. Beginning, July 1, 2020, the DHSMV must discontinue the issuance of an approved specialty plate if the number of valid specialty plate registrations falls below 4,000 plates for at least 12 consecutive months. These 4,000 plate minimum requirements do not apply to specialty license plates that have statutory eligibility limitations for purchase. The only specialty license plate affected in s. 320.08056, F.S., and s. 320.08058, F.S., is the Fraternal Order of Police license plate which may only be issued to organization members and their family.⁴⁸

“In God We Trust” Specialty License Plate

The distribution and use of annual use fees of the “In God We Trust” specialty license plate⁴⁹ are modified to allow a *maximum* of 10 percent of annual use fees to be used to offset marketing, administration, and promotion of the specialty license plate. The bill repeals provisions requiring the fees to be used for the children of public safety employees and U.S. military members who have died in the line of duty who are not covered by existing state law. Instead, the fees will be used to address the needs of military service members and public safety employees, their spouses, and dependents, in addition to uses already in statute.

“Live the Dream” Specialty License Plate

The bill modifies the distribution of proceeds from the “Live the Dream” specialty license plate.⁵⁰ The initial proceeds will be distributed to the Living the Dream Foundation, Inc., of

⁴⁷ See Florida State Chapter of the National Wild Turkey Federation website at <http://www.floridanwtf.org/about.aspx> (last visited on 4/20/2015).

⁴⁸ Sections 320.08056(4)(www) and 320.08058(75), F.S.

⁴⁹ Section 320.08058(67), F.S.

⁵⁰ Section 320.08058(48), F.S.

which 25 percent shall be used for promotion and marketing. The remaining funds are distributed as follows:

- 25 percent to the Sickle Cell Disease Association of Florida, Inc., to be distributed equally among Florida sickle cell organizations;
- 25 percent to The Miami Children's Initiative, Inc., to provide a unified system of support, education, and care;
- 10 percent to the Florida Association of Healthy Start Coalitions, Inc.; and
- 10 percent to the Chapman Partnership, Inc., for programs that provide relief from poverty, hunger, and homelessness.

The remaining 5 percent of the proceeds will continue to be used for administrative costs of the foundation.

Proposed Specialty Plates (effective October 1, 2015)

The bill adds Major League Soccer and the North American Soccer League to the Florida Professional Sports Team specialty license plates, effective October 1, 2015.

Additionally, effective October 1, 2015, the bill directs the DHSMV to establish 29 new specialty plates, each having an annual use fee of \$25.

Florida Professional Sports Team License Plates

The bill directs the DHSMV to create three new Florida Professional Sports Team specialty license plates for the:

- Orlando City Soccer Club;
- Jacksonville Armada Football Club; and
- Tampa Bay Rowdies.

Annual use fees are to be distributed under the provisions of existing professional sports team plates.

Bonefish and Tarpon Trust License Plate

Specialty plate annual use fees will be distributed to the Bonefish Tarpon Trust to conserve and enhance Florida bonefish and tarpon fisheries and their respective environments.

Rotary's Camp Florida

Specialty plate annual use fees will be distributed to Rotary's Camp Florida to be used as grants for Florida Rotary Districts that provide camp services to children throughout Florida, and direct support to the programs and services provided to children who attend the camp.

Support Down Syndrome

Specialty plate annual use fees will be distributed to Olivia's Angels Foundation, Inc., to fund its activities, programs, and projects within the state.

Safe and Free Florida

Specialty plate annual use fees will be distributed to the Department of Legal Affairs, to establish a program to award grants to nongovernmental organizations that assist sexually abused, exploited, or trafficked victims. Funds may not be distributed to any organization that charges victims for services received. An organization receiving such funds must use them to provide material needs, detoxification services, prenatal and postnatal care, safe houses or recovery care centers, counseling and training programs, or emergency legal advocacy for victims. The department is authorized to adopt rules to implement this plate.

Sun Sea Smiles

Specialty plate annual use fees will be distributed as follows:

- 5 percent to the Florida Caribbean Charitable Foundation, Inc., strictly for marketing the specialty license plate;
- 30 percent to the Florida Caribbean Charitable Foundation, Inc., to be used for a college scholarship program, promotion of health and wellness among Florida residents of Caribbean descent, and to promote awareness of Caribbean culture within the state;
- 20 percent to the American Friends of Jamaica, Inc., for use as grants to promote social and community development among Florida residents;
- 10 percent to the Haitian Neighborhood Center Sant La, Inc., to promote social and community development;
- 10 percent to Fanm Ayisyen Nan Miyami, Inc., to promote social and community development;
- 20 percent to Greater Caribbean American Cultural Coalition, Inc., to promote awareness of Caribbean culture within the state; and
- 5 percent to Little Haiti Optimist Foundation, Inc., to promote awareness of Caribbean culture and youth development within the state.

Take Stock in Children

Specialty plate annual use fees will be distributed to Take Stock in Children, Inc., to fund its activities, scholarship and mentoring programs, and projects.

Paddle Florida

Specialty plate annual use fees will be distributed to Paddle Florida, Inc., to be used by the Florida Forever grant program to support activities that further outdoor recreation and natural resource protection.

Dogs Making a Difference

Specialty plate annual use fees will be distributed to Southeastern Guide Dogs, Inc., for the training and promotion of dogs for use by veterans and citizens who are blind.

Ducks Unlimited

Specialty plate annual use fees will be distributed to Ducks Unlimited, Inc., to support the organization's mission and efforts for the conservation, restoration, and management of Florida wetlands and associated habitats for the benefit of waterfowl, other wildlife, and people.

Team Hammy

Specialty plate annual use fees will be distributed to Team Hammy, Inc., to grant wishes to families living with ALS, provide continuing education to caretakers and physicians, and create awareness of ALS in the community.

Florida Bay Forever

Specialty plate annual use fees will be distributed to the Florida National Park Association, Inc., to supplement the Everglades National Park service's budgets and to support educational, interpretive, historical, and scientific research relating to the Everglades National Park.

Furry Friends

Specialty plate annual use fees will be distributed to Furry Friends of Florida, Inc., who will use such fees for activities, programs, and projects, including pet rescue, animal shelters, pet vaccination, veterinary services, and service animals.

Save Our Shores Florida

Specialty plate annual use fees will be distributed to Adore the Shore, Inc., to be used to fund activities, programs, and projects that provide for clean-up activities on Florida's beaches following natural or man-made occurrences and any other legal purpose.

Support Our Constitution

Specialty plate annual use fees will be distributed to The Constitution Foundation, Inc., to fund the activities, programs, and projects of the foundation.

Pan-Hellenic

- Proceeds from the sales of the Alpha Phi Alpha Fraternity, Inc., license plates will benefit the Florida Federation of Alpha Phi Alpha Fraternity Foundation to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Omega Psi Phi Fraternity, Inc., license plates will benefit the Omega Friendship Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Kappa Alpha Fraternity, Inc., license plates will benefit the Southern Province Kappa Alpha Psi Fraternity, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Phi Beta Sigma Fraternity, Inc., license plates will benefit the TmB Charitable Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Zeta Phi Beta Sorority, Inc., license plates will benefit the Florida Pearls, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Delta Sigma Theta Sorority, Inc., license plates will benefit the Delta Research and Educational Foundation to promote community awareness and action through educational, economic, and cultural service activities.

- Proceeds from the sales of the Alpha Kappa Alpha Sorority, Inc., license plates will benefit the Alpha Kappa Alpha Education Advancement Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities.
- Proceeds from the sales of the Sigma Gamma Rho Sorority, Inc., license plates will benefit the National Education Fund, Inc., to promote community awareness and action through educational, economic, and cultural awareness and action.

The United Negro College Fund will receive 5 percent from the sales of all of the Pan-Hellenic License Plates.

Play Ball

Specialty plate annual use fees will be distributed to American Dream Baseball, Inc., which may retain all proceeds from annual use fees to fund the activities, programs, and projects of the organization.

Medical Professionals Who Care

Specialty plate annual use fees will be distributed to the Florida Benevolent Group, Inc., to assist low income individuals in obtaining a medical education and career through scholarships, support, and guidance.

Go Green

Specialty plate annual use fees will be distributed to the Coalition for Renewable Energy Solutions, Inc., to fund activities, programs, and projects that educate, implement, or publicize renewable energy solutions and encourage a cleaner and safer environmental future for Floridians.

National Wild Turkey Federation

Specialty plate annual use fees will be distributed to the Florida State Chapter of the National Wild Turkey Federation to be used to fund programs and projects within the state that promote conservation or improve or increase turkey wildlife habitat.

Except as otherwise expressly provided, this act 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:

Individuals who choose to purchase a specialty license plate created in the bill will pay a \$25 annual use fee in addition to appropriate license taxes and fees. The organization designated to receive those fees, after retention of funds by the DHSMV to defray departmental expenditures, will receive revenue from each purchase.

Proposed specialty plates must meet the new minimum pre-sale requirements. Furthermore, existing specialty plates that do not meet the new minimum sale requirements by July 1, 2020, will be discontinued by the DHSMV.

C. Government Sector Impact:

According to the DHSMV, the cost for the minimum required number of each specialty license plate to be designed and manufactured is \$11,280. The department also estimates that the programming costs to develop all 29 specialty license plates is \$196,600. The DHSMV is authorized to retain revenues from the first proceeds of specialty license plate sales to defray departmental expenditures related to the specialty license plate program.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Legal Affairs is authorized to adopt rules to implement the provisions of the “Safe and Free Florida” license plate.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08056 and 320.08058.

⁵¹ Section 320.08056(7), F.S.

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 20, 2015:

As recommended by the Appropriations Subcommittee on Transportation, Tourism, and Economic Development, the committee substitute:

- Adds 9 specialty license plates.
- Exempts specialty license plates that have statutory eligibility limitations for purchase from:
 - The minimum pre-sale requirement of 4,000 vouchers before a specialty license plate can be produced.
 - The discontinuation of a specialty license plate if the number of valid registrations fall below 4,000 plates for at least 12 consecutive months.

The committee substitute also:

- Adds 2 additional specialty license plates, the “Go Green” plate and the “National Wild Turkey Federation” plate.
- Modifies the distribution of the existing “Live a Dream” specialty license plate and the proposed “Safe and Free Florida” plate.

- B. **Amendments:**

None.

By the Committee on Transportation

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A bill to be entitled

An act relating to specialty license plates; amending s. 320.08053, F.S., relating to requirements for requests to establish a specialty license plate; deleting application requirements; revising presale requirements; amending s. 320.08056, F.S.; deleting certain specialty license plates from the list of license plates for which an annual use fee must be collected; revising the minimum requirements to continue issuance of certain specialty plates; conforming cross-references; amending s. 320.08058, F.S.; deleting specified specialty license plates; revising provisions relating to specified specialty license plates; conforming cross-references; amending ss. 320.08056 and 320.08058, F.S.; directing the Department of Highway Safety and Motor Vehicles to develop certain specialty license plates; establishing an annual use fee for the plates; providing for distribution and use of fees collected from the sale of the plates; providing effective dates.

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

Section 1. Section 320.08053, Florida Statutes, is amended to read:

320.08053 Establishment of Requirements for requests to ~~establish~~ specialty license plates.-

~~(1) An organization that seeks authorization to establish a new specialty license plate for which an annual use fee is to be~~

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~~charged must submit to the department:~~

~~(a) A request for the particular specialty license plate being sought, describing the proposed specialty license plate in specific terms, including a sample plate that conforms to the specifications set by the department and this chapter, and that is in substantially final form.~~

~~(b) An application fee, not to exceed \$60,000, to defray the department's cost for reviewing the application and developing the specialty license plate, if authorized. State funds may not be used to pay the application fee, except for collegiate specialty license plates authorized in s. 320.08058(3) and (13). All applications requested on or after the effective date of this act must meet the requirements of this act.~~

~~(c) A marketing strategy outlining short-term and long-term marketing plans for the requested specialty license plate and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the sale of the requested specialty license plates.~~

~~The information required under this subsection must be submitted to the department at least 90 days before the convening of the next regular session of the Legislature.~~

~~(1)(2) If a~~ the specialty license plate requested by an the organization is approved by law, the organization must submit the proposed art design for the specialty license plate to the department, in a medium prescribed by the department, as soon as practicable, but no later than 60 days after the act approving the specialty license plate becomes a law. ~~If the specialty~~

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~~license plate requested by the organization is not approved by the Legislature or does not meet the presale requirements in subsection (3), the application fee shall be refunded to the requesting organization.~~

~~(2)(3)~~ (a) Within 120 days following the specialty license plate becoming law, the department shall establish a method to issue a specialty license plate voucher to allow for the presale of the specialty license plate. The processing fee as prescribed in s. 320.08056, the service charge and branch fee as prescribed in s. 320.04, and the annual use fee as prescribed in s. 320.08056 shall be charged for the voucher. All other applicable fees shall be charged at the time of issuance of the license plates.

(b) Within 24 months after the presale specialty license plate voucher is established, the approved specialty license plate organization must record with the department a minimum of 4,000 ~~1,000~~ voucher sales before manufacture of the license plate may commence. If, at the conclusion of the 24-month presale period, the minimum sales requirements have not been met, the specialty plate is deauthorized and the department shall discontinue development of the plate and discontinue issuance of the presale vouchers. Upon deauthorization of the license plate, a purchaser of the license plate voucher may use the annual use fee collected as a credit towards any other specialty license plate or apply for a refund on a form prescribed by the department.

~~(c) An organization that meets the requirements of this subsection shall be deemed to have submitted a valid survey for purposes of s. 45, chapter 2008-176, Laws of Florida, as~~

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~~amended.~~

Section 2. Subsection (3), paragraphs (iii), (ttt), and (uuu) of subsection (4), subsection (8), and paragraph (a) of subsection (10) of section 320.08056, Florida Statutes, are amended to read:

320.08056 Specialty license plates.—

(3) Each request must be made annually to the department or an authorized agent serving on behalf of the department, accompanied by the following tax and fees:

(a) The license tax required for the vehicle as set forth in s. 320.08.

(b) A processing fee of \$5, to be deposited into the Highway Safety Operating Trust Fund.

(c) A license plate fee as required by s. 320.06(1)(b).

(d) A license plate annual use fee as required in subsection (4).

A request may be made any time during a registration period. If a request is made for a specialty license plate to replace a current valid license plate, the specialty license plate must be issued with appropriate decals attached at no tax for the plate, but all fees and service charges must be paid. If a request is made for a specialty license plate at the beginning of the registration period, the tax, together with all applicable fees and service charges, must be paid.

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

~~(iii) Corrections Foundation license plate, \$25.~~

~~(ttt) Children First license plate, \$25.~~

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117 ~~(uuu) Veterans of Foreign Wars license plate, \$25-~~
 118 (8) (a) The department must discontinue the issuance of an
 119 approved specialty license plate if the number of valid
 120 specialty plate registrations falls below 1,000 plates for at
 121 least 12 consecutive months. A warning letter shall be mailed to
 122 the sponsoring organization following the first month in which
 123 the total number of valid specialty plate registrations is below
 124 1,000 plates. Beginning July 1, 2020, the department shall
 125 discontinue the issuance of an approved specialty license plate
 126 if the number of valid specialty plate registrations falls below
 127 4,000 for at least 12 consecutive months. A warning letter shall
 128 be mailed to the sponsoring organization following the first
 129 month in which the total number of valid specialty plate
 130 registrations is below 4,000 plates. This paragraph does not
 131 apply to collegiate license plates established under s.
 132 320.08058(3).

133 (b) The department is authorized to discontinue the
 134 issuance of a specialty license plate and distribution of
 135 associated annual use fee proceeds if the organization no longer
 136 exists, if the organization has stopped providing services that
 137 are authorized to be funded from the annual use fee proceeds, if
 138 the organization does not meet the presale requirements as
 139 prescribed in s. 320.08053(2) ~~s. 320.08053(3)~~, or pursuant to an
 140 organizational recipient's request. Organizations shall notify
 141 the department immediately to stop all warrants for plate sales
 142 if any of the conditions in this section exist and must meet the
 143 requirements of s. 320.08062 for any period of operation during
 144 a fiscal year.

145 (10) (a) A specialty license plate annual use fee collected

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146 and distributed under this chapter, or any interest earned from
 147 those fees, may not be used for commercial or for-profit
 148 activities nor for general or administrative expenses, except as
 149 authorized by s. 320.08058 or to pay the cost of the audit or
 150 report required by s. 320.08062(1). The fees and any interest
 151 earned from the fees may be expended only for use in this state
 152 unless the annual use fee is derived from the sale of United
 153 States Armed Forces and veterans-related specialty license
 154 plates pursuant to paragraphs (4) (d), (bb), (ll), (kkk), and
 155 (yyy) ~~(lll)~~, ~~(uuu)~~, and ~~(bbb)~~ and s. 320.0891.

156 Section 3. Subsection (61), paragraph (b) of present
 157 subsection (67), paragraph (b) of present subsection (70),
 158 paragraph (d) of present subsection (71), present subsections
 159 (72) and (73), paragraph (a) of present subsection (79),
 160 paragraph (a) of present subsection (80), paragraph (a) of
 161 present subsection (81), paragraph (a) of present subsection
 162 (82), paragraph (a) of present subsection (83), paragraph (a) of
 163 present subsection (84), paragraph (a) of present subsection
 164 (85), and paragraph (a) of present subsection (86) of section
 165 320.08058, Florida Statutes, are amended to read:

166 320.08058 Specialty license plates.—

167 ~~(61) CORRECTIONS FOUNDATION LICENSE PLATES.—~~

168 ~~(a) The department shall develop a Corrections Foundation~~
 169 ~~license plate as provided in this section. The word "Florida"~~
 170 ~~must appear at the top of the plate, the words "Corrections~~
 171 ~~Foundation" must appear at the bottom of the plate, and the~~
 172 ~~Corrections Foundation logo must appear to the left of the~~
 173 ~~numerals.~~

174 ~~(b) The annual use fees shall be distributed to Corrections~~

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Foundation, Inc., a direct support organization created pursuant to s. 944.802, and shall be used to continue and expand the charitable work of the foundation, as provided in s. 944.802 and the articles of incorporation of the foundation.

~~(66)(67)~~ IN GOD WE TRUST LICENSE PLATES.—

(b) The annual use fees from the plate shall be distributed as a charitable donation to the In God We Trust Foundation, Inc., which may use a maximum of 10 percent to offset marketing, administration, and promotion expenses and which may use the balance of the fees to address the needs of military servicemembers and their spouses and dependents, provide education in public and private schools regarding the historical significance of religion in American and Florida history, provide educational grants in public and private schools, address the needs of public safety employees and their spouses and dependents, and foster self-reliance and stability in Florida's children and families.

~~(b) The license plate annual use fees shall be distributed to the In God We Trust Foundation, Inc., to fund educational scholarships for the children of Florida residents who are members of the United States Armed Forces, the National Guard, and the United States Armed Forces Reserve and for the children of public safety employees who have died in the line of duty who are not covered by existing state law. Funds shall also be distributed to other s. 501(c)(3) organizations that may apply for grants and scholarships and to provide educational grants to public and private schools to promote the historical and religious significance of American and Florida history. The In God We Trust Foundation, Inc., shall distribute the license~~

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plate annual use fees in the following manner:

~~1. The In God We Trust Foundation, Inc., shall retain all revenues from the sale of such plates until all startup costs for developing and establishing the plate have been recovered.~~

~~2. Ten percent of the funds received by the In God We Trust Foundation, Inc., shall be expended for administrative costs, promotion, and marketing of the license plate directly associated with the operations of the In God We Trust Foundation, Inc.~~

~~3. All remaining funds shall be expended by the In God We Trust Foundation, Inc., for programs.~~

~~(69)(70)~~ ST. JOHNS RIVER LICENSE PLATES.—

(b) The requirements of s. 320.08053 must be met prior to the issuance of the plate. Thereafter, the license plate annual use fees shall be distributed to the St. Johns River Alliance, Inc., a s. 501(c)(3) nonprofit organization, which shall administer the fees as follows:

1. The St. Johns River Alliance, Inc., shall retain the first \$60,000 of the annual use fees as direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process. Thereafter, up to 10 percent of the annual use fee revenue may be used for administrative costs directly associated with education programs, conservation, research, and grant administration of the organization, and up to 10 percent may be used for promotion and marketing of the specialty license plate.

2. At least 30 percent of the fees shall be available for competitive grants for targeted community-based or county-based research or projects for which state funding is limited or not

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currently available. The remaining 50 percent shall be directed toward community outreach and access programs. The competitive grants shall be administered and approved by the board of directors of the St. Johns River Alliance, Inc. A grant advisory committee shall be composed of six members chosen by the St. Johns River Alliance board members.

3. Any remaining funds shall be distributed with the approval of and accountability to the board of directors of the St. Johns River Alliance, Inc., and shall be used to support activities contributing to education, outreach, and springs conservation.

4. Effective July 1, 2014, the St. Johns River license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b) ~~s. 320.08053(3)(b)~~. The St. Johns River Alliance, Inc., shall have 24 months to record a minimum of 1,000 sales of the license plates. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the St. Johns River specialty plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the development and issuance of the plate. This subparagraph is repealed June 30, 2016.

~~(70)(71)~~ HISPANIC ACHIEVERS LICENSE PLATES.

(d) Effective July 1, 2014, the Hispanic Achievers license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b) ~~s. 320.08053(3)(b)~~. National Hispanic

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Corporate Achievers, Inc., shall have 24 months to record a minimum of 1,000 sales. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the Hispanic Achievers license plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the Hispanic Achievers license plate. This subsection is repealed June 30, 2016.

~~(72) CHILDREN FIRST LICENSE PLATES.~~

~~(a) Upon Children First Florida, Inc., meeting the requirements of s. 320.08053, the department shall develop a Children First license plate as provided in this section. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Children First" must appear at the bottom of the plate.~~

~~(b) The proceeds from the license plate annual use fee shall be distributed to Children First Florida, Inc., which shall retain all proceeds until the startup costs to develop and establish the plates have been recovered. Thereafter, the proceeds shall be used as follows:~~

~~1. A maximum of 10 percent of the proceeds may be used to administer the license plate program, for direct administrative costs associated with the operations of Children First Florida, Inc., and to promote and market the license plates.~~

~~2. The remaining fees shall be used by Children First~~

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291 Florida, Inc., to fund public schools in this state, including
 292 teacher salaries.

293 ~~(73) VETERANS OF FOREIGN WARS LICENSE PLATES.—~~

294 ~~(a) Upon Veterans of Foreign Wars, Department of Florida,~~
 295 ~~meeting the requirements of s. 320.08053, the department shall~~
 296 ~~develop a Veterans of Foreign Wars license plate as provided in~~
 297 ~~this section. The plates must bear the colors and design~~
 298 ~~approved by the department and must incorporate the Great Seal~~
 299 ~~of the Veterans of Foreign Wars of the United States as~~
 300 ~~described in Art. VIII, s. 801 of the Congressional Charter and~~
 301 ~~By-Laws of the Veterans of Foreign Wars of the United States.~~
 302 ~~The word "Florida" must appear at the top of the plate, and the~~
 303 ~~words "Veterans of Foreign Wars" must appear at the bottom of~~
 304 ~~the plate.~~

305 ~~(b) The Veterans of Foreign Wars, Department of Florida~~
 306 ~~shall retain all revenues from the sale of such plates until all~~
 307 ~~startup costs for developing and issuing the plates have been~~
 308 ~~recovered. Thereafter, 60 percent of the annual revenues shall~~
 309 ~~be distributed to the Veterans of Foreign Wars, Department of~~
 310 ~~Florida to support the Voice of Democracy and Patriots' Pen~~
 311 ~~Scholarship programs, to support high school and college ROTC~~
 312 ~~programs, and for administration and marketing the plate; 20~~
 313 ~~percent of the annual revenues shall be distributed to the~~
 314 ~~direct support organization created under s. 292.055 under the~~
 315 ~~Florida Department of Veterans' Affairs; and 20 percent of the~~
 316 ~~annual revenues shall be distributed to the direct support~~
 317 ~~organization created under s. 250.115 under the Department of~~
 318 ~~Military Affairs. From the funds distributed to the Veterans of~~
 319 ~~Foreign Wars, Department of Florida, an amount not to exceed 10~~

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320 ~~percent of the annual revenues received from the sale of the~~
 321 ~~plate may be used for administration and marketing the plate.~~

322 ~~(76)(79) FREEMASONRY LICENSE PLATES.—~~

323 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 324 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 325 ~~and s. 320.08053(1)~~, the department shall develop a Freemasonry
 326 license plate as provided in this section and s. 320.08053 ~~s.~~
 327 ~~320.08053(2) and (3)~~. The word "Florida" must appear at the top
 328 of the plate, and the words "In God We Trust" must appear at the
 329 bottom of the plate.

330 ~~(77)(80) AMERICAN LEGION LICENSE PLATES.—~~

331 (a) Notwithstanding ~~s. 320.08053(1) and~~ s. 45, chapter
 332 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-
 333 223, Laws of Florida, the department shall develop an American
 334 Legion license plate as provided in s. 320.08053 ~~s. 320.08053(2)~~
 335 ~~and (3)~~ and this section. The plate must bear the colors and
 336 design approved by the department. The word "Florida" must
 337 appear at the top of the plate, and the words "American Legion"
 338 must appear at the bottom of the plate.

339 ~~(78)(81) LAUREN'S KIDS LICENSE PLATES.—~~

340 (a) Notwithstanding ~~s. 320.08053(1) and~~ s. 45, chapter
 341 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-
 342 223, Laws of Florida, the department shall develop a Lauren's
 343 Kids, Prevent Child Sexual Abuse license plate as provided in s.
 344 320.08053 ~~s. 320.08053(2) and (3)~~, and this section. The plate
 345 must bear the colors and design approved by the department. The
 346 word "Florida" must appear at the top of the plate, and the
 347 words "Lauren's Kids" must appear at the bottom of the plate.

348 ~~(79)(82) BIG BROTHERS BIG SISTERS LICENSE PLATES.—~~

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349 (a) Notwithstanding ~~s. 320.08053(1)~~ and s. 45, chapter
 350 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-
 351 223, Laws of Florida, the department shall develop a Big
 352 Brothers Big Sisters license plate as provided in s. 320.08053
 353 ~~s. 320.08053(2) and (3)~~, and this section. The plate must bear
 354 the colors and design approved by the department. The word
 355 "Florida" must appear at the top of the plate, and the words
 356 "Big Brothers Big Sisters" must appear at the bottom of the
 357 plate.

358 (80)~~(83)~~ FALLEN LAW ENFORCEMENT OFFICERS LICENSE PLATES.—

359 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 360 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 361 ~~and s. 320.08053(1)~~, the department shall develop a Fallen Law
 362 Enforcement Officers license plate as provided in s. 320.08053
 363 ~~s. 320.08053(2) and (3)~~ and this section. The plate must bear
 364 the colors and design approved by the department. The word
 365 "Florida" must appear at the top of the plate, and the words "A
 366 Hero Remembered Never Dies" must appear at the bottom of the
 367 plate.

368 (81)~~(84)~~ FLORIDA SHERIFFS ASSOCIATION LICENSE PLATES.—

369 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 370 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 371 ~~and s. 320.08053(1)~~, the department shall develop a Florida
 372 Sheriffs Association license plate as provided in s. 320.08053
 373 ~~s. 320.08053(2) and (3)~~ and this section. The plate must bear
 374 the colors and design approved by the department. A sheriff's
 375 star must appear on the left side of the plate, the word
 376 "Florida" must appear at the top of the plate, and the words
 377 "Florida Sheriffs Association" must appear at the bottom of the

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378 plate.

379 (82)~~(85)~~ KEISER UNIVERSITY LICENSE PLATES.—

380 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 381 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 382 ~~and s. 320.08053(1)~~, the department shall develop a Keiser
 383 University license plate as provided in s. 320.08053 ~~or~~
 384 ~~320.08053(2) and (3)~~ and this section. The plate must bear the
 385 colors and design approved by the department. The word "Florida"
 386 must appear at the top of the plate, and the words "Keiser
 387 University" must appear at the bottom of the plate.

388 (83)~~(86)~~ MOFFITT CANCER CENTER LICENSE PLATES.—

389 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 390 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 391 ~~and s. 320.08053(1)~~, the department shall develop a Moffitt
 392 Cancer Center license plate as provided in s. 320.08053 ~~or~~
 393 ~~320.08053(2) and (3)~~ and this section. The word "Florida" must
 394 appear at the top of the plate, and the words "Moffitt Cancer
 395 Center" must appear at the bottom of the plate.

396 Section 4. Effective October 1, 2015, paragraphs (ffff)
 397 through (www) are added to subsection (4) of section 320.08056,
 398 Florida Statutes, to read:

399 320.08056 Specialty license plates.—

400 (4) The following license plate annual use fees shall be
 401 collected for the appropriate specialty license plates:

402 (ffff) Bonefish and Tarpon Trust license plate, \$25.

403 (gggg) Rotary's Camp Florida license plate, \$25.

404 (hhhh) Support Down Syndrome license plate, \$25.

405 (iiii) Safe and Free Florida license plate, \$25.

406 (jjjj) Sun Sea Smiles license plate, \$25.

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407 (kkkk) Take Stock in Children license plate, \$25.
 408 (llll) Paddle Florida license plate, \$25.
 409 (mmmm) Orlando City Soccer Club license plate, \$25.
 410 (nnnn) Dogs Making a Difference license plate, \$25.
 411 (oooo) Ducks Unlimited license plate, \$25.
 412 (pppp) Team Hammy license plate, \$25.
 413 (qqqq) Florida Bay Forever license plate, \$25.
 414 (rrrr) Jacksonville Armada Football Club license plate,
 415 \$25.
 416 (ssss) Tampa Bay Rowdies license plate, \$25.
 417 (tttt) Alpha Kappa Alpha Sorority license plate, \$25.
 418 (uuuu) Furry Friends license plate, \$25.
 419 (vvvv) Save Our Shores Florida license plate, \$25
 420 (www) Support Our Constitution license plate, \$25.
 421 Section 5. Effective October 1, 2015, subsection (9) of
 422 section 320.08058, Florida Statutes, is amended, and subsections
 423 (84) through (101) are added to that section, to read:
 424 320.08058 Specialty license plates.—
 425 (9) FLORIDA PROFESSIONAL SPORTS TEAM LICENSE PLATES.—
 426 (a) The Department of Highway Safety and Motor Vehicles
 427 shall develop a Florida Professional Sports Team license plate
 428 as provided in this section for Major League Baseball, National
 429 Basketball Association, National Football League, Arena Football
 430 League Teams, and National Hockey League, Major League Soccer,
 431 and North American Soccer League teams domiciled in this state.
 432 However, any Florida Professional Sports Team license plate
 433 created or established after January 1, 1997, must comply with
 434 the requirements of s. 320.08053 and be specifically authorized
 435 by an act of the Legislature. Florida Professional Sports Team

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436 license plates must bear the colors and design approved by the
 437 department and must include the official league or team logo, or
 438 both, as appropriate for each team. The word "Florida" must
 439 appear at the top of the plate.
 440 (b) The license plate annual use fees are to be annually
 441 distributed as follows:
 442 1. Fifty-five percent of the proceeds from the Florida
 443 Professional Sports Team plate must be deposited into the
 444 Professional Sports Development Trust Fund within the Department
 445 of Economic Opportunity. These funds must be used solely to
 446 attract and support major sports events in this state. As used
 447 in this subparagraph, the term "major sports events" means, but
 448 is not limited to, championship or all-star contests of Major
 449 League Baseball, the National Basketball Association, the
 450 National Football League, the National Hockey League, Major
 451 League Soccer, the North American Soccer League, the men's and
 452 women's National Collegiate Athletic Association Final Four
 453 basketball championship, or a horseracing or dogracing Breeders'
 454 Cup. All funds must be used to support and promote major
 455 sporting events, and the uses must be approved by the Department
 456 of Economic Opportunity.
 457 2. The remaining proceeds of the Florida Professional
 458 Sports Team license plate must be allocated to Enterprise
 459 Florida, Inc. These funds must be deposited into the
 460 Professional Sports Development Trust Fund within the Department
 461 of Economic Opportunity. These funds must be used by Enterprise
 462 Florida, Inc., to promote the economic development of the sports
 463 industry; to distribute licensing and royalty fees to
 464 participating professional sports teams; to promote education

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465 programs in Florida schools that provide an awareness of the
 466 benefits of physical activity and nutrition standards; to
 467 partner with the Department of Education and the Department of
 468 Health to develop a program that recognizes schools whose
 469 students demonstrate excellent physical fitness or fitness
 470 improvement; to institute a grant program for communities
 471 bidding on minor sporting events that create an economic impact
 472 for the state; to distribute funds to Florida-based charities
 473 designated by Enterprise Florida, Inc., and the participating
 474 professional sports teams; and to fulfill the sports promotion
 475 responsibilities of the Department of Economic Opportunity.

476 3. Enterprise Florida, Inc., shall provide an annual
 477 financial audit in accordance with s. 215.981 of its financial
 478 accounts and records by an independent certified public
 479 accountant pursuant to the contract established by the
 480 Department of Economic Opportunity. The auditor shall submit the
 481 audit report to the Department of Economic Opportunity for
 482 review and approval. If the audit report is approved, the
 483 Department of Economic Opportunity shall certify the audit
 484 report to the Auditor General for review.

485 4. Notwithstanding the provisions of subparagraphs 1. and
 486 2., proceeds from the Professional Sports Development Trust Fund
 487 may also be used for operational expenses of Enterprise Florida,
 488 Inc., and financial support of the Sunshine State Games.

489 (84) BONEFISH AND TARPON TRUST LICENSE PLATES.—

490 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 491 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 492 and s. 45, chapter 2014-216, Laws of Florida, the department
 493 shall develop a Bonefish and Tarpon Trust license plate as

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494 provided in this section and s. 320.08053. The word "Florida"
 495 must appear at the top of the plate, and the words "Bonefish and
 496 Tarpon Trust" must appear at the bottom of the plate.

497 (b) The department shall retain all annual use fees from
 498 the sale of such plates until all startup costs for developing
 499 and issuing the plates have been recovered. Thereafter, the
 500 license plate annual use fees shall be distributed to the
 501 Bonefish and Tarpon Trust, which:

502 1. May use a maximum of 10 percent of the proceeds to
 503 promote and market the Bonefish and Tarpon Trust license plate.

504 2. Shall invest and reinvest the remainder of the proceeds
 505 and use the interest earnings to conserve and enhance Florida
 506 bonefish and tarpon fisheries and their respective environments
 507 through stewardship, research, education, and advocacy.

508 (85) ROTARY'S CAMP FLORIDA LICENSE PLATES.—

509 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 510 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 511 and s. 45, chapter 2014-216, Laws of Florida, the department
 512 shall develop a Rotary's Camp Florida license plate as provided
 513 in this section and s. 320.08053. The plate must bear the colors
 514 and design approved by the department. The word "Florida" must
 515 appear at the top of the plate, and the words "Rotary's Camp
 516 Florida" must appear at the bottom of the plate.

517 (b) The license plate annual use fees shall be distributed
 518 to Rotary's Camp Florida, which may use a maximum of 10 percent
 519 of the proceeds for administrative costs and for marketing the
 520 plate. Up to 23 percent shall be distributed as grants for
 521 Florida Rotary Districts that provide camp services to children
 522 in this state, and the balance of the proceeds shall be used by

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Rotary's Camp Florida for direct support to the programs and services provided to children who attend the camp.

(86) SUPPORT DOWN SYNDROME LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Support Down Syndrome license plate as provided in this section and s. 320.08053. Support Down Syndrome license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support Down Syndrome" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to Olivia's Angels Foundation, Inc., to fund its activities, programs, and projects within this state. Olivia's Angels Foundation, Inc., may retain all revenues from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 10 percent of the annual use fee revenues may be used for administrative costs and promotion and marketing of the specialty license plate.

(87) SAFE AND FREE FLORIDA LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Safe and Free Florida license plate as provided in this section and s. 320.08053. Safe and Free Florida license plates must bear the colors and design approved by the department. The word "Florida" must appear at the bottom of the plate, and the words "End Human Trafficking" must appear at the

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top of the plate.

(b) The license plate annual use fees shall be distributed to the Statewide Council on Human Trafficking, with a report that specifies the ratio that the annual use fees collected by each county bear to the total fees collected for the plates statewide. The council may retain all revenues from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 15 percent of the annual use fee revenues may be used for administrative costs and for promotion and marketing of the specialty license plate. The council shall distribute the remaining funds to nongovernmental, not-for-profit agencies within each county in this state which assist sexually abused, exploited, or trafficked victims. Funds may not be distributed to an agency that charges victims for services received.

1. An agency that receives the funds must use the funds for:

a. The material needs of sexually abused, exploited, or trafficked victims, including, but not limited to, clothing, housing, medical care, food, utilities, and transportation.

b. Detoxification services.

c. Prenatal and postnatal care and services for infants awaiting placement with adoptive parents.

d. Real estate purchases to facilitate a safe house or a transitional care or recovery care center.

e. Counseling, training, awareness, and prevention programs and advertisement.

2. An agency that receives funds may not use the funds for administrative or legal expenses, or for capital expenditures

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other than those specified in sub-subparagraph 1.d.

3. Each year, any unused funds that exceed 10 percent of the total amount received by an agency must be returned to the Statewide Council on Human Trafficking to be redistributed by the council to other qualified agencies.

4. Each agency that receives funds from the Statewide Council on Human Trafficking must submit an annual attestation to the council.

5. If no qualified agency applies to receive funds in a county in any year, that county's share of the funds shall be distributed pro rata to the qualified agencies that apply and maintain a place of business within a 100-mile radius of the county seat of that county. If no qualified agency within the 100-mile radius applies, the funds shall be distributed to other qualified agencies within the state.

(88) SUN SEA SMILES LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Sun Sea Smiles license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Sun Sea Smiles" must appear at the bottom of the plate.

(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the license plate annual use fees shall be distributed as follows:

1. Five percent shall be distributed to the Florida

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Caribbean Charitable Foundation, Inc., for marketing the Sun Sea Smiles license plate.

2. Thirty percent shall be distributed to the Florida Caribbean Charitable Foundation, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used as follows:

a. Sixty percent shall be used for a college scholarship program.

b. Fifteen percent shall be used to promote health and wellness among Florida residents of Caribbean descent.

c. Twenty-five percent shall be used to promote awareness of Caribbean culture within the state.

3. Twenty percent shall be distributed to the American Friends of Jamaica, Inc., a charitable, not-for-profit organization under s. 501(c)(3) of the Internal Revenue Code registered with the Department of Agriculture and Consumer Services and incorporated in New York, for use as grants to promote social and community development among residents of this state. Of this amount, up to 5 percent may be used for administrative and marketing expenses.

4. Ten percent shall be distributed to Haitian Neighborhood Center Sant La, Inc., to promote social and community development. Of this amount, up to 5 percent may be used for administrative expenses.

5. Ten percent shall be distributed to Fanm Ayisyen nan Miyami, Inc., to promote social and community development. Of this amount, up to 10 percent may be used for administrative expenses.

6. Twenty percent shall be distributed to Greater Caribbean

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639 American Cultural Coalition, Inc., to promote awareness of
 640 Caribbean culture within this state. Of this amount, up to 5
 641 percent may be used for administrative expenses.

642 7. Five percent shall be distributed to Little Haiti
 643 Optimist Foundation, Inc., to promote awareness of Caribbean
 644 culture and youth development within this state. Of this amount,
 645 up to 5 percent may be used for administrative expenses.

646 (89) TAKE STOCK IN CHILDREN LICENSE PLATES.-

647 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 648 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 649 and s. 45, chapter 2014-216, Laws of Florida, the department
 650 shall develop a Take Stock in Children license plate as provided
 651 in this section and s. 320.08053. Take Stock in Children license
 652 plates must bear the colors and design approved by the
 653 department. The word "Florida" must appear at the top of the
 654 plate, and the words "Take Stock in Children" must appear at the
 655 bottom of the plate.

656 (b) The license plate annual use fees shall be distributed
 657 to Take Stock in Children, Inc., to fund its activities,
 658 scholarship and mentoring programs, and projects. Take Stock in
 659 Children, Inc., may retain all revenues from the annual use fees
 660 until all startup costs for developing and establishing the
 661 plate have been recovered. Thereafter, up to 10 percent of the
 662 annual use fee revenue may be used for administrative costs
 663 directly associated with the corporation's programs and the
 664 specialty license plate, and up to 15 percent may be used for
 665 promotion and marketing of the specialty license plate.

666 (90) PADDLE FLORIDA LICENSE PLATES.-

667 (a) Notwithstanding s. 45, chapter 2008-176, Laws of

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668 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 669 and s. 45, chapter 2014-216, Laws of Florida, the department
 670 shall develop a Paddle Florida license plate as provided in this
 671 section and s. 320.08053. The word "Florida" must appear at the
 672 top of the plate, and words approved by the department must
 673 appear at the bottom of the plate.

674 (b) The department shall retain all license plate annual
 675 use fees until the startup costs for developing and issuing the
 676 plates have been recovered. Thereafter, the annual use fees
 677 shall be distributed to Paddle Florida, Inc., which may use up
 678 to 10 percent of the proceeds for administrative costs and
 679 marketing of the plate. The balance of the fees shall be used by
 680 the Florida Forever grant program to support activities that
 681 further outdoor recreation and natural resource protection.

682 (91) ORLANDO CITY SOCCER CLUB LICENSE PLATES.-

683 Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as
 684 amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45,
 685 chapter 2014-216, Laws of Florida, the department shall develop
 686 an Orlando City Soccer Club license plate as provided in
 687 subsection (9).

688 (92) DOGS MAKING A DIFFERENCE LICENSE PLATES.-

689 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 690 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 691 and s. 45, chapter 2014-216, Laws of Florida, the department
 692 shall develop a Dogs Making a Difference license plate as
 693 provided in this section and s. 320.08053. The plate must bear
 694 the colors and design approved by the department. The word
 695 "Florida" must appear at the top of the plate, and the words
 696 "Dogs Making a Difference" must appear at the bottom of the

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697 plate.

698 (b) The department may retain all license plate annual use
 699 fees until the startup costs for developing and issuing the
 700 plates have been recovered. Thereafter, the annual use fees
 701 shall be distributed to Southeastern Guide Dogs, Inc., which may
 702 use up to 10 percent of the proceeds for administrative costs
 703 and marketing of the plate. The balance of the fees shall be
 704 used by Southeastern Guide Dogs, Inc., for the training and
 705 promotion of dogs for use by veterans and citizens who are
 706 blind.

707 (93) DUCKS UNLIMITED LICENSE PLATES.—

708 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 709 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 710 and s. 45, chapter 2014-216, Laws of Florida, the department
 711 shall develop a Ducks Unlimited license plate as provided in
 712 this section and s. 320.08053. Ducks Unlimited license plates
 713 must bear the colors and design approved by the department. The
 714 word "Florida" must appear at the top of the plate, and the
 715 words "Conserving Florida's Wetlands" must appear at the bottom
 716 of the plate.

717 (b) The license plate annual use fees shall be distributed
 718 to Ducks Unlimited, Inc., a nonprofit corporation under s.
 719 501(c)(3) of the Internal Revenue Code. The proceeds must be
 720 used to support Ducks Unlimited's mission and conservation
 721 efforts in this state as follows:

722 1. Up to 5 percent may be used for administrative costs and
 723 marketing of the plate.

724 2. A minimum of 95 percent shall be used to support Ducks
 725 Unlimited's mission and efforts for the conservation,

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726 restoration, and management of Florida wetlands and associated
 727 habitats for the benefit of waterfowl, other wildlife, and
 728 people.

729 (94) TEAM HAMMY LICENSE PLATES.—

730 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
 731 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 732 and s. 45, chapter 2014-216, Laws of Florida, the department
 733 shall develop a Team Hammy license plate as provided in this
 734 section and s. 320.08053. The word "Florida" must appear at the
 735 top of the plate, and the words "Team Hammy" must appear at the
 736 bottom of the plate.

737 (b) The department shall retain all license plate annual
 738 use fees until all startup costs for developing and issuing the
 739 plates have been recovered. Thereafter, the license plate annual
 740 use fees shall be distributed to Team Hammy, Inc., a Florida
 741 nonprofit corporation, which may use up to 10 percent of such
 742 fees for administrative costs and marketing of the plate. The
 743 balance of the fees shall be used by Team Hammy, Inc., to grant
 744 wishes to families living with amyotrophic lateral sclerosis
 745 (ALS), provide continuing education to caregivers and
 746 physicians, and create awareness of ALS in the community.

747 (95) FLORIDA BAY FOREVER LICENSE PLATES.—

748 (a) Notwithstanding s. 45 of chapter 2008-176, Laws of
 749 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
 750 and s. 45, chapter 2014-216, Laws of Florida, the department
 751 shall develop a Florida Bay Forever license plate as provided in
 752 this section and s. 320.08053. The word "Florida" must appear at
 753 the top of the plate, and the words "Florida Bay Forever" must
 754 appear at the bottom of the plate.

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(b) The department shall retain all license plate annual use fees until all startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be distributed to the Florida National Park Association, Inc., which may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used to supplement the Everglades National Park service's budgets and to support educational, interpretive, historical, and scientific research relating to the Everglades National Park.

(96) JACKSONVILLE ARMADA FOOTBALL CLUB LICENSE PLATES.—Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Jacksonville Armada Football Club license plate as provided in subsection (9).

(97) TAMPA BAY ROWDIES LICENSE PLATES.—Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Tampa Bay Rowdies license plate as provided in subsection (9).

(98) ALPHA KAPPA ALPHA SORORITY LICENSE PLATES.—

(a) Notwithstanding s. 45 of chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop an Alpha Kappa Alpha Sorority license plate as provided in this section and s. 320.08053. The word "Florida" must appear at the top of the plate, and the words "Alpha Kappa Alpha Sorority" must appear at the bottom of the plate.

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(b) The department shall retain all annual use fees from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be distributed to Alpha Kappa Alpha Sorority, Inc., which may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used to supplement the Alpha Kappa Alpha Educational Advancement Foundation, Inc., budgets and to promote lifelong learning by awarding scholarships, fellowships, and grants.

(99) FURRY FRIENDS LICENSE PLATES.—

(a) Notwithstanding s. 45 of chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45, chapter 2014-216, Laws of Florida, the department shall develop a Furry Friends license plate as provided in this section and s. 320.08053, upon application by Furry Friends of Florida, Inc. The word "Florida" must appear at the top of the plate, and words approved by the department must appear at the bottom of the plate.

(b) The department shall retain all revenue from the sale of such plates until the startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be distributed monthly to Furry Friends of Florida, Inc., which may use up to 15 percent of such revenue for administrative, handling, and disbursement contracts and expenses, and up to 10 percent for promotion, advertising, and marketing contracts and costs. The balance of the fees shall be used by Furry Friends of Florida, Inc., for activities, programs, and projects, including, but not limited to, pet

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813 rescue, animal shelters, pet vaccination, veterinary services,
814 and service animals.

815 (100) SAVE OUR SHORES FLORIDA LICENSE PLATES.—
816 Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as
817 amended by s. 21, chapter 2010-223, Laws of Florida, and s. 45,
818 chapter 2014-216, Laws of Florida, the department shall develop
819 a Save Our Shores Florida license plate as provided in this
820 section.

821 (a) Save Our Shores Florida license plates must bear the
822 colors and design approved by the department. The word “Florida”
823 must appear at the top of the plate, and the words “Save Our
824 Shores” must appear at the bottom of the plate.

825 (b) The department shall retain all annual use fees from
826 the sale of such plates until startup costs for developing and
827 issuing the plates have been recovered. Thereafter, the annual
828 use fees shall be distributed to Adore the Shore, Inc., which
829 may retain all of such revenue until the startup costs to
830 develop and establish the license plate program have been
831 recovered. Thereafter, Adore the Shore, Inc., may use the
832 proceeds as follows:

833 1. A maximum of 15 percent may be used for administrative
834 costs of the organization.

835 2. A maximum of 10 percent may be used for promotion and
836 the marketing costs of the license plate program.

837 3. The remainder shall be used to fund activities,
838 programs, and projects that provide for cleanup activities on
839 Florida’s beaches following natural or manmade occurrences that
840 threaten the pristine nature of Florida’s beaches and any other
841 legal purpose as allowed by the Internal Revenue Code.

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842 (101) SUPPORT OUR CONSTITUTION LICENSE PLATES.—

843 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
844 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
845 and s. 45, chapter 2014-216, Laws of Florida, the department
846 shall develop a Support Our Constitution license plate as
847 provided in this section and s. 320.08053. Support Our
848 Constitution license plates must bear the colors and design
849 approved by the department. The word “Florida” must appear at
850 the top of the plate, and the words “Support Our Constitution”
851 must appear at the bottom of the plate.

852 (b) The annual use fees shall be distributed to The
853 Constitution Foundation, Inc., which may retain all proceeds
854 from the annual use fees until the startup costs for developing
855 and issuing the license plates have been recovered. Thereafter,
856 The Constitution Foundation, Inc., may use the proceeds as
857 follows:

858 1. A maximum of 15 percent may be used for administrative
859 costs of the organization.

860 2. A maximum of 10 percent may be used for promotion and
861 marketing costs of the license plate.

862 3. The remainder shall be used to fund the activities,
863 programs, and projects of The Constitution Foundation, Inc.

864 Section 6. Except as otherwise expressly provided in this
865 act, 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)

4/20/15

Meeting Date

4072

Bill Number (if applicable)

Topic Specially Plates

Name Greg Pound

Amendment Barcode (if applicable)

Job Title _____

Address 9166 Sunrise Dr.
Street

Phone _____

Largo FL. 33773
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☒ Information

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

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/15
Meeting Date

7072
Bill Number (if applicable)

Topic License Plate

946600
Amendment Barcode (if applicable)

Name Bill MARVIN

Stargel

Job Title Retired

Address 2102 Trescott Dr.
Street

Phone 850-385-6006

Tallahassee, FL 32308
City State Zip

Email WECMNWTF@Yahoo.Com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Wild Turkey 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

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 14, 2015

I respectfully request that **Senate Bill #7072**, relating to **Specialty License Plates**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 22



656416

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 23 - 28
and insert:

(3) OPTIONAL TERMINATION.—Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium if less ~~no more~~ than 10 percent

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 1172

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; Regulated Industries Committee; and Senator Latvala

SUBJECT: Termination of a Condominium Association

DATE: April 21, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Caldwell</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 1172 revises the requirements for the optional termination of condominiums

Current law permits a condominium to be terminated at any time if a plan of termination is approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests reject the termination. The bill provides that, if 10 percent or more of the voting interests of a condominium reject a plan of termination, another termination may not be considered for 18 months.

The bill prohibits condominiums that have been created pursuant to the condominium conversion procedures in Part VI of ch. 718, F.S., from undertaking an optional plan of termination until 5 years after the conversion.

The bill provides the following conditions and limitations for the termination of a condominium if at the time the plan of termination is recorded at least 80 percent of the total voting interests are owned by a bulk owner which would be considered an insider under s. 726.102, F.S., and no sale of the terminated condominium property to an unrelated third party is contemplated:

- Unit owners must be allowed to retain possession of units and lease their former units;
- Any unit owner whose unit was granted homestead exemption must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the unit;

- Unit owners other than the developer must be paid at least 100 percent of the fair market value of their units as determined by one or more independent appraisers;
- The fair market value for a unit of an owner who was an original purchaser from the developer and who dissented or objected to the plan of termination may not be less than the original purchase price paid for the unit; and
- The plan of termination must provide the manner by which each first mortgage on a unit will be satisfied in full at the time the plan is implemented.

The bill provides timeframes for objections to the plan of termination, including plans approved at a meeting and plans approved by a written consent or joinder.

The bill permits unit owners to contest a plan of termination by petitioning the Division of Florida Condominiums, Timeshares, and Mobile Homes for mandatory nonbinding arbitration. It repeals the unit owners' right to contest the plan of termination in a court by initiating a summary procedure pursuant to s. 51.011, F.S. Unit owners may contest the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of unit owners will not be fully satisfied, or that the required vote was not obtained.

The bill has an insignificant negative fiscal impact on the Department of Business and Professional Regulation.

II. Present Situation:

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 developer creates a condominium or offers condominium units for sale or lease in the ordinary course of business.² A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.³ A declaration governs the relationships of the condominium units' owners and the condominium association.⁴

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property and can be amended as provided in the declaration.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than two-thirds of the unit owners.⁶ Condominium associations are administered by a board of administration and can assess costs for common expenses.⁷

¹ Section 718.103(11), F.S.

² Section 718.103(16), F.S.

³ Section 718.104(2), F.S.

⁴ *Woodside Village Condominium Assoc. Inc. v. Jahren*, 806 So. 2d 452, 456 (Fla. 2002).

⁵ Sections 718.104(5) and 718.110(1)(a), F.S.

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(1) and (4), F.S.

Association property is property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.⁸ Whereas, condominium property is the lands, leaseholds, and personal property subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.⁹ The common elements are the portions of the condominium property not included in the units.¹⁰

Voting interests are the voting rights distributed to the association members. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.¹¹

Termination of a Condominium: Optional Termination

Except as provided for in a termination because of economic waste or impossibility and unless the declaration provides for a lower percentage, an optional termination can occur. An optional termination allows for the condominium ownership to be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests, if no more than 10 percent of the total voting interests reject the plan of termination by negative vote or by written objections. An optional termination cannot occur for condominiums in which 75 percent or more of the units are timeshare units.¹²

Exemption

A plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.¹³

Plan of Termination

The plan for termination must be a written document executed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.¹⁴ In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been

⁸ Section 718.103(3), F.S.

⁹ Section 718.103(13), F.S.

¹⁰ Section 718.103(8), F.S.

¹¹ Section 718.103(30), F.S. Voting rights are distributed pursuant to s. 718.104(4)(j), F.S.

¹² Section 718.117(3), F.S.

¹³ Section 718.117(4), F.S.

¹⁴ Section 718.117(11)(a), F.S.

recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.¹⁵ The provisions required in the plan of termination are provided in ss. 718.117(10) and (11), F.S.

The plan of termination must be recorded before it can take effect and is effective only when recorded or at a later date specified in the plan.

A plan of termination that fails to receive the required approval cannot be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that the failed plan of termination was first given to all unit owners.¹⁶

Allocation of Proceeds of Sale

Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee. The value of the common elements is to be paid to the owners according to their proportionate share in the common elements.¹⁷

Right to Contest

A unit owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to s. 51.011, F.S., within 90 days after the date the plan is recorded. If not contested within 90 days, a unit owner or lienor is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property.¹⁸

The person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. The court is required to determine the rights and interests of the parties and order the plan of termination to be implemented if it is fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, it may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner. The prevailing party is entitled to recover reasonable attorney fees and costs.¹⁹

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with chs. 718 and 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with

¹⁵ Section 718.117(11)(b), F.S.

¹⁶ Section 718.117(9), F.S.

¹⁷ Section 718.117(12), F.S.

¹⁸ Section 718.117(16), F.S.

¹⁹ *Id.*

chs. 718 and 719, F.S., with respect to associations that are still under developer control. The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association. After control of the condominium or cooperative is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.²⁰

As part of the division's authority to investigate complaints, the division is authorized to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.²¹

III. Effect of Proposed Changes:

The bill amends s. 718.117, F.S., to revise the requirements for the optional termination of condominiums.

Termination of a Condominium: Optional Termination

The bill creates s. 718.117(3)(a), F.S., to provide that, in a vote on a plan of termination, the total voting interests of the condominium include all voting interests for the purpose of considering a plan of termination, and a voting interest of the condominium may not be suspended during the consideration of a plan of termination. If 10 percent or more of the total voting interests of the condominium reject a plan of termination, another optional plan of termination may not be considered for 18 months after the date of rejection.

Section 718.117(3)(b), F.S., is created to prohibit a condominium that has been created pursuant to the condominium conversion procedures in Part VI of ch. 718, F.S.,²² (conversion condominium) from undertaking an optional plan of termination until 5 years after the conversion. The bill repeals the provision that optional termination provisions do not apply to condominiums in which 75 percent or more of the units are timeshare units.

Optional Terminations and Bulk Owners

Section 718.117(3)(c), F.S., is created and defines the term "bulk owner" to mean the single owner of such voting interests or an owner with a related entity or entities that would be considered insiders, as defined in s. 726.102, F.S.²³

²⁰ Sections 718.501(1) and 719.501(1), F.S.

²¹ *Id.*

²² Part VI of ch. 718, F.S., provides the process for converting real property into the condominium form of ownership.

²³ Section 726.102(8), F.S., defines an "insider" to include: "(a) If the debtor is an individual: 1. A relative of the debtor or of a general partner of the debtor; 2. A partnership in which the debtor is a general partner; 3. A general partner in a partnership described [above]. A corporation of which the debtor is a director, officer, or person in control; (b) If the debtor is a corporation: 1. A director of the debtor; 2. An officer of the debtor; 3. A person in control of the debtor; 4. A partnership in which the debtor is a general partner; 5. A general partner in a partnership described [above]; 6. A relative of a general partner, director, officer, or person in control of the debtor. (c) If the debtor is a partnership: 1. A general partner in the debtor; 2. A relative of a general partner in, a general partner of, or a person in control of the debtor; 3. Another partnership in which the debtor is a general partner; 4. A general partner in a partnership described [above]. 5. A person in control of the debtor. (d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor. (e) A managing agent of the debtor."

If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

If the condominium association is a residential association subject to an optional termination and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

- Right to lease the former unit;
- Relocation payments for homestead property;
- Compensation at fair market value as determined by an independent appraiser; and
- Mandated disclosures in the plan of termination.

The plan of termination must also provide the manner by which each first mortgage on a unit will be satisfied so that each unit owner's obligation under the first mortgage is satisfied in full at the time the plan of termination is implemented.

Right to Lease Former Unit

If the former units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the termination may lease his or her former unit and remain in possession of the unit for 12 months after the termination. To obtain a lease the unit owner must:

- Make a written request to the termination trustee to rent the former unit make a written request and sign a lease within 90 days after the approved plan of termination is recorded; and
- Sign the lease within 15 days after being presented with the lease.

Any unit owner who fails to make such a timely written request waives his or her right to retain possession of the former unit and is required to vacate the former unit on the effective date of the termination, unless otherwise provided in the plan of termination.

Relocation Payments for Homestead Property

Any former unit owner whose unit was granted homestead exemption as of the date of the recording of the plan of termination must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. The relocation payment must be paid by the single entity or related entities owning at least 80 percent of the voting interests. The relocation payment is in addition to any termination proceeds and must be paid within 10 days after the unit owner vacates the unit.

It is not clear whether this provision applies if the unit owners retains possession to lease after termination as provided above in which case the relocation payments would be due within 10 days after the end of the unit owner's post-termination lease.

Compensation

All unit owners other than the bulk owner must be compensated with at least 100 percent of the fair market value of their units.

The fair market value must be determined by an independent appraiser, who is selected by the termination trustee as of a date that is no earlier than 90 days before the date that the plan of termination is recorded.

The fair market value for a unit owner, who was an original purchaser from the developer and is dissenting or objecting to the plan of termination, may not be less than the original purchase price paid for the unit.

The bill defines the term “fair market value” to mean the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices.

Mandated Disclosures in the Plan of Termination

Before presenting the plan of termination to the unit owners, the plan must include the following written disclosures in a sworn statement:

- The identity of the person or entity that owns 50 percent or more of the units and, if an artificial entity owns such units, the name of the natural person who directly or indirectly manages or controls the entity;
- The identity of the natural person or entity that owns or controls, directly or indirectly, 20 percent or more of the artificial entity that constitutes a bulk owner;
- The units acquired by any bulk owner, the date of their acquisition, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit; and
- The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner whose identity must be disclosed.

Exemption

Section 718.117(4), F.S., is amended to provide that an amendment to a declaration to conform the declaration to s. 718.117, F.S., is not an amendment subject to the notice and vote requirements in s. 718.110(4), F.S., and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

Plan of Termination

The bill amends s. 718.117(9), F.S., which provides the process for a unit owner to reject or object to a plan of termination. If the vote on the plan of termination is at a meeting of the unit owners, a vote to reject the plan must be made in person or by proxy, or by delivering a written rejection to the association before or at the meeting. If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, an objection to the plan must be made by written objection within 20 days after the date the association notifies the non-consenting owners that the plan of termination was approved by written action in lieu of a unit owner meeting.

The bill amends s. 718.117(11), F.S., to provide that, unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess the unit and to use

the common elements of the condominium after termination, all such rights in the unit or common elements automatically terminate on the effective date of termination. All leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination unless the plan expressly provides otherwise. The plan must specify the terms and conditions of occupancy if the plan expressly authorizes a unit owner or other person to retain exclusive right of possession after termination.

The bill creates s. 718.117(11)(c), F.S., to permit a plan of termination to be withdrawn or amended by the same percentage required for approval.

The bill creates s. 718.117(11)(d), F.S., to permit a termination trustee to correct a scrivener's error in the plan of termination, and to require that the amended plan be executed in the same manner as a deed.

Allocation of Proceeds of Sale

The bill amends s. 718.117(12)(a), F.S., to provide that the plan of termination may require separate valuations for the common elements. The bill repeals the requirement that the declaration apportion the proceeds of sale between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination by an independent appraiser. The bill provides that if the common elements are not separated, it is presumed that the common elements have no independent value and are included in the valuation of the unit.

The bill amends s. 718.117(12)(d), F.S., to require the lienholder of a unit to provide the termination trustee, within 30 days of the trustee's written request, with a statement confirming the outstanding obligations of the unit owner secured by the lien.

The bill amends s. 718.117(12)(e), F.S., to permit the termination trustee to set off against, and reduce the share of, termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

- Unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts owed for the unit;
- Costs of clearing title to the unit;
- Costs of removing persons from the unit;
- Costs related to breaches of the plan of termination by the owner and others related to the owner;
- Costs related to the removal and storage of personal property; and
- Costs related to the appointment of a receiver or attorney ad litem acting for the unit owner if the unit owner cannot be located.

Right to Contest

The bill requires unit owners contest a plan of termination by petitioning the division for mandatory nonbinding arbitration pursuant s. 718.1255, F.S., which provides for the mediation and arbitration of disputes between the condominium association and unit owners.

The bill repeals the option for unit owners to contest the termination by initiating a summary procedure pursuant to s. 51.011, F.S.

The bill provides that a unit owner or lienor's right to contest a plan of termination is limited to contesting only the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of all unit owners have not or will not be fully satisfied at the time of termination, or that the required vote to approve the plan was not obtained. The contesting party bears the burden of proof.

Current law permits the court in a summary procedure to apportion the proceeds if it determines that the plan of termination is not fair and reasonable. The bill permits the arbitrator to void a plan of termination if it is determined that the plan was not properly approved. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the property or the vesting of the condominium property in the trustee. Challenges to the plan are limited to claims against the proceeds of the plan.

The bill amends s. 718.1255(1)(a), F.S., to include a plan of termination under s. 718.117, F.S., within the types of disputes that the division may arbitrate.

Effective Date

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.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A condominium declaration is a form of contract between the members of the association. Where a recorded declaration may have termination provisions or may implement the protections provided by s. 718.110(4), F.S., the bill may implicate Art. I, s. 10 of the Florida Constitution and article I, section 10 of the United States Constitution, which prohibit the legislature from passing any law that impairs "the obligation of contracts."

As a threshold matter, a law must “substantially impair” a contractual right for it be constitutionally problematic.²⁴ The Florida Supreme Court has held that “[a]n impairment may be constitutional if it is reasonable and necessary to serve an important public purpose.”²⁵

The courts have adopted a balancing test to “determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties’ bargain to a degree greater than is necessary to achieve that objective.”²⁶ Factors considered in the balancing test include:

- Was the law enacted to deal with a broad, generalized economic or social problem?²⁷
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?²⁸

Additionally, the United States Supreme Court has found that parties cannot avoid state regulations and restrictions in an enterprise that is already subject to state regulation by simply entering into a contract.²⁹ This finding may be particularly relevant given the Florida Supreme Court's statement that, “In Florida, condominiums are creatures of statute and as such are subject to the control and regulation of the Legislature. That body has broad discretion to fashion such remedies as it deems necessary to protect the interests of the parties involved.”³⁰

If this bill has the effect of re-writing previously recorded declarations that have termination provisions or that implement the protections provided by s. 718.110(4), F.S., the bill may be an unconstitutional impairment of an obligation of a contract.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁴ *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 779 (Fla.1979) (citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)).

²⁵ *Id.* at 778-79 (citing *U.S. Trust Co. v N.J.*, 431 U.S. 1, 25 (1977)).

²⁶ *Id.* at 780.

²⁷ In determining the purpose of a statute, courts frequently look to the legislature’s express statements of intent in the statute. See *Pomponio*, 378 So. 2d at 781 (noting in its analysis of the public purpose of the statute that the specific objectives for the statute are “neither expressly articulated nor plainly evident” in the statute).

²⁸ *Id.* at 779.

²⁹ *Energy Reserves Group, Inc. v. Kan. Power and Light Co.*, 459 U.S. 400, 411 (1983).

³⁰ *Century Vill. Inc. v. Wellington, E, F, K, L, H, J, M, & G, Condo. Ass'n*, 361 So. 2d 128, 133 (Fla. 1978).

B. Private Sector Impact:

Section 718.117(3)(d)2., F.S., entitles any former unit owner whose unit was granted homestead exemption as of the date of the recording of the plan of termination to be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. Section 718.117(3)(d)3., F.S., requires that all unit owners who are not a bulk owner must be compensated at least 100 percent of the fair market value of their units. The allocation of the proceeds of the sale of condominium property to dissenting or objecting owners must be 110 percent of the purchase price, or 110 percent of fair market value, whichever is greater.

C. Government Sector Impact:

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may experience an indeterminate but minimal increase in expenditures to provide arbitrations between condominium associations and unit owners related to a plan of termination. The division is required under current law to employ full-time attorneys to act as arbitrators.³¹ Given the infrequency of terminations, the impact is indeterminate.

The bill has an insignificant negative fiscal impact on the Department of Business and Professional Regulation that the department reports can be absorbed within existing resources.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 718.117 and 718.1255 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Fiscal Policy on April 21, 2015:**

The committee substitute amends the first sentence in s. 718.117(3), F.S., to fix a scrivener's error.

³¹ 715.1255(4), F.S.

³² The Department of Business and Regulation email to the Appropriations Subcommittee on General Government staff.

CS/CS by Judiciary on April 7, 2015:

The committee substitute (CS):

- Revises the threshold defining the amount of voting interests that are necessary to reject a plan of termination.
- Revises the restriction on the termination of a condominium that was converted to a condominium from a preexisting improvement, such as an apartment complex. Under the amendment these condominiums may not terminate within 5 years, rather than 7 years, after the recording of the declaration of condominium unless there are no objections to the plan of termination.
- Revises the provision regarding allocation of proceeds of the sale of condominium property to owners of units dissenting or objecting to the plan at 110 percent of the unit price or fair market value, whichever is greater. Instead, original purchasers from the developer who dissent or object to the plan, fair market value may not be less than the original purchase price for the unit.
- Revises the language regarding the manner by which each first mortgage on a unit is satisfied so that the unit owner's obligation is satisfied in full when the termination plan is implemented.
- Changes "or" to "and" in the provision "providing that all such rights in the unit and common elements automatically terminate on the effective date of termination" unless the plan expressly authorizes otherwise.

CS by Regulated Industries on March 24, 2015:

The committee substitute (CS):

- Revises the title of the bill from an "act relating to condominiums" to an "act relating to termination of a condominium association;"
- Amends s. 718.117(3), F.S., to provide that, if more than 10 percent of the voting interests of a condominium to reject a plan of termination, another termination may not be considered for 18 months instead of 36 months in the bill;
- Deletes the provision in s. 718.117(3)(c), F.S., that optional termination provisions do not apply to condominiums in which 75 percent or more of the units are timeshare units;
- Creates s. 718.117(3)(d), F.S., to define the term bulk owner;
- Amends s. 718.117(3)(d), F.S., to provide conditions for the termination of a condominium if at least 80 percent of the total voting interests at the time of recording the plan of termination are owned by a bulk owner. It does not limit the condition to when at least 80 percent of the voting interests are owned by bulk buyer or assignee or a related entity which would be considered an insider under and no sale of the terminated condominium property to an unrelated third party is contemplated;
- Amends s. 718.117(3)(d)3., F.S., to require that all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. It deletes the reference to third-party unit owners;
- Amends s. 718.117(3)(d)3., F.S., to require that the fair market value must be determined by an independent appraiser, selected by the termination trustee, as of a date that is no earlier than 90 days before the date that the plan of termination is recorded;

- Creates s. 718.117(3)(d)5., F.S., to require a written and sworn statement of disclosures before the plan of termination is presented to the unit owners;
- Amends s. 718.117(9), F.S., and does not amend s. 718.117(3), F.S., to provide the process for a unit owner to reject or object to a plan of terminations;
- Amends s. 718.117(11), F.S., to provide for the termination of possession rights by the former unit owner, including occupancy agreements, subleases, licenses, or other agreements, after the approval of a plan of termination, unless expressly authorized in the plan of termination. It also deletes the provision that, in a partial termination, title to the surviving units and common elements that remain part of the condominium property and vested in the ownership shown in the public records and do not vest in the termination trustees;
- Creates s. 718.117(11)(c), F.S., to permit a plan of termination to be withdrawn or amended by the same percentage required for approval;
- Creates s. 718.117(11)(c), F.S., to permit a termination trustee to correct a scrivener's error in the plan of termination, and to require that the amended plan must be executed in the same manner as a deed;
- Amends s. 718.117(12), F.S., to provide that the plan of termination may require separate valuations for the common elements. It deletes the requirement that the declaration must expressly provide for the allocation of the proceeds of sale of condominium property and apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination by an independent appraiser;
- Amends s. 718.117(12)(d), F.S., to require the lienholder of a unit to provide the termination trustee, within 30 days of the trustee's written request, with a statement confirming the outstanding obligations of the unit owner secured by the lien;
- Amends s. 718.117(12)(e), F.S., to permit the termination trustee to setoff against and reduce the share of, termination proceeds allocated to a unit by the amounts provided, which may include attorney fees and costs;
- Amends s. 718.117(16), F.S., to permit unit owners to contest a plan of termination by petitioning the division for mandatory nonbinding arbitration pursuant s. 718.1255, F.S. It deletes the option for unit owners to contest the termination by initiating a summary procedure pursuant to s. 51.011, F.S.; and
- Amends s. 718.1255(1)(a), F.S., to include a plan of termination under s. 718.117, F.S., within the types of disputes that the division may arbitrate.

B. Amendments:

None.

By the Committees on Judiciary; and Regulated Industries; and
Senator Latvala

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A bill to be entitled

An act relating to termination of a condominium association; amending s. 718.117, F.S.; providing and revising procedures and requirements for termination of a condominium property; providing requirements for the rejection of a plan of termination; defining terms; providing applicability; providing and revising requirements relating to partial termination of a condominium property; authorizing a plan of termination to be withdrawn, modified, or amended under certain conditions; revising and providing requirements relating to the allocation of proceeds of the sale of condominium property; revising requirements relating to the right to contest a plan of termination; amending s. 718.1255, F.S.; revising the term "dispute"; providing an effective date.

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

Section 1. Subsections (3), (4), (9), (11), (12), and (16) of section 718.117, Florida Statutes, are amended to read:

718.117 Termination of condominium.—

(3) OPTIONAL TERMINATION.—Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium if ~~no more than~~ 10 percent or more of the total voting interests of the condominium have rejected

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the plan of termination by negative vote or by providing written objections.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 10 percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 18 months after the date of the rejection.

(b) This subsection also does not apply to any condominium created pursuant to part VI of this chapter until 5 years after the recording of the declaration of condominium for the condominium unless there are no objections to the plan of termination ~~This subsection does not apply to condominiums in which 75 percent or more of the units are timeshare units.~~

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered insiders, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

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1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and is required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead-exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment is in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. All unit owners other than the bulk owner shall be

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compensated at least 100 percent of the fair market value of their respective units. The fair market value shall be determined by an independent appraiser, selected by the termination trustee, as of a date that is no earlier than 90 days before the date that the plan of termination is recorded. For original purchasers from the developer who dissent or object to the plan of termination, the fair market value for the unit owner dissenting or objecting may not be less than the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure may not be considered for purposes of determining fair market value.

4. The plan of termination must provide the manner by which each first mortgage on a unit will be satisfied so that each unit owner's obligation under a first mortgage is satisfied in full at the time the plan of termination is implemented.

5. Before presenting a plan of termination to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 50 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or

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indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 20 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination. An amendment to a declaration to conform the declaration to this section is not an amendment subject to s. 718.110(4) and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

(9) PLAN OF TERMINATION.—The plan of termination must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the

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proposed plan of termination shall be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners and, if required, consents or joinders of mortgagees must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan. If the plan of termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection.

(a) If the plan of termination is voted on at a meeting of the unit owners called in accordance with this subsection, any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

(b) If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that

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the association notifies the nonconsenting owners, in the manner provided in paragraph (15) (a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION; WITHDRAWAL; ERRORS.—

(a) Unless the plan of termination expressly authorizes a ~~may provide that each~~ unit owner or other person to retain ~~retains~~ the exclusive right to possess that ~~of possession to the~~ portion of the real estate which formerly constituted the unit after termination or to use the common elements of the ~~condominium after termination, all such rights in the unit and~~ common elements automatically terminate on the effective date of ~~termination. Unless the plan expressly provides otherwise, all~~ leases, occupancy agreements, subleases, licenses, or other ~~agreements for the use or occupancy of any unit or common~~ elements of the condominium automatically terminate on the ~~effective date of termination. If the plan expressly authorizes~~ a unit owner or other person to retain exclusive right of ~~possession for that portion of the real estate which formerly~~ constituted the unit or to use the common elements of the ~~condominium after termination, the plan must specify the terms~~ and if the plan specifies the conditions of possession. In a ~~partial termination, the plan of termination as specified in~~ subsection (10) must also identify the units that survive the ~~partial termination and provide that such units remain in the~~ condominium form of ownership pursuant to an amendment to the ~~declaration of condominium or an amended and restated~~ declaration. In a partial termination, title to the surviving units and common elements that remain part of the condominium

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property specified in the plan of termination remain vested in the ownership shown in the public records and do not vest in the termination trustee.

(b) In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded. In a partial termination, the plan does not vest title to the surviving units or common elements that remain part of the condominium property in the termination trustee.

(c) Unless otherwise provided in the plan of termination, at any time before the sale of the condominium property, a plan may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.

(d) Upon the discovery of a scrivener's error in the plan of termination, the termination trustee may record an amended plan or an amendment to the plan for the purpose of correcting the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.

(12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—

(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the

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plan of termination may require separate valuations for ~~must first apportion the proceeds between the aggregate value of all units and the value of the common elements. However, in the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units based on their respective fair market values immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee.~~ In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements being terminated.

(b) The portion of proceeds allocated to the units shall be ~~further~~ apportioned among the individual units. The apportionment is deemed fair and reasonable if it is ~~so~~ determined ~~by the unit owners, who may approve the plan of termination~~ by any of the following methods:

1. The respective values of the units based on the fair market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee;

2. The respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser's records; or

3. The respective interests of the units in the common elements specified in the declaration immediately before the termination.

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(c) The methods of apportionment in paragraph (b) do not prohibit any other method of apportioning the proceeds of sale allocated to the units or any other method of valuing the units agreed upon in the plan of termination. ~~Any~~ The portion of the proceeds separately allocated to the common elements shall be apportioned among the units based upon their respective interests in the common elements as provided in the declaration.

(d) Liens that encumber a unit shall, unless otherwise provided in the plan of termination, be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. In a partial termination, liens that encumber a unit being terminated must be transferred to the proceeds of sale of that portion of the condominium property being terminated which are attributable to such unit. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property. The holder of a lien that encumbers a unit at the time of recording a plan must, within 30 days after the written request from the termination trustee, deliver a statement to the termination trustee confirming the outstanding amount of any obligations of the unit owner secured by the lien.

(e) The termination trustee may setoff against, and reduce the share of, the termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

1. All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the

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association associated with the unit, its owner, or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

2. All costs of clearing title to the owner's unit, including, but not limited to, locating lienors, obtaining statements from such lienors confirming the outstanding amount of any obligations of the unit owner, and paying all mortgages and other liens, judgments, and encumbrances and filing suit to quiet title or remove title defects.

3. All costs of removing the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons from the unit in the event such persons fail to vacate a unit as required by the plan.

4. All costs arising from, or related to, any breach of the plan by the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

5. All costs arising out of, or related to, the removal and storage of all personal property remaining in a unit, other than personal property owned by the association, so that the unit may be delivered vacant and clear of the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons as required by the plan.

6. All costs arising out of, or related to, the appointment and activities of a receiver or attorney ad litem acting for the owner in the event that the owner is unable to be located.

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a petition for mandatory nonbinding arbitration summary procedure pursuant to s. 718.1255 ~~s. 51.011~~ within 90 days after the date the plan is recorded. A

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unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the first mortgages of all unit owners other than the bulk owner have not or will not be fully satisfied at the time of termination as required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). The arbitrator court shall determine the rights and interests of the parties in the apportionment of the sale proceeds ~~and order the plan of termination to be implemented if it is fair and reasonable.~~ If the arbitrator court determines that the apportionment of sale proceeds plan of termination is not fair and reasonable, the arbitrator court may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, it may void the plan or grant other

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349 relief it deems just and proper. The arbitrator shall
 350 automatically void the plan upon a finding that any of the
 351 disclosures required in subparagraph (3)(d)4. are omitted,
 352 misleading, incomplete, or inaccurate. Any challenge to a plan,
 353 other than a challenge that the required vote was not obtained,
 354 does not affect title to the condominium property or the vesting
 355 of the condominium property in the trustee, but shall only be a
 356 claim against the proceeds of the plan. In any such action, the
 357 prevailing party shall recover reasonable attorney attorney's
 358 fees and costs.

359 Section 2. Subsection (1) of section 718.1255, Florida
 360 Statutes, is amended to read:

361 718.1255 Alternative dispute resolution; voluntary
 362 mediation; mandatory nonbinding arbitration; legislative
 363 findings.—

364 (1) DEFINITIONS.—As used in this section, the term
 365 “dispute” means any disagreement between two or more parties
 366 that involves:

367 (a) The authority of the board of directors, under this
 368 chapter or association document to:

369 1. Require any owner to take any action, or not to take any
 370 action, involving that owner's unit or the appurtenances
 371 thereto.

372 2. Alter or add to a common area or element.

373 (b) The failure of a governing body, when required by this
 374 chapter or an association document, to:

375 1. Properly conduct elections.

376 2. Give adequate notice of meetings or other actions.

377 3. Properly conduct meetings.

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378 4. Allow inspection of books and records.

379 (c) A plan of termination pursuant to s. 718.117.
 380

381 “Dispute” does not include any disagreement that primarily
 382 involves: title to any unit or common element; the
 383 interpretation or enforcement of any warranty; the levy of a fee
 384 or assessment, or the collection of an assessment levied against
 385 a party; the eviction or other removal of a tenant from a unit;
 386 alleged breaches of fiduciary duty by one or more directors; or
 387 claims for damages to a unit based upon the alleged failure of
 388 the association to maintain the common elements or condominium
 389 property.

390 Section 3. This act shall take effect July 1, 2015.



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 Committee on Fiscal Policy
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

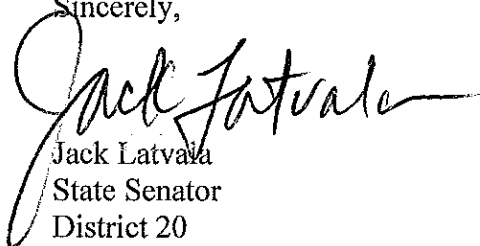
Dear Chair Flores:

I respectfully request consideration of Senate Bill 1172/Condominiums by the Senate Committee on Fiscal Policy at your earliest convenience. The bill was referred favorably by the Judiciary Committee on April 7.

This bill will curtail the disagreeable practices of bulk buyers of condominiums as they attempt to convert them to apartments and will provide condo owners with equitable relief.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,


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 20, 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 Monday, April 20, two 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 must be present for important votes.

I would like to have my aide Tracy Caddell present SB1180/Practice of Pharmacy and 1172/Termination of a Condominium Association.

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

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 1180

INTRODUCER: Regulated Industries Committee; Health Policy Committee; and Senator Latvala and others

SUBJECT: Practice of Pharmacy

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Fav/CS
2.	Kraemer	Imhof	RI	Fav/CS
3.	Pace	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1180 amends ch. 465, F.S., the Florida Pharmacy Act, to provide that a veterinarian licensed under the Veterinary Medical Practice Act (ch. 474, F.S.) is not prohibited from administering a compounded drug to any animal under the veterinarian's care or dispensing a compounded drug to the animal's owner or caretaker.

The bill creates s. 465.1862, F.S. to define the terms "maximum allowable cost" and "pharmacy benefits manager" and to require certain provisions in pharmacy benefit manager contracts.

There is no fiscal impact to state government.

II. Present Situation:

Veterinary Medical Practice

The practice of veterinary medicine is regulated by the Board of Veterinary Medicine within the Department of Business and Professional Regulation (DBPR).¹ The practice of veterinary medicine includes diagnosing the medical condition of animals and prescribing, dispensing, or

¹ Section 474.204, F.S.

administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease.²

Under the Florida Drug Abuse Prevention and Control Act a practitioner means a licensed³ physician, dentist, veterinarian, osteopathic physician, naturopath, certified optometrist, or podiatric physician, provided such practitioner holds a valid federal controlled substance registry number.⁴ Veterinarians who hold a valid federal controlled substance registry number are authorized to prescribe, administer, dispense, mix, or prepare a controlled substance for use in animals.⁵

Dispensing Practitioner

A practitioner who dispenses medicinal drugs for human consumption for fee or remuneration of any kind must register with her or his professional licensing board as a dispensing practitioner, pay a registration fee, and comply with and be subject to all laws and rules applicable to pharmacists and pharmacies.⁶ Currently, veterinarians do not register as dispensing practitioners with their professional licensing board (Board of Veterinary Medicine) because veterinarians do not dispense medicinal drugs for human consumption, and the Veterinary Act does not have a corresponding registration requirement.

Veterinarians are not regulated under the pharmacy act. However, veterinarians who dispense medications from an office are subject to dispensing practitioner regulations and inspection by the DBPR.⁷

Compounded Medicine

Compounding is defined as the practice of combining, mixing, or altering the ingredients of one or more drugs or product to create another drug or product.⁸ Compounding includes the preparation of:

- Drugs or devices in anticipation of prescriptions based on routine, regularly-observed prescribing patterns;
- Drugs or devices, pursuant to a prescription, that are not commercially available; or
- Commercially available products from bulk when the prescribing practitioner has prescribed the compounded product on a per prescription basis and the patient has been made aware that the compounded product will be prepared by the pharmacist. The reconstitution of commercially available products pursuant to the manufacturer's guidelines is permissible without notice to the practitioner.⁹

² Section 474.202(9), F.S.

³ A physician licensed pursuant to ch. 458, F.S., a dentist licensed pursuant to ch. 466, F.S., a veterinarian licensed pursuant to ch. 474, F.S., an osteopathic physician licensed pursuant to ch. 459, F.S., a naturopath licensed pursuant to ch. 462, F.S., a certified optometrist licensed pursuant to ch. 463, F.S., or a podiatric physician licensed pursuant to ch. 461, F.S.

⁴ Section 893.02(21), F.S.

⁵ Section 893.05(1), F.S.

⁶ Section 465.0276(2), F.S.

⁷ Section 465.0276(3), F.S.

⁸ See s. 465.003(18), F.S.

⁹ Rule 64B16-27.700(1), F.A.C.

The practice of compounding medications has evolved and expanded to include compounding for office use. Office use is not currently defined in Florida law, but is defined by rule as the providing and administering of a compounded drug to a patient in a practitioner's office or in a health care facility, such as a hospital, ambulatory surgical center, or pharmacy.¹⁰ The rule authorizes a pharmacist to dispense¹¹ a quantity of a compounded drug to a practitioner for office use by the practitioner provided that the compounded drug is administered¹² to the patient and may not be dispensed to the patient or sold to any other person or entity.¹³

Regulation of Compounded Medicine

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (Pharmacy Act).¹⁴ The practice of pharmacy includes compounding, dispensing, and consulting concerning a medicinal drug. Only licensed pharmacists, or other persons licensed under ch. 465, F.S. may dispense medicinal drugs, except that a practitioner authorized to prescribe drugs may dispense drugs to her or his patients in the regular course of practice.¹⁵ The Pharmacy Act makes no distinction between the dispensing of drugs for human patients and animal patients.

The federal Food and Drug Administration (FDA) traditionally regulates the manufacture of prescription drugs, which typically includes making drugs (preparation, deriving, compounding, propagation, processing, producing, or fabrication) on a large scale for marketing and distribution of the product for unidentified patients. Federal rules currently require that compounded medications be modified versions of the FDA-approved medication.¹⁶ Compounded drugs are not approved by the FDA. The FDA states that, in general, state boards of pharmacy continue to have primary responsibility for oversight and regulation of the practice of pharmacy, including traditional pharmacy compounding.¹⁷

Regulation of Compounding Medicine for use in Animals

Currently, administering and dispensing compounded drugs to animals or their caretakers is not specifically addressed by state or federal law. However, the practice of veterinary medicine includes the treatment of whatever nature to prevent, cure, or provide relief of a wound, fracture, bodily injury, or disease of an animal.

¹⁰ Rule 64B16-27.700(3), F.A.C.

¹¹ Dispensing is the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer, or one who represents that it is his or her intention not to consume or use the drug, but to transfer it to the ultimate consumer or user for consumption by that person. See ss. 465.003(6) and 893.02(7), F.S.

¹² Administering is the direct application of a drug, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal. See ss. 465.003(1) and 893.02(1), F.S.

¹³ *Id.*

¹⁴ Chapter 465, F.S.

¹⁵ Section 465.0267(1), F.S.

¹⁶ 21 U.S.C. s. 353a(b)(3)

¹⁷ U.S. Food and Drug Administration, *Compounding and the FDA: Questions and Answers*, available at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm> (last visited April 16, 2015).

The FDA has issued compliance policy guidance¹⁸ intended to provide guidance and instructions to FDA staff, the industry, and the public regarding the compounding of drugs for use in animals. This guidance describes how the FDA intends to address the issue, including what types of compounding might be subject to enforcement action. The FDA's policy is that it will defer to state authorities regarding the day-to-day regulation of compounding by veterinarians and pharmacists of animal and human drugs that are intended for use in animals.

Regulation of Pharmacies and Pharmacy Benefits Management Companies

The Board of Pharmacy adopts rules to implement provisions of the Pharmacy Act and takes other actions according to duties conferred upon it.¹⁹ Each pharmacy is subject to inspection by the DOH and may be disciplined for violations of applicable laws and rules relating to a pharmacy.²⁰

A pharmacy benefits manager (PBM) administers the prescription drug part of a health plan on behalf of the plan sponsor, self-insured employers, insurers, and health maintenance organizations. Currently, PBMs are not subject to regulation in Florida. Some states, such as Connecticut, Georgia, Kansas, Louisiana, Maryland, and South Dakota, require PBMs to either register with state insurance regulators or be licensed as third-party administrators.²¹

Although PBMs are not subject to licensure in Florida, a PBM may obtain accreditation from various accrediting bodies that determine if certain national standards are met. Accreditation is an evaluative, rigorous, transparent, and comprehensive process in which a health care organization undergoes an examination of its systems, processes, and performance by an accrediting body to ensure that it is conducting business in a manner that meets predetermined criteria and is consistent with national standards.

Pharmacy Benefits Managers

PBMs negotiate with retail pharmacies to obtain various discounts on prescription drug prices. PBMs can provide the following services to its customers:

- Pharmacy claims processing;
- Mail-order pharmacy services;
- Rebate negotiations with drug manufacturers;
- Development of pharmacy networks;
- Formulary management;²²
- Prospective and retrospective drug utilization reviews;
- Offer incentives to plan participants to use generic drug substitutions; and
- Disease management programs.

¹⁸ U.S. Food and Drug Administration, Compliance Policy Guidance, Sec. 608.400, *Compounding of Drugs for Use in Animals*, available at <http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074656.htm> (last visited April 6, 2015).

¹⁹ Sections 465.005 and 465.022, F.S.

²⁰ Sections 465.015 and 465.016, F.S.

²¹ Joanne Wojcik, *States Try to Regulate Pharmacy Benefit Managers*, Business Insurance (August 22, 2010), available at <http://www.businessinsurance.com/article/20100822/ISSUE07/308229997> (last visited April 15, 2015).

²² A list of drugs that a health plan uses to make reimbursement decisions.

The decision of plan sponsors to use PBMs to control pharmacy benefit costs, however, can shift business away from retail pharmacies.

Maximum Allowable Cost Pricing List

Contracts between a PBM and health plan sponsors specify how much the health plan sponsors will pay the PBMs for brand name and generic drugs. These prices are typically set as a discount off the average wholesale price²³ for brand-name drugs and at a maximum allowable cost (MAC)²⁴ for generic drugs, plus a dispensing fee. The MAC represents the upper limit price that a plan will pay or reimburse for generic drugs. A MAC pricing list creates a standard reimbursement amount for identical products, and is a common cost management tool developed from a proprietary survey of wholesale prices in the marketplace, taking into account market share, inventory, reasonable profits margins, and other factors. The purpose of the MAC pricing list is to ensure that the pharmacy is motivated to seek and purchase generic drugs at the lowest price in the marketplace.

The federal Medicare Part D program and 45 state Medicaid programs use some type of MAC price lists to reduce costs.²⁵ The MAC price lists are used by many private employer prescription drug plans for retail generic prescriptions.

III. Effect of Proposed Changes:

The bill amends s. 465.0267, F.S. relating to dispensing practitioners. Currently, only licensed pharmacists and practitioners authorized by law to prescribe drugs may dispense medicinal drugs. The bill provides that a veterinarian licensed under the Veterinary Medical Practice Act (ch. 474, F.S.) is not prohibited from administering a compounded drug to any animal under the veterinarian's care or dispensing a compounded drug to the animal's owner or caretaker.

The bill creates s. 465.1862, F.S., relating to pharmacy benefits manager contracts. The bill defines the following terms:

- Maximum allowable cost is the per-unit amount that a pharmacy benefits manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, but before any application of copayments, coinsurance, and other cost-sharing charges.
- A pharmacy benefits manager is a person or entity doing business in this state who contracts to administer or manage prescription drug benefits to state residents on behalf of a health insurance plan defined in s. 627.6482, F.S.²⁶

²³ Average wholesale price is the retail list price (sticker price) or the average price that manufacturers recommend wholesalers sell to physicians, pharmacies and others, such as hospitals.

²⁴ Maximum allowable cost is a price set for generic drugs and is the maximum amount that the plan sponsor will pay for a specific drug.

²⁵ Medicaid Drug Pricing in State Maximum Allowable Cost Programs, Office of Inspector General, OEI-03-11-00640, (August 29, 2013) available at <https://oig.hhs.gov/oei/reports/oei-03-11-00640.asp> (last visited April 15, 2015).

²⁶ See s. 627.6482(6), F.S., which defines that "health insurance" as any hospital and medical expense incurred policy, minimum premium plan, stop-loss coverage, health maintenance organization contract, prepaid health clinic contract, multiple-employer welfare arrangement contract, or fraternal benefit society health benefits contract, whether an individual policy or group policy, but excluding motor vehicle policies for medical payments or personal injury protection, liability insurance supplemental coverage, or workers' compensation.

The bill provides that in each original or renewal contract between a pharmacy benefits manager and a pharmacy must include requirements that the pharmacy benefits manager:

- Update maximum allowable cost pricing information at least every 7 days; and
- Maintain a process to timely eliminate drugs from maximum allowable cost lists, or modify drug prices to remain consistent with pricing data used to formulate maximum allowable cost prices and product availability.

The effective date of the bill is 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:

Veterinarians who are licensed and practicing under the Florida Veterinary Practice Act, ch. 474, F.S., may administer a compounded drug to any animal under the veterinarian's care or dispense a compounded drug to the animal's owner or caretaker without concern that such activities are prohibited by the provisions of the Pharmacy Act, ch. 465, F.S., or the rules adopted thereunder.

Pharmacies and pharmacy benefits managers must absorb the cost of verifying that their contracts or contract renewals include provisions requiring updated maximum allowable cost pricing information at least every 7 days and adoption of procedures that will either eliminate drugs from MAC lists or modify drug prices to remain consistent with pricing data used to formulate prices and product availability within a timely manner.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 465.0276 of the Florida Statutes.

This bill creates section 465.1862 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Regulated Industries on April 15, 2015:

The CS amends s. 465.0276, F.S., respecting dispensing practitioners, to provide that veterinarians who are licensed and practicing under the Florida Veterinary Medical Practice Act, ch. 474, F.S., may administer a compounded drug to any animal under the veterinarian's care, or dispense a compounded drug to the animal's owner or caretaker. The CS removes the exception stating that licensed veterinarians engaging in activities allowed by the Veterinary Medical Practice Act are not limited by the provisions of ch. 465, F.S., the Pharmacy Act, or any adopted rules.

The CS creates s. 465.1862 to define the terms "maximum allowable cost" (MAC) and "pharmacy benefits manager" (PBM) and to require certain provisions in contracts between a pharmacy and a PBM. The CS requires a PBM to update pricing information weekly, and to adopt procedures that will timely either eliminate drugs from MAC lists, or modify drug prices to remain consistent with pricing data used to formulate prices and product availability.

CS by Health Policy on March 23, 2015:

The CS removes the new definition for office use compounding and the new provision stating that nothing in the chapter or rule prohibit a veterinarian from dispensing a compounded drug to an animal patient or its owner or caretaker. Instead, the CS provides that neither the Florida Pharmacy Act nor pharmacy rules limit a veterinarian from engaging in an activity allowed under the Veterinary Practice Act.

- B. **Amendments:**

None.

By the Committees on Regulated Industries; and Health Policy;
and Senators Latvala, Soto, and Diaz de la Portilla

580-04204-15

20151180c2

A bill to be entitled

An act relating to the practice of pharmacy; amending s. 465.0276, F.S.; specifying that the Florida Pharmacy Act and rules adopted thereunder do not prohibit a veterinarian from administering a compounded drug to a patient or dispensing a compounded drug to the patient's owner or caretaker; providing applicability; creating s. 465.1862, F.S.; defining terms; requiring that each contract or contract renewal between a pharmacy benefits manager and a pharmacy require the pharmacy benefits manager to periodically update the maximum allowable cost pricing information and to maintain a procedure to eliminate certain drugs from the list of those subject to maximum allowable cost pricing or modify maximum allowable cost prices to remain consistent with changes in certain pricing data; providing an effective date.

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

Section 1. Subsection (6) is added to section 465.0276, Florida Statutes, to read:

465.0276 Dispensing practitioner.—

(6) This chapter and the rules adopted thereunder do not prohibit a veterinarian licensed under chapter 474 from administering a compounded drug to a patient, as defined in s. 474.202, or dispensing a compounded drug to the patient's owner or caretaker. This subsection does not affect the regulation of

Page 1 of 2

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

580-04204-15

20151180c2

the practice of pharmacy as set forth in this chapter.

Section 2. Section 465.1862, Florida Statutes, is created to read:

465.1862 Pharmacy benefits manager contracts.—

(1) (a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefits manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.

(b) "Pharmacy benefits manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health insurance plan, as defined in s. 627.6482, to residents of this state.

(2) Each contract execution or contract renewal between a pharmacy benefits manager and a pharmacy must include requirements that the pharmacy benefits manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days; and

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

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)

4-20-15

Meeting Date

5B1180

Bill Number (if applicable)

Topic PRACTICE OF PHARMACY

Name Philip J. Hinkle

Job Title EXECUTIVE DIRECTOR

Address 7207 MONETARY DRIVE

Street

Phone 863-242-6500

ORLANDO, FL 32809

City

State

Zip

Email phil.hinkle@fvma.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA VETERINARY MEDICAL ASSOCIATION
FLORIDA ASSOCIATION OF EQUINE PRACTITIONERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4/20/2015
Meeting Date

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

1180
Bill Number (if applicable)

Topic Vet. Compounding

Amendment Barcode (if applicable)

Name Jon Rawlson

Job Title Pres - Arroyo Hill Advocates

Address 934 N. Magnolia Ave.
Street

Phone 321-436-0836

Orl. Fla. 32803
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing HA Coalition of Compounding Pharmacies

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/20/15

Meeting Date

CS/CS/SB 1180

Bill Number (if applicable)

Topic Practice of Pharmacy

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

FL

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)

04/20/15

Meeting Date

1180

Bill Number (if applicable)

Topic Pharmacy

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title _____

Address 100. E. Jefferson St. Suite A

Street

Phone 850 559 0855

Tallahassee

City

FL

State

32303

Zip

Email Cyhenderson@me.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing EPIC RX

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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:

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 20, 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 Monday, April 20, two 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 must be present for important votes.

I would like to have my aide Tracy Caddell present SB1180/Practice of Pharmacy and 1172/Termination of a Condominium Association.

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



573064

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 29 and 30
insert:

Section 2. Subsection (3) of section 1012.39, Florida
Statutes, is amended to read:

1012.39 Employment of substitute teachers, teachers of
adult education, nondegreed teachers of career education, and
career specialists; students performing clinical field
experience.—



573064

(3) A student who is enrolled in a state-approved teacher preparation program in a postsecondary educational institution that is approved by rules of the State Board of Education and who is jointly assigned by the postsecondary educational institution and a district school board to perform a clinical field experience under the direction of a regularly employed and certified educator shall, while serving such supervised clinical field experience, be accorded the same protection of law as that accorded to the certified educator except for the right to bargain collectively as an employee of the district school board. The district school board providing the clinical field experience shall notify the student electronically or in writing regarding the availability of educator liability insurance under s. 1012.75. A postsecondary educational institution or district school board may not require a student enrolled in a state-approved teacher preparation program to purchase liability insurance as a condition of participation in any clinical field experience or related activity on the premises of an elementary or secondary school.

Section 3. Section 1012.75, Florida Statutes, is amended to read:

1012.75 Liability of teacher or principal; ~~excessive force.~~

(1) Except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a bus driver shall not be civilly or criminally liable for any action carried out in conformity with State Board of Education and district school board rules



573064

regarding the control, discipline, suspension, and expulsion of students, including, but not limited to, any exercise of authority under s. 1003.32 or s. 1006.09.

(2) The State Board of Education shall adopt rules that outline administrative standards for the use of reasonable force by school personnel to maintain a safe and orderly learning environment. Such standards shall be distributed to each school in the state and shall provide guidance to school personnel in receiving the limitations on liability specified in this section.

(3) Beginning with the 2015-2016 school year, the Department of Education shall administer an educator liability insurance program, as provided in the General Appropriations Act, to protect full-time instructional personnel, as defined by the district school board, from liability for monetary damages and the cost of defense of actions resulting from claims made against them arising out of occurrences in the course of activities in their professional capacity. For purposes of this subsection, the term "instructional personnel" has the same meaning as in s. 1012.01(2).

(a) Liability coverage in an amount not less than \$2 million must be provided to all full-time instructional personnel, as defined by the district school board. Liability coverage may be provided at cost to the following individuals who choose to participate in the program: part-time instructional personnel, as defined by the district school board; administrative personnel, as defined by the district school board; and students, as described in s. 1012.39(3).

(b) Each district school board shall annually notify



573064

personnel specified in paragraph (a) regarding the liability coverage provided pursuant to this section by August 1. The department shall develop the form of the notice to be used by each district school board. The notice shall be on an 8 1/2 by 5 1/2-inch postcard and include the amount of coverage, a general description of the nature of the coverage, and the contact information for coverage and claims questions. The notification must be provided separately from any other correspondence. Each district school board shall certify to the department by August 5 of each year that the notification required by this subsection has been provided.

(c) The department shall consult with the Department of Financial Services to select the most economically prudent and cost-effective means of implementing the program through self-insurance, a risk management program, or competitive procurement.

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

And the title is amended as follows:

Delete lines 2 - 5
and insert:

An act relating to education personnel; amending s. 39.202, F.S.; authorizing certain employees or agents of the Department of Education to have access to certain reports and records; amending s. 1012.39, F.S.; providing requirements regarding liability insurance for students participating in clinical field experience; amending s. 1012.75, F.S.; requiring the department to establish an educator liability



573064

98 insurance program; specifying program administration
99 and eligibility requirements; amending



906706

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 29 and 30
insert:

Section 2. Paragraph (e) of subsection (1) of section
1011.62, Florida Statutes, is amended to read

1011.62 Funds for operation of schools.—If the annual
allocation from the Florida Education Finance Program to each
district for operation of schools is not determined in the
annual appropriations act or the substantive bill implementing
the annual appropriations act, it shall be determined as



906706

follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(e) *Funding model for exceptional student education programs.*—

1.a. The funding model uses basic, at-risk, support levels IV and V for exceptional students and career Florida Education Finance Program cost factors, and a guaranteed allocation for exceptional student education programs. Exceptional education cost factors are determined by using a matrix of services to document the services that each exceptional student will receive. The nature and intensity of the services indicated on the matrix shall be consistent with the services described in each exceptional student's individual educational plan. The Department of Education shall review and revise the descriptions of the services and supports included in the matrix of services for exceptional students and shall implement those revisions before the beginning of the 2012-2013 school year. Beginning with the 2016-2017 school year, a school district shall add three special consideration points to the calculation of a matrix of services for a student who is deaf and enrolled in an auditory-oral education program as defined in s. 1002.391.

b. In order to generate funds using one of the two weighted cost factors, a matrix of services must be completed at the time of the student's initial placement into an exceptional student education program and at least once every 3 years by personnel who have received approved training. Nothing listed in the



906706

matrix shall be construed as limiting the services a school district must provide in order to ensure that exceptional students are provided a free, appropriate public education.

c. Students identified as exceptional, in accordance with chapter 6A-6, Florida Administrative Code, who do not have a matrix of services as specified in sub-subparagraph b. shall generate funds on the basis of full-time-equivalent student membership in the Florida Education Finance Program at the same funding level per student as provided for basic students. Additional funds for these exceptional students will be provided through the guaranteed allocation designated in subparagraph 2.

2. For students identified as exceptional who do not have a matrix of services and students who are gifted in grades K through 8, there is created a guaranteed allocation to provide these students with a free appropriate public education, in accordance with s. 1001.42(4)(1) and rules of the State Board of Education, which shall be allocated annually to each school district in the amount provided in the General Appropriations Act. These funds shall be in addition to the funds appropriated on the basis of FTE student membership in the Florida Education Finance Program, and the amount allocated for each school district shall not be recalculated during the year. These funds shall be used to provide special education and related services for exceptional students and students who are gifted in grades K through 8. Beginning with the 2007-2008 fiscal year, a district's expenditure of funds from the guaranteed allocation for students in grades 9 through 12 who are gifted may not be greater than the amount expended during the 2006-2007 fiscal year for gifted students in grades 9 through 12.



906706

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

An act relating to education; amending s. 39.202,
F.S.; authorizing certain employees or agents of the
Department of Education to have access to certain
reports and records; amending s. 1011.62, F.S.;
requiring a school district to add additional points
to the calculation of a matrix of services for certain
students beginning in a specified school year;
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/SB 888

INTRODUCER: Fiscal Policy Committee and Senator Detert

SUBJECT: Educator Professional Practices

DATE: April 22, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Scott	Klebacha	ED	Favorable
2.	Sikes	Elwell	AED	Recommend: Favorable
3.	Pace	Hrdlicka	FP	Fav/CS

I. Summary:

CS/SB 888 revises provisions related to education. Specifically, the bill:

- Adds Department of Education (DOE) employees and agents who investigate or prosecute educator misconduct to the list of individuals authorized to access confidential records relating to child abuse or neglect;
- Requires a school district to add additional points to the calculation of a matrix of services for a student who is deaf and enrolled in an auditory-oral education program beginning with the 2016-2017 school year;
- Requires a district school board to notify students regarding the availability of liability insurance for students participating in clinical field experience;
- Requires the DOE to establish an educator liability insurance program;
- Modifies the membership of the Education Practices Commission; and
- Authorizes the Commissioner of Education to issue a letter of guidance to an educator in lieu of a finding probable cause to prosecute misconduct.

The bill has a minimal fiscal impact associated with the five new emeritus members that may be appointed to the Education Practices Commission.

The bill revises the matrix of services calculation for students who are deaf and enrolled in an eligible auditory-oral education program beginning in the 2016 -2017 fiscal year. The revised matrix calculation will generate additional FEFP funds for students in these programs to receive services that will enable them to be mainstreamed in regular classrooms once they exit the auditory-oral program, no later than age 7.

II. Present Situation:

Reports of Child Abuse, Abandonment, or Neglect

Any person who knows, or has reason to suspect, that a child is abused, abandoned, or neglected must report such knowledge or suspicion to the Department of Children and Families (DCF).¹ School teachers and other school officials or personnel are required to make such reports and the failure to do so is a felony of the third degree.²

Records held by the DCF regarding such reports, including reports made to the Central Abuse Hotline, are confidential and exempt from public records requirements, unless specifically authorized in law.³ Access to records, excluding the name of the person reporting abuse, is granted to a limited list of persons, officials, and agencies (*e.g.*, Department of Health employees responsible for child protective investigations, criminal justice agencies, or school district employees designated as a liaison between the school district and the DCF).⁴

Currently, employees or agents of the DOE who are responsible for the investigation or prosecution of misconduct by a certified educator are not included on the list of persons with access to confidential records in cases of child abuse or neglect.

Florida law requires that each person⁵ in a position who provides direct instruction to students meet the state's educator certification requirements and criteria.

School Funding

The procedure for determining annual school funding allocation for exceptional student education programs to each school district is determined by using a matrix of services to document the services that each exceptional student will receive. The nature and intensity of the services indicated on the matrix is consistent with the services described in each exceptional student's individual educational plan.⁶

An auditory-oral education program is a program that develops and relies solely on listening skills and uses an implant or assistive hearing device for the purpose of relying on speech and spoken language skills as the method of communication.⁷ Parents of a child who is deaf or hard of hearing can enroll the child in an auditory-oral education program as a school of choice. The level of services is determined by the individual educational plan team or individualized family support plan team, which includes the child's parent. A child is eligible for services until the end of the school year in which he or she reaches the age of 7 years or after grade 2, whichever comes first.⁸

¹ Section 39.201(1), F.S.

² Section 39.205(1), F.S.

³ Sections 39.202(1) and 39.2021(1), F.S.

⁴ Section 39.202(2), F.S.

⁵ Such persons include instructional personnel (*e.g.*, classroom teachers, student advisors, or certified school counselors) or administrative personnel (*e.g.*, deputy superintendents, school principals, or assistance principals). *See* s. 1012.01(2)-(3), F.S.

⁶ Section 1011.62(1)(e), F.S.

⁷ Section 1002.391(1)(a), F.S.

⁸ Section 1002.391(2) and (3), F.S.

Currently, no special consideration points are added to the calculation of a matrix of services for students enrolled in an auditory-oral education program.

Liability

Educator Liability

Public school educators are immune from personal liability through the doctrine of sovereign immunity.⁹ There are also specific statutory protections in place for such educators. Each district school board may provide legal services for officers and employees charged with civil or criminal actions arising out of, or in the performance of, their assigned duties and responsibilities. District school boards must reimburse reasonable legal expenses incurred by officers and employees of school boards who are charged with civil or criminal actions arising out of or in the performance of assigned duties and responsibilities upon successful defense by the employee or officer.¹⁰

Furthermore, except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a bus driver, may not be held civilly or criminally liable for any action carried out in conformity with State Board of Education and district school board rules regarding the control, discipline, suspension, and expulsion of students.¹¹

Student Liability

Currently, a student who is enrolled in a state-approved teacher preparation program and who is jointly assigned a clinical field experience under the direction of a regularly employed and certified educator is given the same protection of law as that of the certified educator except for the right to bargain collectively as an employee of the district school board.¹² Thus, student participants are shielded from personal liability while serving in their official capacity.

Education Practices Commission

Membership

The Education Practices Commission (EPC) consists of 25 members including:

- Eight teachers;
- Five administrators, at least one of whom must represent a private school;
- Seven lay citizens, five of whom must be parents of public school students with no family relation to a public school employee and two of whom must be former district school board members; and

⁹ No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. See s. 68.28(9)(a), F.S.

¹⁰ Section 1012.26, F.S.

¹¹ Section 1012.75, F.S.

¹² Section 1012.39(3), F.S.

- Five sworn law enforcement officials.¹³

The members are appointed by the State Board of Education (state board) based upon nominations made by the Commissioner of Education (commissioner), subject to confirmation by the Senate.¹⁴ Teachers, school administrators, and lay citizens who wish to serve on the EPC must be Florida residents; however, law enforcement officials are not required to be Florida residents, but they must have expertise in child safety.¹⁵

Duties and Responsibilities

The EPC interprets and applies the standards¹⁶ of professional practice established by the state board; revokes or suspends educator certificates, or takes other disciplinary action, for misconduct; reports to and meets with the state board; and adopts rules.¹⁷

The Department of Education (DOE) is required to investigate legally sufficient¹⁸ complaints of misconduct¹⁹ committed by certified educators and advise the commissioner on whether probable cause exists.²⁰ Upon a finding of probable cause, the commissioner must file a formal complaint and prosecute the complaint pursuant to ch. 120, F.S.²¹ An administrative law judge assigned to hear the complaint makes recommendations to the EPC for review and preparation of a final order issued by a panel of five EPC members.²² Unless the complaint involves a felony or crime of moral turpitude, the commissioner may enter into a deferred prosecution agreement with the certified educator in lieu of finding probable cause.²³ If the commissioner does not find probable cause, the complaint must be dismissed.²⁴

III. Effect of Proposed Changes:

Records of Child Abuse, Abandonment, or Neglect (Section 1)

The bill authorizes the DCF to release records pertaining to child abuse, abandonment, or neglect, which are otherwise confidential and exempt from public records requirements, to DOE

¹³ Section 1012.79(1), F.S.

¹⁴ Before making nominations, the commissioner must consult with teaching associations, parent organizations, law enforcement agencies, and other involved associations in the state. *Id.*

¹⁵ Section 1012.79(1)(a)-(d), F.S.

¹⁶ Rule 6A-10.080, F.A.C. and 6A-10.081, F.A.C.

¹⁷ Section 1012.79(7), F.S.

¹⁸ Section 1012.796(1)(a), F.S. The complaint is legally sufficient if it contains ultimate facts showing a violation has occurred.

¹⁹ Misconduct may include fraudulently obtaining an educator certificate, knowingly failing to report actual or suspected child abuse, or breach of contract. Section 1012.795(1), F.S.

²⁰ Section 1012.796(3), F.S.

²¹ Section 1012.796(6), F.S.

²² Sections 1012.79(8)(a), and 1012.795(6), F.S. In 2014, 16 of the 19 hearings involved teacher misconduct. *See Florida Department of Education, Division of K-12 Educator Quality, 2015 Agency Legislative Bill Analysis for HB 587* (March 16, 2015) at 2, (on file with the Committee on Education Pre-K – 12).

²³ Section 1012.796(3), F.S. An educator may be directed to participate through a deferred prosecution agreement or final order of the EPC in the recovery network program for assistance in obtaining treatment and services for alcohol abuse, drug abuse, or a mental condition. *See s. 1012.798(1), F.S.*

²⁴ Section 1012.796(3), F.S.

employees or agents who investigate or prosecute misconduct by certified educators. The bill may assist the DOE in its investigations of educator misconduct.

School Funding (Section 2)

The bill requires a district school board, beginning with the 2016-2017 school year, to add three special consideration points to the calculation of a matrix of services for a student who is deaf and enrolled in an auditory-oral education program.

Liability

Educator Liability Insurance Program (Section 4)

The bill requires the DOE to establish an educator liability insurance program to protect full-time instructional personnel from liability for monetary damages and the cost of defense of action resulting from claims made against them during the course of their professional activities. Liability coverage in the amount of \$2 million must be provided to all full-time instructional personnel. Liability coverage may be provided at cost to part-time instructional personnel; administrative personnel; and students enrolled in a state-approved teach preparation program. The DOE must consult with the Department of Financial Services to select the most cost-effective means of implementing the program through self-insurance, a risk management program, or competitive procurement.

The bill requires each school district to annually notify personnel regarding liability coverage by August 1 and to certify to the DOE that notification has been provided. The DOE must develop the notice to be used by each school district and the notice must:

- Include the amount of coverage;
- Describe the nature of the coverage;
- Contain the contact information for coverage and claims questions;
- Be on an 8 ½ by 5 ½ inch postcard; and
- Be provided separately from any other correspondence.

Clinical Field Experience (Section 3)

The bill requires a district school board that provides clinical field experience to notify students regarding the availability of educator liability insurance. The bill prohibits a district school board or a postsecondary educational institution from requiring students who are enrolled in a state-approved teacher preparation program to purchase liability insurance as a condition of participation in a clinical field experience or related activity on the premises of an elementary or secondary school.

The EPC Membership (Section 5)

The bill revises the membership of the EPC. Specifically, the bill makes the following revisions to the EPC membership:

- Redistributes the number of teachers, lay citizens, and sworn law enforcement members while retaining the existing number of members (25) as follows:
 - The number of teacher members is increased from 8 to 10;

- The number of lay citizen members is reduced from 7 to 4, all of whom must be parents of public school students; and
- The number of sworn law enforcement officials is reduced from 5 to 4.
- Revises the membership to include:
 - Former charter governing board members or former superintendents, assistant superintendents, or deputy superintendents; and
 - Virtual school administrators.
- Requires all members to be Florida residents.

The bill also authorizes the commissioner, upon request or recommendation from the EPC, to appoint up to five emeritus members from previous membership of the EPC to serve 1-year terms. An emeritus member may serve up to five 1-year terms as a voting members for discipline hearings and as consulting, nonvoting members for business meetings.

Letter of Guidance (Section 6)

The bill authorizes the commissioner to issue a letter of guidance to a certified educator who has had a complaint of misconduct filed against him or her, rather than finding probable cause to prosecute. The bill may provide the commissioner with more flexibility by permitting the issuance of a letter of guidance in determining the course of action to take regarding educator misconduct complaints, if deemed more appropriate under the circumstances.

The bill provides for 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:

According to the Department of Education, under SB 888, the Education Practices Commission would incur minimal additional operational expenses to cover the estimated costs for travel and training of emeritus members.²⁵ The additional training and travel costs for adding five emeritus members are estimated at \$3,500 per year. These costs are funded through the Education Certification and Service Trust Fund and can be absorbed within existing resources.

The bill revises the matrix of services calculation for students who are deaf and enrolled in an eligible auditory-oral education program beginning in the 2016-2017 school year. The revised matrix calculation will generate additional FEFP funds for students in these programs to receive services that will enable them to be mainstreamed in regular classrooms once they exit the auditory-oral program, no later than age 7.

The educator liability insurance program has an estimated cost of \$1.2 million for FY 2015-2016.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.202, 1011.62, 1012.39, 1012.75, 1012.79, and 1012.796.

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 20, 2015:

The committee substitute requires a school district to add additional points to the calculation of a matrix of services for a student who is deaf and enrolled in an auditory-oral education program and any school district that offers education liability insurance to notify students regarding the availability of liability insurance for students participating in clinical field experience. The CS also requires the DOE to establish an educator liability insurance program.

²⁵ Florida Department of Education, Division of K-12 Educator Quality, *2015 Agency Legislative Bill Analysis for HB 587* (March 16, 2015), (on file with the Committee on Education Pre-K – 12).

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 Detert

28-00850A-15

2015888__

A bill to be entitled

An act relating to educator professional practices; amending s. 39.202, F.S.; authorizing certain employees or agents of the Department of Education to have access to certain reports and records; amending s. 1012.79, F.S.; revising the membership of the Education Practices Commission; authorizing the Commissioner of Education to appoint emeritus members to the commission; amending s. 1012.796, F.S.; authorizing the commissioner to issue a letter of guidance in response to a complaint against a teacher or administrator in lieu of a probable cause determination; providing an effective date.

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

Section 1. Present paragraphs (q) through (s) of subsection (2) of section 39.202, Florida Statutes, are redesignated as paragraphs (r) through (t), respectively, and a new paragraph (q) is added to that subsection, to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(q) An employee or agent of the Department of Education who is responsible for the investigation or prosecution of misconduct by a certified educator.

Page 1 of 4

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

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Section 2. Subsection (1) of section 1012.79, Florida Statutes, is amended to read:

1012.79 Education Practices Commission; organization.—

(1) The Education Practices Commission ~~is composed~~ consists of ~~the following~~ 25 members: ~~10, including 8~~ teachers; 5 administrators, at least one of whom represents ~~shall represent~~ a private or virtual school; ~~4~~ 7 lay citizens who are, ~~5 of whom~~ shall be parents of public school students and who are unrelated to public school employees; ~~and 2 of whom shall be former~~ charter school governing board or district school board members or former superintendents, assistant superintendents, or deputy superintendents; and ~~4~~ 5 sworn law enforcement officials, appointed by the State Board of Education from nominations by the Commissioner of Education and subject to Senate confirmation. Prior to making nominations, the commissioner shall consult with teaching associations, parent organizations, law enforcement agencies, and other involved associations in the state. In making nominations, the commissioner shall attempt to achieve equal geographical representation, as closely as possible.

(a) A teacher member, in order to be qualified for appointment:

1. Must be certified to teach in the state.
2. Must be a resident of the state.
3. Must have practiced the profession in this state for at least 5 years immediately preceding the appointment.

(b) A school administrator member, in order to be qualified for appointment:

1. Must have an endorsement on the educator certificate in

Page 2 of 4

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

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2015888__

the area of school administration or supervision.

2. Must be a resident of the state.

3. Must have practiced the profession as an administrator for at least 5 years immediately preceding the appointment.

(c) ~~All The law~~ members must be residents of the state.

(d) The law enforcement official members must have served in the profession for at least 5 years immediately preceding appointment and have background expertise in child safety.

(e) The Commissioner of Education, upon request or recommendation from the commission, may also appoint up to 5 emeritus members from the commission's prior membership to serve 1-year terms. Notwithstanding any prior service on the commission, an emeritus member may serve up to five 1-year terms. An emeritus member serves as a voting member at a discipline hearing and as a consulting but nonvoting member during a business meeting.

Section 3. Subsection (3) of section 1012.796, Florida Statutes, is amended to read:

1012.796 Complaints against teachers and administrators; procedure; penalties.—

(3) The department staff shall advise the commissioner concerning the findings of the investigation. The department general counsel or members of that staff shall review the investigation and advise the commissioner concerning probable cause or lack thereof. The determination of probable cause shall be made by the commissioner. The commissioner shall provide an opportunity for a conference, if requested, prior to determining probable cause. The commissioner may enter into deferred prosecution agreements in lieu of finding probable cause if, in

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2015888__

his or her judgment, such agreements are in the best interests of the department, the certificateholder, and the public. Such deferred prosecution agreements shall become effective when filed with the clerk of the Education Practices Commission. However, a deferred prosecution agreement ~~may shall~~ not be entered into if there is probable cause to believe that a felony or an act of moral turpitude, as defined by rule of the State Board of Education, has occurred. Upon finding no probable cause, the commissioner shall dismiss the complaint. In lieu of a finding of probable cause, the commissioner may also issue a letter of guidance to the educator.

Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

4/20/15

Meeting Date

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

888

Bill Number (if applicable)

Topic _____

Name Rolland Steele

Amendment Barcode (if applicable)

Job Title Regional Advocacy Associate

Address 215 South Monroe Suite 420
Street

Phone 850-273-4393

Tallahassee FL 32301
City State Zip

Email rolland@afloridapromise.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Foundation for Florida's Future

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 / 20 / 2015

Meeting Date

Topic _____

Bill Number 888
(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)

4/20/15
Meeting Date

56 888
Bill Number (if applicable)

906706
Amendment Barcode (if applicable)

Topic Auditory Oral Amendment

Name Patrick Hanley

Job Title _____

Address 1154 Linwood Loop
Street

Phone 904-669-1539

ST. JOHNS FL 32259
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

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

4/20/15
Meeting Date

Sb 888
Bill Number (if applicable)

Topic Amendment 906706 to sb. 888

906706
Amendment Barcode (if applicable)

Name Theresa Bulger

Job Title Lobbyist

Address 253 Hayden
Street

Phone (904) 880 9063

Tallahassee Florida
City State Zip

Email tdb@privatepublicsolutions.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Coalition for spoken language options
AND Florida Association of Audiologists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/20/15
Meeting Date

SB 888

Bill Number (if applicable)

906706

Amendment Barcode (if applicable)

Topic Auditory Oral Amendment

Name Dylan Harvey

Job Title student

Address 1154 Linwood Loop
Street

Phone 904-254-9123

St. Johns, FL 32259
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-15
Meeting Date

SB 888
Bill Number (if applicable)

906706
Amendment Barcode (if applicable)

Topic Auditory Oral Amendment

Name Brandy Harvey

Job Title Parent

Address 1154 Linwood loop
Street

Phone 904-254-9123

St. Johns, FL 32259
City State Zip

Email BrandyRvm@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

888

Bill Number (if applicable)

537064

Amendment Barcode (if applicable)

Topic _____

Name Rolland Steele

Job Title Regional Advocacy Associate

Address 215 South Monroe Suite 420

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-273-4393

Email rolland@afloridapromise.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Foundation for Florida's Future

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 #888**, relating to Educator Professional Practices, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy Detert", is written over a horizontal line.

Senator Nancy C. Detert
Florida Senate, District 28



366026

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Division of Law Revision and Information is directed to add ss. 744.1096-744.1098, Florida Statutes, created by this act, to part I of chapter 744, Florida Statutes.

Section 2. The Division of Law Revision and Information is directed to retitle part II of chapter 744, Florida Statutes, consisting of ss. 744.2001-744.2109, Florida Statutes, as "PUBLIC AND PROFESSIONAL GUARDIANS."



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Section 3. The Division of Law Revision and Information is directed to remove part IX of chapter 744, Florida Statutes.

Section 4. Section 744.1012, Florida Statutes, is amended to read:

744.1012 Legislative intent.—The Legislature finds:

(1) That adjudicating a person totally incapacitated and in need of a guardian deprives such person of all her or his civil and legal rights and that such deprivation may be unnecessary.

(2) ~~The Legislature further finds~~ That it is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs and that alternatives to guardianship and less intrusive means of assistance should always be explored, including, but not limited to, guardian advocates, before an individual's rights are removed through an adjudication of incapacity.

(3) By recognizing that every individual has unique needs and differing abilities, the Legislature declares that it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf. This act shall be liberally construed to



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accomplish this purpose.

(4) That private guardianship is inadequate where there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person, and such person does not have adequate income or wealth for the compensation of a private guardian.

(5) The Legislature intends, through the establishment of the Office of Public and Professional Guardians, to permit the establishment of offices of public guardians for the purpose of providing guardianship services for incapacitated persons when no private guardian is available.

(6) That a public guardian be provided only to those persons whose needs cannot be met through less drastic means of intervention.

Section 5. Section 744.201, Florida Statutes, is renumbered as section 744.1096, Florida Statutes.

Section 6. Section 744.202, Florida Statutes, is renumbered as section 744.1097, Florida Statutes, and subsection (3) of that section is amended to read:

744.1097 ~~744.202~~ Venue.—

(3) When the residence of an incapacitated person is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided in s. 744.1098 ~~s. 744.2025~~.

Section 7. Section 744.2025, Florida Statutes, is renumbered as section 744.1098, Florida Statutes.

Section 8. Section 744.7021, Florida Statutes, is renumbered as section 744.2001, Florida Statutes, and amended to



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read:

744.2001 ~~744.7021~~ ~~Statewide Public Guardianship Office of~~
Public and Professional Guardians.—There is hereby created the
~~Statewide Public Guardianship Office of~~ Public and Professional
Guardians within the Department of Elderly Affairs.

(1) The Secretary of Elderly Affairs shall appoint the
executive director, who shall be the head of the ~~Statewide~~
~~Public Guardianship Office of~~ Public and Professional Guardians.
The executive director must be a member of The Florida Bar,
knowledgeable of guardianship law and of the social services
available to meet the needs of incapacitated persons, shall
serve on a full-time basis, and shall personally, or through a
representative ~~representatives~~ of the office, carry out the
purposes and functions of the ~~Statewide Public Guardianship~~
Office of Public and Professional Guardians in accordance with
state and federal law. The executive director shall serve at the
pleasure of and report to the secretary.

(2) The executive director shall, within available
resources:—

(a) Have oversight responsibilities for all public and
professional guardians.

(b) Review the standards and criteria for the education,
registration, and certification of public and professional
guardians in Florida.

(3) The executive director's oversight responsibilities of
professional guardians shall include, but not be limited to:

(a) The development and implementation of a monitoring tool
to be used for periodic monitoring activities of professional
guardians related to the management of their wards. This



366026

99 monitoring may not include a financial audit as required by the
100 clerk of the circuit court under s. 744.368.

101 (b) The development of procedures, in consultation with
102 professional guardianship associations, for the review of an
103 allegation that a professional guardian has violated an
104 applicable statute, fiduciary duty, standard of practice, rule,
105 regulation, or other requirement governing the conduct of
106 professional guardians.

107 (c) Establish disciplinary proceedings, conduct hearings,
108 and take administrative action pursuant to chapter 120.

109 (d) Assist the chief judge in each judicial circuit to
110 establish a registry to allow for the appointment of
111 professional guardians in rotating order as provided in s.
112 744.2005.

113 (4) The executive director's oversight responsibilities of
114 public guardians shall include, but not be limited to:

115 (a) The ~~executive director shall~~ review of the current
116 public guardian programs in Florida and other states.

117 (b) The development ~~executive director~~, in consultation
118 with local guardianship offices, ~~of shall develop~~ statewide
119 performance measures and standards.

120 (c) The ~~executive director shall~~ review of the various
121 methods of funding public guardianship programs, the kinds of
122 services being provided by such programs, and the demographics
123 of the wards. In addition, the executive director shall review
124 and make recommendations regarding the feasibility of recovering
125 a portion or all of the costs of providing public guardianship
126 services from the assets or income of the wards.

127 (d) By January 1 of each year, providing ~~the executive~~



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~~director shall provide~~ a status report and providing provide
further recommendations to the secretary that address the need
for public guardianship services and related issues.

(e) In consultation with the Florida State Guardianship
Association, the development of a guardianship training program
curriculum that may be offered to all guardians, whether public
or private.

(5) The executive director may provide assistance to local
governments or entities in pursuing grant opportunities. The
executive director shall review and make recommendations in the
annual report on the availability and efficacy of seeking
Medicaid matching funds. The executive director shall diligently
seek ways to use existing programs and services to meet the
needs of public wards.

~~(f) The executive director, in consultation with the
Florida Guardianship Foundation, shall develop a guardianship
training program curriculum that may be offered to all guardians
whether public or private.~~

(6) ~~(3)~~ The executive director may conduct or contract for
demonstration projects authorized by the Department of Elderly
Affairs, within funds appropriated or through gifts, grants, or
contributions for such purposes, to determine the feasibility or
desirability of new concepts of organization, administration,
financing, or service delivery designed to preserve the civil
and constitutional rights of persons of marginal or diminished
capacity. Any gifts, grants, or contributions for such purposes
shall be deposited in the Department of Elderly Affairs
Administrative Trust Fund.

Section 9. Section 744.1083, Florida Statutes, is



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renumbered as section 744.2002, Florida Statutes, subsections (1) through (5) of that section are amended, and subsections (7) and (10) of that section are republished, to read:

744.2002 ~~744.1083~~ Professional guardian registration.—

(1) A professional guardian must register with the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians established in part II ~~IX~~ of this chapter.

(2) Annual registration shall be made on forms furnished by the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians and accompanied by the applicable registration fee as determined by rule. The fee may not exceed \$100.

(3) Registration must include the following:

(a) Sufficient information to identify the professional guardian, as follows:

1. If the professional guardian is a natural person, the name, address, date of birth, and employer identification or social security number of the person.

2. If the professional guardian is a partnership or association, the name, address, and employer identification number of the entity.

(b) Documentation that the bonding and educational requirements of s. 744.2003 ~~s. 744.1085~~ have been met.

(c) Sufficient information to distinguish a guardian providing guardianship services as a public guardian, individually, through partnership, corporation, or any other business organization.

(4) Prior to registering a professional guardian, the ~~Statewide Public Guardianship~~ Office of Public and Professional



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Guardians must receive and review copies of the credit and criminal investigations conducted under s. 744.3135. The credit and criminal investigations must have been completed within the previous 2 years.

(5) The executive director of the office may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would violate any provision of this chapter. ~~If a guardian who is currently registered with the office violates a provision of this chapter, the executive director of the office may suspend or revoke the guardian's registration. If the executive director denies registration to a professional guardian or suspends or revokes a professional guardian's registration, the Statewide Public Guardianship Office must send written notification of the denial, suspension, or revocation to the chief judge of each judicial circuit in which the guardian was serving on the day of the office's decision to deny, suspend, or revoke the registration.~~

(7) A trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state, may, but is not required to, register as a professional guardian under this section. If a trust company, state banking corporation, state savings association, national banking association, or federal savings and loan association described



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in this subsection elects to register as a professional guardian under this subsection, the requirements of subsections (3) and (4) do not apply and the registration must include only the name, address, and employer identification number of the registrant, the name and address of its registered agent, if any, and the documentation described in paragraph (3)(b).

(10) A state college or university or an independent college or university that is located and chartered in Florida, that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and that confers degrees as defined in s. 1005.02(7) may, but is not required to, register as a professional guardian under this section. If a state college or university or independent college or university elects to register as a professional guardian under this subsection, the requirements of subsections (3) and (4) do not apply and the registration must include only the name, address, and employer identification number of the registrant.

Section 10. Section 744.1085, Florida Statutes, is renumbered as section 744.2003, Florida Statutes, subsections (3), (6), and (9) of that section are amended, and subsection (8) of that section is republished, to read:

744.2003 ~~744.1085~~ Regulation of professional guardians; application; bond required; educational requirements.—

(3) Each professional guardian defined in s. 744.102(17) and public guardian must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour



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educational requirement is met. The instruction and education must be completed through a course approved or offered by the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney who is licensed to practice law in this state.

(6) ~~After July 1, 2005,~~ Each professional guardian ~~is shall~~ be required to demonstrate competency to act as a professional guardian by taking an examination approved by the Department of Elderly Affairs.

(a) The Department of Elderly Affairs shall determine the minimum examination score necessary for passage of guardianship examinations.

(b) The Department of Elderly Affairs shall determine the procedure for administration of the examination.

(c) The Department of Elderly Affairs or its contractor shall charge an examination fee for the actual costs of the development and the administration of the examination. The fee for registration and certification of a professional guardian ~~may~~ not ~~to~~ exceed \$500.

(d) The Department of Elderly Affairs may recognize passage of a national guardianship examination in lieu of all or part of the examination approved by the Department of Elderly Affairs, except that all professional guardians must take and pass an approved examination section related to Florida law and procedure.

(8) The Department of Elderly Affairs shall waive the examination requirement in subsection (6) if a professional



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guardian can provide:

(a) Proof that the guardian has actively acted as a professional guardian for 5 years or more; and

(b) A letter from a circuit judge before whom the professional guardian practiced at least 1 year which states that the professional guardian had demonstrated to the court competency as a professional guardian.

(9) ~~After July 1, 2004,~~ The court may ~~shall~~ not appoint any professional guardian who has not met the requirements of this section and s. 744.2002 ~~s. 744.1083~~.

Section 11. Section 744.2004, Florida Statutes, is created to read:

744.2004 Complaints; disciplinary proceedings; penalties; enforcement.—

(1) The Office of Public and Professional Guardians shall adopt rules to:

(a) Review, and if determined appropriate, investigate an allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians.

(b) Establish disciplinary proceedings, conduct hearings, and take administrative action pursuant to chapter 120.

Disciplinary actions include, but are not limited to, requiring a professional guardian to participate in additional educational courses provided by the Office of Public and Professional Guardians, imposing additional monitoring by the office of the guardianships to which the professional guardian is appointed, and suspension or revocation of a professional guardian's



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registration.

(2) If the office makes a final determination to suspend or revoke the professional guardian's registration, it must provide the determination to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.

Section 12. Section 744.344, Florida Statutes, is renumbered as section 744.2005, Florida Statutes, and amended to read:

744.2005 744.344 Order of appointment.-

(1) A professional guardian appointed by the court to provide representation of a ward shall be selected from a registry of professional guardians.

(2) In using a registry:

(a) The chief judge of the judicial circuit shall compile a list of professional guardians by county and provide the list to the clerk of court in each county. To be included on a registry, the professional guardian must be certified by the Office of Public and Professional Guardians.

(b) The court shall appoint professional guardians in the order in which the names appear on the applicable registry, unless the court makes a finding of good cause on the record for appointment of a professional guardian out of order. The clerk of the court shall maintain the registry and provide to the court the name of the professional guardian for appointment. A professional guardian not appointed in the order in which her or his name appears on the list shall remain next in order.

(3)~~(1)~~ The court may hear testimony on the question of who is entitled to preference in the appointment of a guardian. Any



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interested person may intervene in the proceedings.

(4) The order appointing a guardian must state the nature of the guardianship as either plenary or limited. If limited, the order must state that the guardian may exercise only those delegable rights which have been removed from the incapacitated person and specifically delegated to the guardian. The order shall state the specific powers and duties of the guardian.

(5)~~(2)~~ The order appointing a guardian must be consistent with the incapacitated person's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the incapacitated person the right to make decisions in all matters commensurate with the person's ability to do so.

(6)~~(3)~~ If a petition for appointment of guardian has been filed, an order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated. The order must specify the amount of the bond to be given by the guardian and must state specifically whether the guardian must place all, or part, of the property of the ward in a restricted account in a financial institution designated pursuant to s. 69.031.

(7)~~(4)~~ If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine capacity, the court may appoint an emergency temporary guardian in the manner and for the purposes specified in s. 744.3031.

(8)~~(5)~~ A plenary guardian shall exercise all delegable rights and powers of the incapacitated person.

(9)~~(6)~~ A person for whom a limited guardian has been appointed retains all legal rights except those which have been



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specifically granted to the guardian in the court's written order.

Section 13. Section 744.703, Florida Statutes, is renumbered as 744.2006, Florida Statutes, and subsections (1) and (6) of that section are amended, to read:

744.2006 ~~744.703~~ Office of public and professional guardians ~~guardian~~; appointment, notification.—

(1) The executive director of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians, after consultation with the chief judge and other circuit judges within the judicial circuit and with appropriate advocacy groups and individuals and organizations who are knowledgeable about the needs of incapacitated persons, may establish, within a county in the judicial circuit or within the judicial circuit, one or more offices of public and professional guardian and if so established, shall create a list of persons best qualified to serve as the public guardian, who have been investigated pursuant to s. 744.3135. The public guardian must have knowledge of the legal process and knowledge of social services available to meet the needs of incapacitated persons. The public guardian shall maintain a staff or contract with professionally qualified individuals to carry out the guardianship functions, including an attorney who has experience in probate areas and another person who has a master's degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner. A public guardian that is a nonprofit corporate guardian under s. 744.309(5) must receive tax-exempt status from the United States Internal Revenue Service.

(6) Public guardians who have been previously appointed by



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a chief judge prior to the effective date of this act pursuant to this section may continue in their positions until the expiration of their term pursuant to their agreement. However, oversight of all public guardians shall transfer to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians upon the effective date of this act. The executive director of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall be responsible for all future appointments of public guardians pursuant to this act.

Section 14. Section 744.704, Florida Statutes, is renumbered as section 744.2007, Florida Statutes.

Section 15. Section 744.705, Florida Statutes, is renumbered as section 744.2008, Florida Statutes.

Section 16. Section 744.706, Florida Statutes, is renumbered as section 744.2009, Florida Statutes, and amended to read:

744.2009 ~~744.706~~ Preparation of budget.—Each public guardian, whether funded in whole or in part by money raised through local efforts, grants, or any other source or whether funded in whole or in part by the state, shall prepare a budget for the operation of the office of public guardian to be submitted to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians. As appropriate, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians will include such budgetary information in the Department of Elderly Affairs' legislative budget request. The office of public guardian shall be operated within the limitations of the General Appropriations Act and any other funds appropriated by the Legislature to that particular judicial circuit, subject to the



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provisions of chapter 216. The Department of Elderly Affairs shall make a separate and distinct request for an appropriation for the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians. However, this section may ~~shall~~ not be construed to preclude the financing of any operations of the office of the public guardian by moneys raised through local effort or through the efforts of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.

Section 17. Section 744.707, Florida Statutes, is renumbered as section 744.2101, Florida Statutes, and amended to read:

744.2101 ~~744.707~~ Procedures and rules.—The public guardian, subject to the oversight of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians, is authorized to:

(1) Formulate and adopt necessary procedures to assure the efficient conduct of the affairs of the ward and general administration of the office and staff.

(2) Contract for services necessary to discharge the duties of the office.

(3) Accept the services of volunteer persons or organizations and provide reimbursement for proper and necessary expenses.

Section 18. Section 744.709, Florida Statutes, is renumbered as section 744.2102, Florida Statutes.

Section 19. Section 744.708, Florida Statutes, is renumbered as section 744.2103, Florida Statutes, and subsections (3), (4), (5), and (7) of that section are amended, to read:

744.2103 ~~744.708~~ Reports and standards.—



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(3) A public guardian shall file an annual report on the operations of the office of public guardian, in writing, by September 1 for the preceding fiscal year with the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians, which shall have responsibility for supervision of the operations of the office of public guardian.

(4) Within 6 months of his or her appointment as guardian of a ward, the public guardian shall submit to the clerk of the court for placement in the ward's guardianship file and to the executive director of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians a report on his or her efforts to locate a family member or friend, other person, bank, or corporation to act as guardian of the ward and a report on the ward's potential to be restored to capacity.

(5) (a) Each office of public guardian shall undergo an independent audit by a qualified certified public accountant at least once every 2 years. A copy of the audit report shall be submitted to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.

(b) In addition to regular monitoring activities, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall conduct an investigation into the practices of each office of public guardian related to the managing of each ward's personal affairs and property. If feasible, the investigation shall be conducted in conjunction with the financial audit of each office of public guardian under paragraph (a).

(7) The ratio for professional staff to wards shall be 1 professional to 40 wards. The ~~Statewide Public Guardianship~~



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Office of Public and Professional Guardians may increase or decrease the ratio after consultation with the local public guardian and the chief judge of the circuit court. The basis for the decision to increase or decrease the prescribed ratio must be included in the annual report to the secretary.

Section 20. Section 744.7081, Florida Statutes, is renumbered as section 744.2104, Florida Statutes, and amended to read:

744.2104 ~~744.7081~~ Access to records by ~~the Statewide Public Guardianship~~ Office of Public and Professional Guardians; confidentiality.—Notwithstanding any other provision of law to the contrary, any medical, financial, or mental health records held by an agency, or the court and its agencies, which are necessary to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports, shall be provided to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians upon that office's request. Any confidential or exempt information provided to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall continue to be held confidential or exempt as otherwise provided by law. All records held by the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults as defined in chapter 415, persons with a developmental disability as defined in chapter 393, or persons with a mental illness as defined in chapter 394, shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Notwithstanding any other provision of law, the Office of Public and Professional



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Guardians is entitled to access all court records relating to the guardianship cases for which a professional guardian is appointed. The office is entitled to access these records through whatever means or systems are available, including, but not limited to, electronic access through the Florida Courts E-Portal.

Section 21. Section 744.7082, Florida Statutes, is renumbered as section 744.2105, Florida Statutes, and subsections (1) through (5) and (8) of that section are amended, to read:

744.2105 ~~744.7082~~ Direct-support organization; definition; use of property; board of directors; audit; dissolution.—

(1) DEFINITION.—As used in this section, the term “direct-support organization” means an organization whose sole purpose is to support the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians and is:

(a) A not-for-profit corporation incorporated under chapter 617 and approved by the Department of State;

(b) Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians; and

(c) Determined by the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians to be consistent with the goals of the office, in the best interests of the state, and in



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accordance with the adopted goals and mission of the Department of Elderly Affairs and the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.

(2) CONTRACT.—The direct-support organization shall operate under a written contract with the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians. The written contract must provide for:

(a) Certification by the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the office and in the best interests of the state. This certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

(b) The reversion of moneys and property held in trust by the direct-support organization:

1. To the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians if the direct-support organization is no longer approved to operate for the office;

2. To the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians if the direct-support organization ceases to exist;

3. To the Department of Elderly Affairs if the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians ceases to exist; or

4. To the state if the Department of Elderly Affairs ceases to exist.

The fiscal year of the direct-support organization shall begin



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on July 1 of each year and end on June 30 of the following year.

(c) The disclosure of the material provisions of the contract, and the distinction between the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians and the direct-support organization, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.

(3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs shall appoint a board of directors for the direct-support organization from a list of nominees submitted by the executive director of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.

(4) USE OF PROPERTY.—The Department of Elderly Affairs may permit, without charge, appropriate use of fixed property and facilities of the department or the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians by the direct-support organization. The department may prescribe any condition with which the direct-support organization must comply in order to use fixed property or facilities of the department or the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.

(5) MONEYS.—Any moneys may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the written contract with the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians. Expenditures of the direct-support organization shall be expressly used to support the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians. The expenditures of the direct-support organization may not be used for the purpose



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of lobbying as defined in s. 11.045.

(8) DISSOLUTION.—~~A After July 1, 2004, any~~ not-for-profit corporation incorporated under chapter 617 that is determined by a circuit court to be representing itself as a direct-support organization created under this section, but that does not have a written contract with the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians in compliance with this section, is considered to meet the grounds for a judicial dissolution described in s. 617.1430(1)(a). The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall be the recipient for all assets held by the dissolved corporation which accrued during the period that the dissolved corporation represented itself as a direct-support organization created under this section.

Section 22. Section 744.712, Florida Statutes, is renumbered as section 744.2106, Florida Statutes, and amended to read:

744.2106 744.712 Joining Forces for Public Guardianship grant program; purpose.—The Legislature intends to establish the Joining Forces for Public Guardianship matching grant program for the purpose of assisting counties to establish and fund community-supported public guardianship programs. The Joining Forces for Public Guardianship matching grant program shall be established and administered by the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians within the Department of Elderly Affairs. The purpose of the program is to provide startup funding to encourage communities to develop and administer locally funded and supported public guardianship programs to address the needs of indigent and incapacitated



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residents.

(1) The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians may distribute the grant funds as follows:

(a) As initial startup funding to encourage counties that have no office of public guardian to establish an office, or as initial startup funding to open an additional office of public guardian within a county whose public guardianship needs require more than one office of public guardian.

(b) As support funding to operational offices of public guardian that demonstrate a necessity for funds to meet the public guardianship needs of a particular geographic area in the state which the office serves.

(c) To assist counties that have an operating public guardianship program but that propose to expand the geographic area or population of persons they serve, or to develop and administer innovative programs to increase access to public guardianship in this state.

Notwithstanding this subsection, the executive director of the office may award emergency grants if he or she determines that the award is in the best interests of public guardianship in this state. Before making an emergency grant, the executive director must obtain the written approval of the Secretary of Elderly Affairs. Subsections (2), (3), and (4) do not apply to the distribution of emergency grant funds.

(2) One or more grants may be awarded within a county. However, a county may not receive an award that equals, or multiple awards that cumulatively equal, more than 20 percent of



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the total amount of grant funds appropriated during any fiscal year.

(3) If an applicant is eligible and meets the requirements to receive grant funds more than once, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall award funds to prior awardees in the following manner:

(a) In the second year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 75 percent of the total amount of grant funds awarded within that county in year one.

(b) In the third year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 60 percent of the total amount of grant funds awarded within that county in year one.

(c) In the fourth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 45 percent of the total amount of grant funds awarded within that county in year one.

(d) In the fifth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 30 percent of the total amount of grant funds awarded within that county in year one.

(e) In the sixth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 15 percent of the total amount of grant funds awarded within that county in year one.

The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians may not award grant funds to any



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applicant within a county that has received grant funds for more than 6 years.

(4) Grant funds shall be used only to provide direct services to indigent wards, except that up to 10 percent of the grant funds may be retained by the awardee for administrative expenses.

(5) Implementation of the program is subject to a specific appropriation by the Legislature in the General Appropriations Act.

Section 23. Section 744.713, Florida Statutes, is renumbered as section 744.2107, Florida Statutes, and amended to read:

744.2107 ~~744.713~~ Program administration; duties of the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians.—The ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians shall administer the grant program. The office shall:

(1) Publicize the availability of grant funds to entities that may be eligible for the funds.

(2) Establish an application process for submitting a grant proposal.

(3) Request, receive, and review proposals from applicants seeking grant funds.

(4) Determine the amount of grant funds each awardee may receive and award grant funds to applicants.

(5) Develop a monitoring process to evaluate grant awardees, which may include an annual monitoring visit to each awardee's local office.

(6) Ensure that persons or organizations awarded grant



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funds meet and adhere to the requirements of this act.

Section 24. Section 744.714, Florida Statutes, is renumbered as section 744.2108, Florida Statutes, and paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of that section are amended, to read:

744.2108 ~~744.714~~ Eligibility.—

(1) Any person or organization that has not been awarded a grant must meet all of the following conditions to be eligible to receive a grant:

(b) The applicant must have already been appointed by, or is pending appointment by, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians to become an office of public guardian in this state.

(2) Any person or organization that has been awarded a grant must meet all of the following conditions to be eligible to receive another grant:

(b) The applicant must have been appointed by, or is pending reappointment by, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians to be an office of public guardian in this state.

Section 25. Section 744.715, Florida Statutes, is renumbered as section 744.2109, Florida Statutes, and amended to read:

744.2109 ~~744.715~~ Grant application requirements; review criteria; awards process.—Grant applications must be submitted to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians for review and approval.

(1) A grant application must contain:

(a) The specific amount of funds being requested.



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(b) The proposed annual budget for the office of public guardian for which the applicant is applying on behalf of, including all sources of funding, and a detailed report of proposed expenditures, including administrative costs.

(c) The total number of wards the applicant intends to serve during the grant period.

(d) Evidence that the applicant has:

1. Attempted to procure funds and has exhausted all possible other sources of funding; or

2. Procured funds from local sources, but the total amount of the funds collected or pledged is not sufficient to meet the need for public guardianship in the geographic area that the applicant intends to serve.

(e) An agreement or confirmation from a local funding source, such as a county, municipality, or any other public or private organization, that the local funding source will contribute matching funds to the public guardianship program totaling not less than \$1 for every \$1 of grant funds awarded. For purposes of this section, an applicant may provide evidence of agreements or confirmations from multiple local funding sources showing that the local funding sources will pool their contributed matching funds to the public guardianship program for a combined total of not less than \$1 for every \$1 of grant funds awarded. In-kind contributions, such as materials, commodities, office space, or other types of facilities, personnel services, or other items as determined by rule shall be considered by the office and may be counted as part or all of the local matching funds.

(f) A detailed plan describing how the office of public



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guardian for which the applicant is applying on behalf of will be funded in future years.

(g) Any other information determined by rule as necessary to assist in evaluating grant applicants.

(2) If the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians determines that an applicant meets the requirements for an award of grant funds, the office may award the applicant any amount of grant funds the executive director deems appropriate, if the amount awarded meets the requirements of this act. The office may adopt a rule allocating the maximum allowable amount of grant funds which may be expended on any ward.

(3) A grant awardee must submit a new grant application for each year of additional funding.

(4) (a) In the first year of the Joining Forces for Public Guardianship program's existence, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall give priority in awarding grant funds to those entities that:

1. Are operating as appointed offices of public guardians in this state;

2. Meet all of the requirements for being awarded a grant under this act; and

3. Demonstrate a need for grant funds during the current fiscal year due to a loss of local funding formerly raised through court filing fees.

(b) In each fiscal year after the first year that grant funds are distributed, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians may give priority to awarding grant funds to those entities that:



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1. Meet all of the requirements of this act for being awarded grant funds; and

2. Submit with their application an agreement or confirmation from a local funding source, such as a county, municipality, or any other public or private organization, that the local funding source will contribute matching funds totaling an amount equal to or exceeding \$2 for every \$1 of grant funds awarded by the office. An entity may submit with its application agreements or confirmations from multiple local funding sources showing that the local funding sources will pool their contributed matching funds to the public guardianship program for a combined total of not less than \$2 for every \$1 of grant funds awarded. In-kind contributions allowable under this section shall be evaluated by the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians and may be counted as part or all of the local matching funds.

Section 26. Section 744.701, Florida Statutes, is repealed.

Section 27. Section 744.702, Florida Statutes, is repealed.

Section 28. Section 744.7101, Florida Statutes, is repealed.

Section 29. Section 744.711, Florida Statutes, is repealed.

Section 30. Subsection (5) of section 400.148, Florida Statutes, is amended to read:

400.148 Medicaid "Up-or-Out" Quality of Care Contract Management Program.—

(5) The agency shall, jointly with the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians, develop a system in the pilot project areas to identify Medicaid recipients who are residents of a participating nursing home or



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assisted living facility who have diminished ability to make their own decisions and who do not have relatives or family available to act as guardians in nursing homes listed on the Nursing Home Guide Watch List. The agency and the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall give such residents priority for publicly funded guardianship services.

Section 31. Subsection (3), paragraph (c) of subsection (4), and subsections (5) and (6) of section 744.3135, Florida Statutes, are amended to read:

744.3135 Credit and criminal investigation.—

(3) For professional guardians, the court and the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall accept the satisfactory completion of a criminal history record check by any method described in this subsection. A professional guardian satisfies the requirements of this section by undergoing an electronic fingerprint criminal history record check. A professional guardian may use any electronic fingerprinting equipment used for criminal history record checks. The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall adopt a rule detailing the acceptable methods for completing an electronic fingerprint criminal history record check under this section. The professional guardian shall pay the actual costs incurred by the Federal Bureau of Investigation and the Department of Law Enforcement for the criminal history record check. The entity completing the record check must immediately send the results of the criminal history record check to the clerk of the court and the ~~Statewide Public Guardianship~~ Office of Public and



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Professional Guardians. The clerk of the court shall maintain the results in the professional guardian's file and shall make the results available to the court.

(4)

(c) The Department of Law Enforcement shall search all arrest fingerprints received under s. 943.051 against the fingerprints retained in the statewide automated biometric identification system under paragraph (b). Any arrest record that is identified with the fingerprints of a person described in this paragraph must be reported to the clerk of court. The clerk of court must forward any arrest record received for a professional guardian to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians within 5 days. Each professional guardian who elects to submit fingerprint information electronically shall participate in this search process by paying an annual fee to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians of the Department of Elderly Affairs and by informing the clerk of court and the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians of any change in the status of his or her guardianship appointment. The amount of the annual fee to be imposed for performing these searches and the procedures for the retention of professional guardian fingerprints and the dissemination of search results shall be established by rule of the Department of Law Enforcement. At least once every 5 years, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians must request that the Department of Law Enforcement forward the fingerprints maintained under this section to the Federal Bureau of Investigation.



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(5) (a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, an investigation of his or her credit history before and at least once every 2 years after the date of the guardian's registration with the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.

(b) The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall adopt a rule detailing the acceptable methods for completing a credit investigation under this section. If appropriate, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians may administer credit investigations. If the office chooses to administer the credit investigation, the office may adopt a rule setting a fee, not to exceed \$25, to reimburse the costs associated with the administration of a credit investigation.

(6) The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians may inspect at any time the results of any credit or criminal history record check of a public or professional guardian conducted under this section. The office shall maintain copies of the credit or criminal history record check results in the guardian's registration file. If the results of a credit or criminal investigation of a public or professional guardian have not been forwarded to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians by the investigating agency, the clerk of the court shall forward copies of the results of the investigations to the office upon receiving them.

Section 32. Paragraph (e) of subsection (2) of section



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415.1102, Florida Statutes, is amended to read:

415.1102 Adult protection teams.—

(2) Such teams may be composed of, but need not be limited to:

(e) Public and professional guardians as described in part II ~~IX~~ of chapter 744.

Section 33. Paragraph (d) of subsection (3) of section 744.331, Florida Statutes, is amended to read:

744.331 Procedures to determine incapacity.—

(3) EXAMINING COMMITTEE.—

(d) A member of an examining committee must complete a minimum of 4 hours of initial training. The person must complete 2 hours of continuing education during each 2-year period after the initial training. The initial training and continuing education program must be developed under the supervision of the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians, in consultation with the Florida Conference of Circuit Court Judges; the Elder Law and the Real Property, Probate and Trust Law sections of The Florida Bar; and the Florida State Guardianship Association; ~~and the Florida Guardianship Foundation~~. The court may waive the initial training requirement for a person who has served for not less than 5 years on examining committees. If a person wishes to obtain his or her continuing education on the Internet or by watching a video course, the person must first obtain the approval of the chief judge before taking an Internet or video course.

Section 34. Paragraph (a) of subsection (1) of section 20.415, Florida Statutes, is amended to read:



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20.415 Department of Elderly Affairs; trust funds.—The following trust funds shall be administered by the Department of Elderly Affairs:

(1) Administrative Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with ss. 215.32, 744.534, and 744.2001 ~~744.7021~~.

Section 35. Section 744.524, Florida Statutes, is amended to read:

744.524 Termination of guardianship on change of domicile of resident ward.—When the domicile of a resident ward has changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign court having jurisdiction over the ward at the ward's new domicile has appointed a guardian and that guardian has qualified and posted a bond in an amount required by the foreign court, the guardian in this state may file her or his final report and close the guardianship in this state. The guardian of the property in this state shall cause a notice to be published once a week for 2 consecutive weeks, in a newspaper of general circulation published in the county, that she or he has filed her or his accounting and will apply for discharge on a day certain and that jurisdiction of the ward will be transferred to the state of foreign jurisdiction. If an objection is filed to the termination of the guardianship in this state, the court shall hear the objection and enter an order either sustaining or overruling the objection. Upon the disposition of all objections filed, or if no objection is filed, final settlement shall be made by the Florida guardian. On proof that the remaining property in the guardianship has been received by the foreign



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guardian, the guardian of the property in this state shall be discharged. The entry of the order terminating the guardianship in this state shall not exonerate the guardian or the guardian's surety from any liability previously incurred.

Section 36. For the 2015-2016 fiscal year, 6 full-time equivalent positions, with associated salary rate of 191,119, are authorized and the sum of \$821,670 in recurring funds from the General Revenue Fund is appropriated to the Department of Elder Affairs for the purpose of carrying out all oversight and monitoring responsibilities of the Office of Public and Professional Guardians.

Section 37. This act shall take effect January 1, 2016.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to guardianship; providing directives to the Division of Law Revision and Information; amending s. 744.1012, F.S.; revising legislative intent; renumbering s. 744.201, F.S.; renumbering and amending s. 744.202, F.S.; conforming a cross-reference; renumbering s. 744.2025, F.S.; renumbering and amending s. 744.7021, F.S.; revising the responsibilities of the executive director for the Office of Public and Professional Guardians; conforming provisions to changes made by the act; renumbering and amending s. 744.1083, F.S.; removing a



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998 provision authorizing the executive director to
999 suspend or revoke the registration of a guardian who
1000 commits certain violations; removing the requirement
1001 of written notification to the chief judge of the
1002 judicial circuit upon the executive director's denial,
1003 suspension, or revocation of a registration;
1004 conforming provisions to changes made by the act;
1005 conforming a cross-reference; renumbering and amending
1006 s. 744.1085, F.S.; removing an obsolete provision;
1007 conforming provisions to changes made by the act;
1008 conforming a cross-reference; creating s. 744.2004,
1009 F.S.; requiring the Office of Public and Professional
1010 Guardians to adopt rules; requiring the office, under
1011 certain circumstances, to make a specified
1012 recommendation to a court of competent jurisdiction;
1013 renumbering and amending s. 744.344, F.S.; requiring
1014 that a professional guardian appointed by a court to
1015 represent a ward be selected from a registry of
1016 professional guardians; requiring the chief judge of a
1017 circuit court to compile a list of professional
1018 guardians by county and provide the list to the clerk
1019 of court in each county; providing requirements for
1020 inclusion in the registry; providing procedures for a
1021 court to appoint a professional guardian; providing an
1022 exception; requiring the clerk of the court to
1023 maintain the registry and provide the court with the
1024 name of a professional guardian for appointment;
1025 renumbering and amending s. 744.703, F.S.; conforming
1026 provisions to changes made by the act; renumbering ss.



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1027 744.704 and 744.705, F.S.; renumbering and amending
1028 ss. 744.706 and 744.707, F.S.; conforming provisions
1029 to changes made by the act; renumbering s. 744.709,
1030 F.S.; renumbering and amending s. 744.708, F.S.;
1031 conforming provisions to changes made by the act;
1032 renumbering and amending s. 744.7081, F.S.; providing
1033 the Office of Public and Professional Guardians with
1034 access to all court records relating to guardianship
1035 cases for which a professional guardian is appointed;
1036 providing that the office may access such records
1037 through all available means; conforming provisions to
1038 changes made by the act; renumbering and amending s.
1039 744.7082, F.S.; conforming provisions to changes made
1040 by the act; renumbering and amending s. 744.712, F.S.;
1041 providing legislative intent; conforming provisions;
1042 renumbering and amending ss. 744.713, 744.714, and
1043 744.715, F.S.; conforming provisions to changes made
1044 by the act; repealing s. 744.701, F.S.; relating to a
1045 short title; repealing s. 744.702, F.S.; relating to
1046 legislative intent; repealing s. 744.7101, F.S.;
1047 relating to a short title; repealing s. 744.711, F.S.;
1048 relating to legislative findings and intent; amending
1049 ss. 400.148, 744.3135, and 744.331, F.S.; conforming
1050 provisions to changes made by the act; amending ss.
1051 20.415, 415.1102, and 744.524, F.S.; conforming cross-
1052 references; making technical changes; providing an
1053 appropriation; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 978
and insert:
Section 36. This act shall take effect January 1, 2016.

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 1226

INTRODUCER: Fiscal Policy Committee and Senator Detert

SUBJECT: Guardianship

DATE: April 22, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3. <u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

I. Summary:

CS/SB 1226 amends and reorganizes the Guardianship chapter, ch. 744, F.S. The Statewide Public Guardianship Office, which currently exists within the Department of Elder Affairs (DOEA) and has oversight for public guardians for indigent people in the state, is expanded and renamed the Office of Public and Professional Guardians. In its new capacity, the office is given the additional responsibility of administering professional guardians who have not previously been closely regulated by the state. The newly titled office remains housed within the DOEA.

The executive director of the new Office of Public and Professional Guardians remains an appointee of the Secretary of the DOEA, but with expanded responsibilities. The bill establishes the additional duties and responsibilities of the executive director and requires the annual registration of professional guardians. The DOEA sets the fee for registration and certification of a professional guardian, which may not exceed \$500.

The Office of Public and Professional Guardians is directed to adopt rules to establish disciplinary oversight, conducting hearings, and taking administrative action pursuant to ch. 120, F.S.

The bill also directs the chief judge in each judicial circuit to compile a list of professional guardians and provide the list to the clerk of the court. Professional guardians must be certified by the office to be included on the list. The court appoints professional guardians in the order in which names appear on the registry, unless the court makes a finding on the record to appoint a professional guardian out of order.

The bill provides \$821,670 in recurring funds from the General Revenue Fund to the DOEA and 6 FTE for the purpose of carrying out all oversight and monitoring responsibilities of the Office of Public and Professional Guardians (see Section V.).

II. Present Situation:

Guardianship

Guardianship is a concept whereby a “guardian” acts for another, called a “ward,” whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Guardianships are generally disfavored due to the loss of individual civil rights, and a guardian may be appointed only if the court finds there is no sufficient alternative to guardianship.

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.¹ For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, in situations where an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is based on the determination of a court appointed examination committee.²

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.³ A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relationship.⁴ The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.⁵ In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out its responsibilities in an informed and considered manner.

Section 744.362, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward’s overall physical and social health. A guardian is also under a duty to file with the court an initial guardianship report,⁶ an annual guardianship report,⁷ and an annual accounting of the ward’s property.⁸ The reports provide evidence of the guardian’s faithful execution of his or her fiduciary duties.⁹

At the heart of a court’s interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446, F.S., explicitly states that the “fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law.” In the event

¹ See generally, Section 744.102(9), F.S.

² See generally, Section 744.102(12), F.S.

³ *Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

⁴ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

⁵ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

⁶ Section 744.362, F.S.

⁷ Section 744.367, F.S.

⁸ Section 744.3678, F.S.

⁹ Section 744.368(1), F.S.

of a breach by the guardian of the guardian's fiduciary duty, the court must take the necessary actions to protect the ward and the ward's assets.¹⁰

Professional Guardians

In Florida, a "professional guardian" means any guardian who has, at any time, rendered services to three or more wards as their guardian.¹¹ A professional guardian must register annually with the Statewide Public Guardianship Office.¹² Currently, there are 465 professional guardians registered with the Statewide Public Guardianship Office.¹³ Professional guardians must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 16 hours of continuing education every 2 years after the initial educational requirement is met. The instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office.¹⁴

Professional guardians are subject to a level 2 background check,¹⁵ an investigation of the guardian's credit history,¹⁶ and are required to demonstrate competency to act as a professional guardian by taking an examination approved by DOEA.¹⁷ These requirements do not apply to a professional guardian or the employees of that professional guardian when that guardian is a:

- Trust company;
- State banking corporation;
- State savings association authorized and qualified to exercise fiduciary powers in this state; or
- National banking association or federal savings and loan association authorized and qualified to exercise fiduciary duties in this state.¹⁸

Public Guardianship Act

The Public Guardianship Act is recognized in s. 744.701, F.S. The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.¹⁹ The executive director of the Statewide Public Guardianship Office, after consultation with the chief judge and other judges within the judicial circuit may establish one or more office of public guardian within a judicial circuit.²⁰ A public guardian may serve an incapacitated person if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.²¹ A person serving as a public guardian is considered a professional guardian for

¹⁰ Section 744.446(4), F.S.

¹¹ Section 744.102(17), F.S.

¹² Section 744.1083(1) and (2), F.S.

¹³ Children and Families, and Elder Affairs Committee staff telephone conversation with the Department of Elder Affairs on March 9, 2015.

¹⁴ Section 744.1085(3), F.S.

¹⁵ Section 744.1085(5), F.S.

¹⁶ Section 744.1085(4), F.S.

¹⁷ Section 744.1085(6), F.S.

¹⁸ Section 744.1085(10), F.S.

¹⁹ Chapter 99-277 L.O.F.

²⁰ Section 744.703(1), F.S.

²¹ Section 744.704(1), F.S.

purposes of regulation, education, and registration.²² Public guardianship offices are in all 20 judicial circuits in the state.²³

Determining Incapacity

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court. A petition may be executed by an adult and must be served on and read to the alleged incapacitated person. The notice and copies of the petitioner must be provided to the attorney for the alleged incapacitated person, and served on all next of kin identified in the petition. The notice must include:

- The time and place for the court hearing to inquire into the capacity of the alleged incapacitated person;
- That an attorney has been appointed to represent that person; and
- That, if he or she is determined to be incapable of exercising certain rights, a guardian will be appointed to exercise those rights on his or her behalf.²⁴

In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.²⁵ The court must enter a written order determining incapacity after finding that a person is incapacitated with respect to the exercise of a particular right or all rights. A person is determined to be incapacitated only with respect to those rights specified in the court's order.²⁶ When an order determines that a person is incapable of exercising delegable rights, the court must consider whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If an alternative to guardianship will not sufficiently address the problems of the incapacitated person, a guardian will be appointed.²⁷

If a petition for appointment of a guardian has been filed, an order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated.²⁸ If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine incapacity, the court may appoint an emergency temporary guardian.²⁹

Court Proceedings

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.³⁰ At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best

²² Section 744.102(17), F.S.

²³ Children, Families, and Elder Affairs Committee staff meeting with the Department of Elder Affairs on February 2, 2015.

²⁴ Section 744.331(1), F.S.

²⁵ Section 744.331(5)(c), F.S.

²⁶ Section 744.331(6), F.S.

²⁷ Section 744.331(6)(b), F.S.

²⁸ Section 744.344(3), F.S.

²⁹ Section 744.344(4), F.S.

³⁰ Section 744.372, F.S.

interest of the ward. If the petition for review is found to be without merit the court may assess costs and attorney fees against the petitioner.³¹

A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee.³² Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.³³

A ward has the right to be restored to capacity at the earliest possible time.³⁴ The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed. Immediately upon the filing of the suggestion of capacity, the court shall appoint a physician to examine the ward. The physician must examine the ward and file a report with the court within 20 days.³⁵ All objections to the suggestion of capacity must be filed within 20 days after formal notice is served on the ward, guardian, attorney for the ward, if any, and any other interested persons designated by the court.³⁶ If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court must set the matter for hearing.³⁷ The level of proof required to show capacity is not presently spelled out in the statute.

In a study and work group report by the Florida Developmental Disabilities Council, dated February 28, 2014, Palm Beach County court personnel performed a limited review of a random sample of 76 guardianship files for persons over the age of 18. Among these, over two thirds were of persons with age-related disabilities. After reviewing the files, the senior auditor for the circuit reported that there were no cases where the guardianship plan recommended the restoration of any rights of the incapacitated persons.³⁸

Media Reports

Beginning on December 6, 2014, the Sarasota Herald Tribune published a series of articles titled "The Kindness of Strangers – Inside Elder Guardianship in Florida," which detailed abuses occurring in guardianships. The paper examined guardianship court case files and conducted interviews with wards, family, and friends caught in the system against their will.³⁹ The paper concluded that "Florida has cobbled together an efficient way to identify and care for helpless elders, using the probate court system to place them under guardianship." However, critics say this system often ignores basic individual rights and most often plays out in secret, with hearings and files typically closed to the public.⁴⁰ The paper also concluded that "monitoring elders and

³¹ Section 744.3715, F.S.

³² Section 744.108(1), F.S.

³³ Section 744.108(8), F.S.

³⁴ Section 744.3215(1)(c), F.S.

³⁵ Section 744.464(2)(b), F.S.

³⁶ Section 744.464(2)(c),(d)

³⁷ Section 744.464(2)(e), F.S.

³⁸ Florida Developmental Disabilities Council, *Restoration of Capacity Study and Work Group Report*, February 28, 2014 (on file with the Senate Committee on Children, Families and Elder Affairs).

³⁹ Barbara Peters Smith, *The Kindness of Strangers – Inside Elder Guardianship in Florida*, HERALD TRIBUNE (December 6, 2014), available at <http://extra.heraldtribune.com/2014/12/06/well-oiled-machine/> (last visited April 14, 2015).

⁴⁰ *Id* at 2.

tapping their assets is a growth business: In 2003, there were 23 registered professional guardians in Florida, according to the [DOEA]. Today there are more than 440 – an increase greater than 1,800 percent in 11 years.”⁴¹

III. Effect of Proposed Changes:

The bill renames the Statewide Public Guardianship Office and significantly expands its duties. The office is renamed the Office of Public and Professional Guardians and, as its name implies, now has oversight for both public and professional guardians. While public guardians, who provide services for indigent people, have been regulated by the state, professional guardians have not been as closely regulated.

This bill establishes the regulation and supervision of professional guardians by giving the DOEA the authority to discipline professional guardians for misconduct.

Legislative Intent (Section 4)

The bill amends the legislative intent language in s. 744.1012, F.S., and finds that alternatives to guardianship and less intrusive means of assistance should always be explored before an individual’s rights are removed through an adjudication of incapacity.

The legislative intent also includes the finding that private guardianship is inadequate where there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person and such person does not have adequate income or wealth for the compensation of the private guardian. The Legislature intends, through establishing the Office of Public and Professional Guardians, to permit the establishment of public guardians to provide services for incapacitated persons when no private guardian is available. The public guardian must be provided only to those persons whose needs cannot be met through less drastic means of intervention.

Office of Public and Professional Guardians (Section 8)

The bill creates the Office of Public and Professional Guardians within the DOEA. The executive director of the Office of Public and Professional Guardians has oversight responsibilities over all public and private guardians. The executive director must review the standards and criteria for the education, registration, and certification of public and professional guardians in Florida.

The executive director’s oversight responsibilities for professional guardians, include, but are not limited to:

- Developing and implementing a monitoring tool to use for periodic monitoring activities of professional guardians; however, this monitoring tool may not include a financial audit as required to be performed by the clerk of the circuit court under s. 744.368, F.S.;

⁴¹ *Id.*

- Developing procedures for the review of an allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians;
- Establishing disciplinary proceedings, conducting hearings, and taking administrative action under ch. 120, F.S.; and
- Assisting the chief judge in each circuit to establish a registry to allow for the appointment of a professional guardian on a rotating basis.

Regulation of Professional Guardians (Section 10)

The bill clarifies that the DOEA or its contractor must charge a fee for registration and certification of professional guardians which may not exceed \$500.

Discipline of Professional Guardians (Section 11)

The bill creates s. 744.2004, F.S., and directs the Office of Public and Professional Guardians to adopt rules to:

- Review, and if appropriate, investigate allegations that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians;
- Establish disciplinary proceedings, conduct hearings, and take administrative action pursuant to ch. 120, F.S. Disciplinary actions may include, but are not limited to:
 - Requiring professional guardians to participate in additional educational courses;
 - Imposing additional monitoring of the guardianships being served by the professional guardian; and
 - Suspending and revoking the guardian's registration. If the final determination from a disciplinary proceeding is to suspend or revoke the guardian's registration, the determination must be provided to any court that oversees any guardianship to which the professional guardian is appointed.

Professional Guardian Registry (Section 12)

The bill creates a registry of professional guardians for a court to use when appointing guardians. The registry is to be compiled by the chief judge in each circuit and provided to and maintained by the clerk of the court in each county of the circuit. A professional guardian must be certified by the Office of Public and Professional Guardians to be included on the registry. The court must appoint professional guardians in the order the names appear and may appoint a professional guardian out of order only upon entering a finding of good cause into the record.

Access to Records by the Office of Public and Professional Guardians (Section 20)

Under current law, any confidential or exempt information provided to the Statewide Public Guardianship Office (renamed by the bill to the Office of Public and Professional Guardians) continues to be held confidential or exempt as otherwise provided by law. Current law also provides that all records relating to the medical, financial, or mental health of vulnerable adults as defined in ch. 415, F.S., persons with a developmental disability as defined in ch. 393, F.S., or

persons with a mental illness as defined in ch. 394, F.S., are confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a) of the Florida Constitution.

The bill provides the Office of Public and Professional Guardians access to all court records relating to the guardianship cases for which a professional guardian is appointed and allows access to these records through whatever means or systems are available, including, but not limited to, electronic access through the Florida Courts E-Portal.

Joining Forces for Public Guardianship (Section 22)

The bill provides the purpose for establish the Joining Forces for Public Guardianship matching grant program is to assist counties in establishing and funding community-supported public guardianship programs.

Organizational Changes (Remaining Sections)

The remaining sections of the bill make technical changes and relocate what is currently part II, Venue, to part I, General Provisions, retitles part II as Public and Professional Guardians and makes other conforming changes to carry out the intent of the act.

Appropriation (Section 36)

The bill provides for FY 2015-2016, 6 full-time equivalent positions and \$821,670 in recurring funds from the General Revenue Fund to the DOEA for the purpose of carrying out all oversight and monitoring responsibilities of the Office of Public and Professional Guardians.

Effective Date (Section 37)

The bill is effective January 1, 2016.

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.

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

None.

B. Private Sector Impact:

Professional guardians will be regulated by the DOEA.

C. Government Sector Impact:

The bill provides for FY 2015-2016, 6 full-time equivalent (FTE) positions and \$821,670 in recurring funds from the General Revenue Fund to the DOEA for the purpose of carrying out all oversight and monitoring responsibilities of the Office of Public and Professional Guardians. According to the DOEA, the bill would increase the monitoring duties of the Office of Public and Professional Guardians and would require contracting with forensic auditors to investigate potential issues. This contracting is estimated to initially cost \$500,000, which is contained in the recurring funds appropriated by the bill. Additionally, the DOEA estimated costs of \$100,000 to develop a computer system to track complaints and activities. The 6 FTE consist of 5 complaint investigators and 1 senior attorney.⁴²

According to the Office of the State Court Administrator, the bill will increase the judicial workload, however the exact fiscal impact cannot be determined due to the unavailability of data.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Office of Public and Professional Guardians is directed to adopt rules concerning professional guardians to establish disciplinary oversight, including conducting hearings and taking administrative action pursuant to ch. 120, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.415, 400.148, 415.1102, 744.1012, 744.1083, 744.1085, 744.201, 744.202, 744.2025, 744.7021, 744.344, 744.703, 744.704, 744.705, 744.706, 744.707, 744.708, 744.709, 744.7081, 744.7082, 744.712, 744.713, 744.714, 744.715, 744.3135, 744.331, and 744.524.

⁴² 2015 Department of Elder Affairs Bill Analysis, *Senate Bill 1226*, (April 16, 2015) (on file with the Senate Fiscal Policy Committee).

⁴³ Office of the State Courts Administrator 2015 Judicial Impact Statement, *Senate Bill 1226*, (March 15, 2015) (on file with the Senate Fiscal Policy Committee).

This bill creates section 744.2004 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 744.701, 744.702, 744.7101, and 744.711.

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 20, 2015:

The committee substitute:

- Removes the provision authorizing the DOEA to investigate public and private guardians.
- Clarifies that a professional guardian must be certified instead of licensed.
- Provides the Office of Public and Professional Guardians access to all court records relating to the guardianship cases for which a professional guardian is appointed and allows access to these records through whatever means or systems are available.
- Makes technical changes.
- Provides 6 full-time equivalent positions and \$821,670 in recurring funds from the General Revenue Fund, to the DOEA for the purpose of carrying out all oversight and monitoring responsibilities of the Office of Public and Professional Guardians.

B. Amendments:

None.

By Senator Detert

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1 A bill to be entitled
 2 An act relating to guardianship; providing directives
 3 to the Division of Law Revision and Information;
 4 amending s. 744.1012, F.S.; revising legislative
 5 intent; renumbering s. 744.201, F.S.; renumbering and
 6 amending s. 744.202, F.S.; conforming a cross-
 7 reference; renumbering s. 744.2025, F.S.; renumbering
 8 and amending s. 744.7021, F.S.; revising the
 9 responsibilities of the executive director for the
 10 Office of Public and Professional Guardians;
 11 conforming provisions to changes made by the act;
 12 renumbering and amending s. 744.1083, F.S.; removing a
 13 provision authorizing the executive director to
 14 suspend or revoke the registration of a guardian who
 15 commits certain violations; removing the requirement
 16 of written notification to the chief judge of the
 17 judicial circuit upon the executive director's denial,
 18 suspension, or revocation of a registration;
 19 conforming provisions to changes made by the act;
 20 conforming a cross-reference; renumbering and amending
 21 s. 744.1085, F.S.; removing an obsolete provision;
 22 conforming provisions to changes made by the act;
 23 conforming a cross-reference; creating s. 744.2004,
 24 F.S.; requiring the Office of Public and Professional
 25 Guardians to adopt rules; requiring the office, under
 26 certain circumstances, to make a specified
 27 recommendation to a court of competent jurisdiction;
 28 renumbering and amending s. 744.344, F.S.; requiring
 29 that a professional guardian appointed by a court to

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30 represent an allegedly incapacitated person be
 31 selected from a registry of professional guardians;
 32 requiring the chief judge of a circuit court to
 33 compile a list of professional guardians by county and
 34 provide the list to the clerk of court in each county;
 35 providing requirements for inclusion in the registry;
 36 providing procedures for a court to appoint a
 37 professional guardian; providing an exception;
 38 requiring the clerk of the court to maintain the
 39 registry and provide the court with the name of a
 40 professional guardian for appointment; renumbering and
 41 amending s. 744.703, F.S.; conforming provisions to
 42 changes made by the act; renumbering ss. 744.704 and
 43 744.705, F.S.; renumbering and amending ss. 744.706
 44 and 744.707, F.S.; conforming provisions to changes
 45 made by the act; renumbering s. 744.709, F.S.;
 46 renumbering and amending ss. 744.708, 744.7081, and
 47 744.7082, F.S.; conforming provisions to changes made
 48 by the act; renumbering and amending s. 744.712, F.S.;
 49 providing legislative intent; conforming provisions;
 50 renumbering and amending ss. 744.713, 744.714, and
 51 744.715, F.S.; conforming provisions to changes made
 52 by the act; repealing s. 744.701, F.S.; relating to a
 53 short title; repealing s. 744.702, F.S.; relating to
 54 legislative intent; repealing s. 744.7101, F.S.;
 55 relating to a short title; repealing s. 744.711, F.S.;
 56 relating to legislative findings and intent; amending
 57 ss. 400.148, 744.3135, and 744.331, F.S.; conforming
 58 provisions to changes made by the act; amending ss.

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20.415, 415.1102, and 744.524, F.S.; conforming cross-references; making technical changes; providing an effective date.

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

Section 1. The Division of Law Revision and Information is directed to add ss. 744.1096-744.1098, Florida Statutes, created by this act, to part I of chapter 744, Florida Statutes.

Section 2. The Division of Law Revision and Information is directed to retitle part II of chapter 744, Florida Statutes, consisting of ss. 744.2001-744.2109, Florida Statutes, as "PUBLIC AND PROFESSIONAL GUARDIANS."

Section 3. The Division of Law Revision and Information is directed to remove part IX of chapter 744, Florida Statutes.

Section 4. Section 744.1012, Florida Statutes, is amended to read:

744.1012 Legislative intent.—The Legislature finds:

(1) That adjudicating a person totally incapacitated and in need of a guardian deprives such person of all her or his civil and legal rights and that such deprivation may be unnecessary.

(2) ~~The Legislature further finds~~ That it is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs and that alternatives to guardianship and less intrusive means of assistance should always be explored, including, but not limited to, guardian advocates, before an individual's rights are removed through an adjudication of incapacity.

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(3) By recognizing that every individual has unique needs and differing abilities, the Legislature declares that it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf. This act shall be liberally construed to accomplish this purpose.

(4) That private guardianship is inadequate where there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person, and such person does not have adequate income or wealth for the compensation of a private guardian.

(5) The Legislature intends, through the establishment of the Office of Public and Professional Guardians, to permit the establishment of offices of public guardians for the purpose of providing guardianship services for incapacitated persons when no private guardian is available.

(6) That a public guardian be provided only to those persons whose needs cannot be met through less drastic means of intervention.

Section 5. Section 744.201, Florida Statutes, is renumbered as section 744.1096, Florida Statutes.

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Section 6. Section 744.202, Florida Statutes, is renumbered as section 744.1097, Florida Statutes, and subsection (3) of that section is amended to read:

744.1097 744.202 Venue.—

(3) When the residence of an incapacitated person is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided in s. 744.1098 ~~s. 744.2025~~.

Section 7. Section 744.2025, Florida Statutes, is renumbered as section 744.1098, Florida Statutes.

Section 8. Section 744.7021, Florida Statutes, is renumbered as section 744.2001, Florida Statutes, and amended to read:

744.2001 744.7021 ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.—There is hereby created the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians within the Department of Elderly Affairs.

(1) The Secretary of Elderly Affairs shall appoint the executive director, who shall be the head of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians. The executive director must be a member of The Florida Bar, knowledgeable of guardianship law and of the social services available to meet the needs of incapacitated persons, shall serve on a full-time basis, and shall personally, or through a representative ~~representatives~~ of the office, carry out the purposes and functions of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians in accordance with state and federal law. The executive director shall serve at the

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pleasure of and report to the secretary.

(2) The executive director shall, within available resources:

(a) Have oversight responsibilities for all public and professional guardians.

(b) Review the standards and criteria for the education, registration, and certification of public and professional guardians in Florida.

(3) The executive director's oversight responsibilities of professional guardians shall include, but not be limited to:

(a) The development and implementation of a monitoring tool to be used for regular monitoring activities of professional guardians related to the management of each ward and his or her personal affairs. This monitoring may not include a financial audit as required by the clerk of the circuit court under s. 744.368.

(b) The development of procedures, in consultation with professional guardianship associations, for the review of an allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians.

(c) The establishment of disciplinary proceedings, including the authority to conduct investigations and take appropriate administrative action pursuant to chapter 120.

(d) Assist the chief judge in each judicial circuit to establish a registry to allow for the appointment of professional guardians in rotating order as provided in s. 744.2005.

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(4) The executive director's oversight responsibilities of public guardians shall include, but not be limited to:

(a) ~~The executive director shall review of~~ the current public guardian programs in Florida and other states.

(b) ~~The development executive director, in consultation with local guardianship offices, of shall develop~~ statewide performance measures and standards.

(c) ~~The executive director shall review of~~ the various methods of funding public guardianship programs, the kinds of services being provided by such programs, and the demographics of the wards. In addition, the executive director shall review and make recommendations regarding the feasibility of recovering a portion or all of the costs of providing public guardianship services from the assets or income of the wards.

(d) By January 1 of each year, providing the executive director shall provide a status report and providing provide further recommendations to the secretary that address the need for public guardianship services and related issues.

(e) In consultation with the Florida Guardianship Foundation, the development of a guardianship training program curriculum that may be offered to all guardians, whether public or private.

(5) The executive director may provide assistance to local governments or entities in pursuing grant opportunities. The executive director shall review and make recommendations in the annual report on the availability and efficacy of seeking Medicaid matching funds. The executive director shall diligently seek ways to use existing programs and services to meet the needs of public wards.

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~~(f) The executive director, in consultation with the Florida Guardianship Foundation, shall develop a guardianship training program curriculum that may be offered to all guardians whether public or private.~~

~~(6) (3)~~ The executive director may conduct or contract for demonstration projects authorized by the Department of Elderly Affairs, within funds appropriated or through gifts, grants, or contributions for such purposes, to determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of persons of marginal or diminished capacity. Any gifts, grants, or contributions for such purposes shall be deposited in the Department of Elderly Affairs Administrative Trust Fund.

Section 9. Section 744.1083, Florida Statutes, is renumbered as section 744.2002, Florida Statutes, subsections (1) through (5) of that section are amended, and subsections (7) and (10) of that section are republished, to read:

744.2002 ~~744.1083~~ Professional guardian registration.—

(1) A professional guardian must register with the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ established in part II ~~IX~~ of this chapter.

(2) Annual registration shall be made on forms furnished by the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ and accompanied by the applicable registration fee as determined by rule. The fee may not exceed \$100.

(3) Registration must include the following:

(a) Sufficient information to identify the professional

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guardian, as follows:

1. If the professional guardian is a natural person, the name, address, date of birth, and employer identification or social security number of the person.

2. If the professional guardian is a partnership or association, the name, address, and employer identification number of the entity.

(b) Documentation that the bonding and educational requirements of s. 744.2003 ~~s. 744.1085~~ have been met.

(c) Sufficient information to distinguish a guardian providing guardianship services as a public guardian, individually, through partnership, corporation, or any other business organization.

(4) Prior to registering a professional guardian, the Statewide Public Guardianship Office of Public and Professional Guardians must receive and review copies of the credit and criminal investigations conducted under s. 744.3135. The credit and criminal investigations must have been completed within the previous 2 years.

(5) The executive director of the office may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would violate any provision of this chapter. ~~If a guardian who is currently registered with the office violates a provision of this chapter, the executive director of the office may suspend or revoke the guardian's registration. If the executive director denies registration to a professional guardian or suspends or~~

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~~revokes a professional guardian's registration, the Statewide Public Guardianship Office must send written notification of the denial, suspension, or revocation to the chief judge of each judicial circuit in which the guardian was serving on the day of the office's decision to deny, suspend, or revoke the registration.~~

(7) A trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state, may, but is not required to, register as a professional guardian under this section. If a trust company, state banking corporation, state savings association, national banking association, or federal savings and loan association described in this subsection elects to register as a professional guardian under this subsection, the requirements of subsections (3) and (4) do not apply and the registration must include only the name, address, and employer identification number of the registrant, the name and address of its registered agent, if any, and the documentation described in paragraph (3)(b).

(10) A state college or university or an independent college or university that is located and chartered in Florida, that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and that confers degrees as defined in s. 1005.02(7) may, but is not required to, register as a professional guardian under this section. If a state college or university or independent college or university

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elects to register as a professional guardian under this subsection, the requirements of subsections (3) and (4) do not apply and the registration must include only the name, address, and employer identification number of the registrant.

Section 10. Section 744.1085, Florida Statutes, is renumbered as section 744.2003, Florida Statutes, subsections (3), (6), and (9) of that section are amended, and subsection (8) of that section is republished, to read:

744.2003 ~~744.1085~~ Regulation of professional guardians; application; bond required; educational requirements.—

(3) Each professional guardian defined in s. 744.102(17) and public guardian must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The instruction and education must be completed through a course approved or offered by the ~~Statewide Public Guardianship Office~~ Office of Public and Professional Guardians. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney who is licensed to practice law in this state.

(6) ~~After July 1, 2005,~~ Each professional guardian ~~is shall~~ be required to demonstrate competency to act as a professional guardian by taking an examination approved by the Department of Elderly Affairs.

(a) The Department of Elderly Affairs shall determine the minimum examination score necessary for passage of guardianship examinations.

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(b) The Department of Elderly Affairs shall determine the procedure for administration of the examination.

(c) The Department of Elderly Affairs or its contractor shall charge an examination fee for the actual costs of the development and the administration of the examination. The fee for registration and licensing of a professional guardian may not, not to exceed \$500.

(d) The Department of Elderly Affairs may recognize passage of a national guardianship examination in lieu of all or part of the examination approved by the Department of Elderly Affairs, except that all professional guardians must take and pass an approved examination section related to Florida law and procedure.

(8) The Department of Elderly Affairs shall waive the examination requirement in subsection (6) if a professional guardian can provide:

(a) Proof that the guardian has actively acted as a professional guardian for 5 years or more; and

(b) A letter from a circuit judge before whom the professional guardian practiced at least 1 year which states that the professional guardian had demonstrated to the court competency as a professional guardian.

(9) ~~After July 1, 2004,~~ The court ~~may shall~~ not appoint any professional guardian who has not met the requirements of this section and s. 744.2002 ~~s. 744.1083~~.

Section 11. Section 744.2004, Florida Statutes, is created to read:

744.2004 Complaints; disciplinary proceedings; penalties; enforcement.—

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349 (1) The Office of Public and Professional Guardians shall
 350 adopt rules to:

351 (a) Review, and if determined appropriate, investigate an
 352 allegation that a professional guardian has violated an
 353 applicable statute, fiduciary duty, standard of practice, rule,
 354 regulation, or other requirement governing the conduct of
 355 professional guardians.

356 (b) Establish disciplinary proceedings, conduct hearings,
 357 and take administrative action pursuant to chapter 120.
 358 Disciplinary actions include, but are not limited to, requiring
 359 a professional guardian to participate in additional educational
 360 courses provided by the Office of Public and Professional
 361 Guardians, imposing additional monitoring by the office of the
 362 guardianships to which the professional guardian is appointed,
 363 and suspension or revocation of a professional guardian's
 364 license.

365 (2) If the office makes a final recommendation for the
 366 suspension or revocation of a professional guardian's license,
 367 it must provide the recommendation to the court of competent
 368 jurisdiction for any guardianship case to which the professional
 369 guardian is currently appointed.

370 Section 12. Section 744.344, Florida Statutes, is
 371 renumbered as section 744.2005, Florida Statutes, and amended to
 372 read:

373 744.2005 744.344 Order of appointment.—

374 (1) A professional guardian appointed by the court to
 375 provide representation of an alleged incapacitated person shall
 376 be selected from a registry of professional guardians.

377 (2) In using a registry:

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378 (a) The chief judge of the judicial circuit shall compile a
 379 list of professional guardians by county and provide the list to
 380 the clerk of court in each county. To be included on a registry,
 381 the professional guardian must be certified by the Office of
 382 Public and Professional Guardians.

383 (b) The court shall appoint professional guardians in the
 384 order in which the names appear on the applicable registry,
 385 unless the court makes a finding of good cause on the record for
 386 appointment of a professional guardian out of order. The clerk
 387 of the court shall maintain the registry and provide to the
 388 court the name of the professional guardian for appointment. A
 389 professional guardian not appointed in the order in which her or
 390 his name appears on the list shall remain next in order.

391 (3)(1) The court may hear testimony on the question of who
 392 is entitled to preference in the appointment of a guardian. Any
 393 interested person may intervene in the proceedings.

394 (4) The order appointing a guardian must state the nature
 395 of the guardianship as either plenary or limited. If limited,
 396 the order must state that the guardian may exercise only those
 397 delegable rights which have been removed from the incapacitated
 398 person and specifically delegated to the guardian. The order
 399 shall state the specific powers and duties of the guardian.

400 (5)(2) The order appointing a guardian must be consistent
 401 with the incapacitated person's welfare and safety, must be the
 402 least restrictive appropriate alternative, and must reserve to
 403 the incapacitated person the right to make decisions in all
 404 matters commensurate with the person's ability to do so.

405 (6)(3) If a petition for appointment of guardian has been
 406 filed, an order appointing a guardian must be issued

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contemporaneously with the order adjudicating the person incapacitated. The order must specify the amount of the bond to be given by the guardian and must state specifically whether the guardian must place all, or part, of the property of the ward in a restricted account in a financial institution designated pursuant to s. 69.031.

~~(7)(4)~~ If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine capacity, the court may appoint an emergency temporary guardian in the manner and for the purposes specified in s. 744.3031.

~~(8)(5)~~ A plenary guardian shall exercise all delegable rights and powers of the incapacitated person.

~~(9)(6)~~ A person for whom a limited guardian has been appointed retains all legal rights except those which have been specifically granted to the guardian in the court's written order.

Section 13. Section 744.703, Florida Statutes, is renumbered as 744.2006, Florida Statutes, and subsections (1) and (6) of that section are amended, to read:

744.2006 744.703 Office of public and professional guardians guardian; appointment, notification.—

(1) The executive director of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians, after consultation with the chief judge and other circuit judges within the judicial circuit and with appropriate advocacy groups and individuals and organizations who are knowledgeable about the needs of incapacitated persons, may establish, within a county in the judicial circuit or within the judicial circuit,

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one or more offices of public and professional guardian and if so established, shall create a list of persons best qualified to serve as the public guardian, who have been investigated pursuant to s. 744.3135. The public guardian must have knowledge of the legal process and knowledge of social services available to meet the needs of incapacitated persons. The public guardian shall maintain a staff or contract with professionally qualified individuals to carry out the guardianship functions, including an attorney who has experience in probate areas and another person who has a master's degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner. A public guardian that is a nonprofit corporate guardian under s. 744.309(5) must receive tax-exempt status from the United States Internal Revenue Service.

(6) Public guardians who have been previously appointed by a chief judge prior to the effective date of this act pursuant to this section may continue in their positions until the expiration of their term pursuant to their agreement. However, oversight of all public guardians shall transfer to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians upon the effective date of this act. The executive director of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall be responsible for all future appointments of public guardians pursuant to this act.

Section 14. Section 744.704, Florida Statutes, is renumbered as section 744.2007, Florida Statutes.

Section 15. Section 744.705, Florida Statutes, is renumbered as section 744.2008, Florida Statutes.

Section 16. Section 744.706, Florida Statutes, is

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 465 renumbered as section 744.2009, Florida Statutes, and amended to
 466 read:

467 744.2009 744.706 Preparation of budget.—Each public
 468 guardian, whether funded in whole or in part by money raised
 469 through local efforts, grants, or any other source or whether
 470 funded in whole or in part by the state, shall prepare a budget
 471 for the operation of the office of public guardian to be
 472 submitted to the ~~Statewide Public Guardianship~~ Office of Public
 473 and Professional Guardians. As appropriate, the ~~Statewide Public~~
 474 ~~Guardianship~~ Office of Public and Professional Guardians will
 475 include such budgetary information in the Department of Elderly
 476 Affairs' legislative budget request. The office of public
 477 guardian shall be operated within the limitations of the General
 478 Appropriations Act and any other funds appropriated by the
 479 Legislature to that particular judicial circuit, subject to the
 480 provisions of chapter 216. The Department of Elderly Affairs
 481 shall make a separate and distinct request for an appropriation
 482 for the ~~Statewide Public Guardianship~~ Office of Public and
 483 Professional Guardians. However, this section ~~may~~ shall not be
 484 construed to preclude the financing of any operations of the
 485 office of the public guardian by moneys raised through local
 486 effort or through the efforts of the ~~Statewide Public~~
 487 ~~Guardianship~~ Office of Public and Professional Guardians.

488 Section 17. Section 744.707, Florida Statutes, is
 489 renumbered as section 744.2101, Florida Statutes, and amended to
 490 read:

491 744.2101 744.707 Procedures and rules.—The public guardian,
 492 subject to the oversight of the ~~Statewide Public Guardianship~~
 493 Office of Public and Professional Guardians, is authorized to:

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494 (1) Formulate and adopt necessary procedures to assure the
 495 efficient conduct of the affairs of the ward and general
 496 administration of the office and staff.

497 (2) Contract for services necessary to discharge the duties
 498 of the office.

499 (3) Accept the services of volunteer persons or
 500 organizations and provide reimbursement for proper and necessary
 501 expenses.

502 Section 18. Section 744.709, Florida Statutes, is
 503 renumbered as section 744.2102, Florida Statutes.

504 Section 19. Section 744.708, Florida Statutes, is
 505 renumbered as section 744.2103, Florida Statutes, and
 506 subsections (3), (4), (5), and (7) of that section are amended,
 507 to read:

508 744.2103 744.708 Reports and standards.—

509 (3) A public guardian shall file an annual report on the
 510 operations of the office of public guardian, in writing, by
 511 September 1 for the preceding fiscal year with the ~~Statewide~~
 512 ~~Public Guardianship~~ Office of Public and Professional Guardians,
 513 which shall have responsibility for supervision of the
 514 operations of the office of public guardian.

515 (4) Within 6 months of his or her appointment as guardian
 516 of a ward, the public guardian shall submit to the clerk of the
 517 court for placement in the ward's guardianship file and to the
 518 executive director of the ~~Statewide Public Guardianship~~ Office
 519 of Public and Professional Guardians a report on his or her
 520 efforts to locate a family member or friend, other person, bank,
 521 or corporation to act as guardian of the ward and a report on
 522 the ward's potential to be restored to capacity.

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(5) (a) Each office of public guardian shall undergo an independent audit by a qualified certified public accountant at least once every 2 years. A copy of the audit report shall be submitted to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.

(b) In addition to regular monitoring activities, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall conduct an investigation into the practices of each office of public guardian related to the managing of each ward's personal affairs and property. If feasible, the investigation shall be conducted in conjunction with the financial audit of each office of public guardian under paragraph (a).

(7) The ratio for professional staff to wards shall be 1 professional to 40 wards. The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians may increase or decrease the ratio after consultation with the local public guardian and the chief judge of the circuit court. The basis for the decision to increase or decrease the prescribed ratio must be included in the annual report to the secretary.

Section 20. Section 744.7081, Florida Statutes, is renumbered as section 744.2104, Florida Statutes, and amended to read:

744.2104 ~~744.7081~~ Access to records by ~~the Statewide Public Guardianship~~ Office of Public and Professional Guardians; confidentiality.—Notwithstanding any other provision of law to the contrary, any medical, financial, or mental health records held by an agency, or the court and its agencies, which are necessary to evaluate the public guardianship system, to assess

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the need for additional public guardianship, or to develop required reports, shall be provided to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians upon that office's request. Any confidential or exempt information provided to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall continue to be held confidential or exempt as otherwise provided by law. All records held by the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults as defined in chapter 415, persons with a developmental disability as defined in chapter 393, or persons with a mental illness as defined in chapter 394, shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 21. Section 744.7082, Florida Statutes, is renumbered as section 744.2105, Florida Statutes, and subsections (1) through (5) and (8) of that section are amended, to read:

744.2105 ~~744.7082~~ Direct-support organization; definition; use of property; board of directors; audit; dissolution.—

(1) DEFINITION.—As used in this section, the term "direct-support organization" means an organization whose sole purpose is to support the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians and is:

(a) A not-for-profit corporation incorporated under chapter 617 and approved by the Department of State;

(b) Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold,

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invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians; and

(c) Determined by the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians to be consistent with the goals of the office, in the best interests of the state, and in accordance with the adopted goals and mission of the Department of Elderly Affairs and the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians.

(2) CONTRACT.—The direct-support organization shall operate under a written contract with the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians. The written contract must provide for:

(a) Certification by the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the office and in the best interests of the state. This certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

(b) The reversion of moneys and property held in trust by the direct-support organization:

1. To the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians if the direct-support organization is no longer approved to operate for the office;

2. To the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians if the direct-support organization

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ceases to exist;

3. To the Department of Elderly Affairs if the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians ceases to exist; or

4. To the state if the Department of Elderly Affairs ceases to exist.

The fiscal year of the direct-support organization shall begin on July 1 of each year and end on June 30 of the following year.

(c) The disclosure of the material provisions of the contract, and the distinction between the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians and the direct-support organization, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.

(3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs shall appoint a board of directors for the direct-support organization from a list of nominees submitted by the executive director of the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians.

(4) USE OF PROPERTY.—The Department of Elderly Affairs may permit, without charge, appropriate use of fixed property and facilities of the department or the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians by the direct-support organization. The department may prescribe any condition with which the direct-support organization must comply in order to use fixed property or facilities of the department or the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians.

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(5) MONEYS.—Any moneys may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the written contract with the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~. Expenditures of the direct-support organization shall be expressly used to support the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~. The expenditures of the direct-support organization may not be used for the purpose of lobbying as defined in s. 11.045.

(8) DISSOLUTION.—~~A After July 1, 2004, any~~ not-for-profit corporation incorporated under chapter 617 that is determined by a circuit court to be representing itself as a direct-support organization created under this section, but that does not have a written contract with the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ in compliance with this section, is considered to meet the grounds for a judicial dissolution described in s. 617.1430(1)(a). The ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ shall be the recipient for all assets held by the dissolved corporation which accrued during the period that the dissolved corporation represented itself as a direct-support organization created under this section.

Section 22. Section 744.712, Florida Statutes, is renumbered as section 744.2106, Florida Statutes, and subsections (1) and (3) are amended, to read:

744.2106 744.712 Joining Forces for Public Guardianship grant program; purpose.—~~The Legislature intends to establish the~~ Joining Forces for Public Guardianship matching grant program for the purpose of assisting counties to establish and fund

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~~community-supported public guardianship programs~~. The Joining Forces for Public Guardianship matching grant program shall be established and administered by the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ within the Department of Elderly Affairs. The purpose of the program is to provide startup funding to encourage communities to develop and administer locally funded and supported public guardianship programs to address the needs of indigent and incapacitated residents.

(1) The ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ may distribute the grant funds as follows:

(a) As initial startup funding to encourage counties that have no office of public guardian to establish an office, or as initial startup funding to open an additional office of public guardian within a county whose public guardianship needs require more than one office of public guardian.

(b) As support funding to operational offices of public guardian that demonstrate a necessity for funds to meet the public guardianship needs of a particular geographic area in the state which the office serves.

(c) To assist counties that have an operating public guardianship program but that propose to expand the geographic area or population of persons they serve, or to develop and administer innovative programs to increase access to public guardianship in this state.

Notwithstanding this subsection, the executive director of the office may award emergency grants if he or she determines that

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the award is in the best interests of public guardianship in this state. Before making an emergency grant, the executive director must obtain the written approval of the Secretary of Elderly Affairs. Subsections (2), (3), and (4) do not apply to the distribution of emergency grant funds.

(3) If an applicant is eligible and meets the requirements to receive grant funds more than once, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall award funds to prior awardees in the following manner:

(a) In the second year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 75 percent of the total amount of grant funds awarded within that county in year one.

(b) In the third year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 60 percent of the total amount of grant funds awarded within that county in year one.

(c) In the fourth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 45 percent of the total amount of grant funds awarded within that county in year one.

(d) In the fifth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 30 percent of the total amount of grant funds awarded within that county in year one.

(e) In the sixth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 15 percent of the total amount of grant funds awarded within that county in year one.

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The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians may not award grant funds to any applicant within a county that has received grant funds for more than 6 years.

Section 23. Section 744.713, Florida Statutes, is renumbered as section 744.2107, Florida Statutes, and amended to read:

744.2107 ~~744.713~~ Program administration; duties of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians.—The ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall administer the grant program. The office shall:

(1) Publicize the availability of grant funds to entities that may be eligible for the funds.

(2) Establish an application process for submitting a grant proposal.

(3) Request, receive, and review proposals from applicants seeking grant funds.

(4) Determine the amount of grant funds each awardee may receive and award grant funds to applicants.

(5) Develop a monitoring process to evaluate grant awardees, which may include an annual monitoring visit to each awardee's local office.

(6) Ensure that persons or organizations awarded grant funds meet and adhere to the requirements of this act.

Section 24. Section 744.714, Florida Statutes, is renumbered as section 744.2108, Florida Statutes, and paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of

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that section are amended, to read:

744.2108 ~~744.714~~ Eligibility.—

(1) Any person or organization that has not been awarded a grant must meet all of the following conditions to be eligible to receive a grant:

(b) The applicant must have already been appointed by, or is pending appointment by, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians to become an office of public guardian in this state.

(2) Any person or organization that has been awarded a grant must meet all of the following conditions to be eligible to receive another grant:

(b) The applicant must have been appointed by, or is pending reappointment by, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians to be an office of public guardian in this state.

Section 25. Section 744.715, Florida Statutes, is renumbered as section 744.2109, Florida Statutes, and subsections (2) and (4) of that section are amended, to read:

744.2109 ~~744.715~~ Grant application requirements; review criteria; awards process.—Grant applications must be submitted to the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians for review and approval.

(2) If the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians determines that an applicant meets the requirements for an award of grant funds, the office may award the applicant any amount of grant funds the executive director deems appropriate, if the amount awarded meets the requirements of this act. The office may adopt a rule allocating

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the maximum allowable amount of grant funds which may be expended on any ward.

(4) (a) In the first year of the Joining Forces for Public Guardianship program's existence, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians shall give priority in awarding grant funds to those entities that:

1. Are operating as appointed offices of public guardians in this state;

2. Meet all of the requirements for being awarded a grant under this act; and

3. Demonstrate a need for grant funds during the current fiscal year due to a loss of local funding formerly raised through court filing fees.

(b) In each fiscal year after the first year that grant funds are distributed, the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians may give priority to awarding grant funds to those entities that:

1. Meet all of the requirements of this act for being awarded grant funds; and

2. Submit with their application an agreement or confirmation from a local funding source, such as a county, municipality, or any other public or private organization, that the local funding source will contribute matching funds totaling an amount equal to or exceeding \$2 for every \$1 of grant funds awarded by the office. An entity may submit with its application agreements or confirmations from multiple local funding sources showing that the local funding sources will pool their contributed matching funds to the public guardianship program for a combined total of not less than \$2 for every \$1 of grant

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funds awarded. In-kind contributions allowable under this section shall be evaluated by the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ and may be counted as part or all of the local matching funds.

Section 26. Section 744.701, Florida Statutes, is repealed.

Section 27. Section 744.702, Florida Statutes, is repealed.

Section 28. Section 744.7101, Florida Statutes, is repealed.

Section 29. Section 744.711, Florida Statutes, is repealed.

Section 30. Subsection (5) of section 400.148, Florida Statutes, is amended to read:

400.148 Medicaid "Up-or-Out" Quality of Care Contract Management Program.—

(5) The agency shall, jointly with the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~, develop a system in the pilot project areas to identify Medicaid recipients who are residents of a participating nursing home or assisted living facility who have diminished ability to make their own decisions and who do not have relatives or family available to act as guardians in nursing homes listed on the Nursing Home Guide Watch List. The agency and the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ shall give such residents priority for publicly funded guardianship services.

Section 31. Subsection (3), paragraph (c) of subsection (4), and subsections (5) and (6) of section 744.3135, Florida Statutes, are amended to read:

744.3135 Credit and criminal investigation.—

(3) For professional guardians, the court and the ~~Statewide~~

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~~Public Guardianship Office of Public and Professional Guardians~~ shall accept the satisfactory completion of a criminal history record check by any method described in this subsection. A professional guardian satisfies the requirements of this section by undergoing an electronic fingerprint criminal history record check. A professional guardian may use any electronic fingerprinting equipment used for criminal history record checks. The ~~Statewide Public Guardianship Office of Public and Professional Guardians~~ shall adopt a rule detailing the acceptable methods for completing an electronic fingerprint criminal history record check under this section. The professional guardian shall pay the actual costs incurred by the Federal Bureau of Investigation and the Department of Law Enforcement for the criminal history record check. The entity completing the record check must immediately send the results of the criminal history record check to the clerk of the court and the ~~Statewide Public Guardianship Office of Public and Professional Guardians~~. The clerk of the court shall maintain the results in the professional guardian's file and shall make the results available to the court.

(4)

(c) The Department of Law Enforcement shall search all arrest fingerprints received under s. 943.051 against the fingerprints retained in the statewide automated biometric identification system under paragraph (b). Any arrest record that is identified with the fingerprints of a person described in this paragraph must be reported to the clerk of court. The clerk of court must forward any arrest record received for a professional guardian to the ~~Statewide Public Guardianship~~

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871 Office of Public and Professional Guardians within 5 days. Each
 872 professional guardian who elects to submit fingerprint
 873 information electronically shall participate in this search
 874 process by paying an annual fee to the ~~Statewide Public~~
 875 ~~Guardianship~~ Office of Public and Professional Guardians of the
 876 Department of Elderly Affairs and by informing the clerk of
 877 court and the ~~Statewide Public Guardianship~~ Office of Public and
 878 Professional Guardians of any change in the status of his or her
 879 guardianship appointment. The amount of the annual fee to be
 880 imposed for performing these searches and the procedures for the
 881 retention of professional guardian fingerprints and the
 882 dissemination of search results shall be established by rule of
 883 the Department of Law Enforcement. At least once every 5 years,
 884 the ~~Statewide Public Guardianship~~ Office of Public and
 885 Professional Guardians must request that the Department of Law
 886 Enforcement forward the fingerprints maintained under this
 887 section to the Federal Bureau of Investigation.

888 (5) (a) A professional guardian, and each employee of a
 889 professional guardian who has a fiduciary responsibility to a
 890 ward, must complete, at his or her own expense, an investigation
 891 of his or her credit history before and at least once every 2
 892 years after the date of the guardian's registration with the
 893 ~~Statewide Public Guardianship~~ Office of Public and Professional
 894 Guardians.

895 (b) The ~~Statewide Public Guardianship~~ Office of Public and
 896 Professional Guardians shall adopt a rule detailing the
 897 acceptable methods for completing a credit investigation under
 898 this section. If appropriate, the ~~Statewide Public Guardianship~~
 899 Office of Public and Professional Guardians may administer

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900 credit investigations. If the office chooses to administer the
 901 credit investigation, the office may adopt a rule setting a fee,
 902 not to exceed \$25, to reimburse the costs associated with the
 903 administration of a credit investigation.

904 (6) The ~~Statewide Public Guardianship~~ Office of Public and
 905 Professional Guardians may inspect at any time the results of
 906 any credit or criminal history record check of a public or
 907 professional guardian conducted under this section. The office
 908 shall maintain copies of the credit or criminal history record
 909 check results in the guardian's registration file. If the
 910 results of a credit or criminal investigation of a public or
 911 professional guardian have not been forwarded to the ~~Statewide~~
 912 ~~Public Guardianship~~ Office of Public and Professional Guardians
 913 by the investigating agency, the clerk of the court shall
 914 forward copies of the results of the investigations to the
 915 office upon receiving them.

916 Section 32. Paragraph (e) of subsection (2) of section
 917 415.1102, Florida Statutes, is amended to read:

918 415.1102 Adult protection teams.—

919 (2) Such teams may be composed of, but need not be limited
 920 to:

921 (e) Public and professional guardians as described in part
 922 II ~~IX~~ of chapter 744.

923 Section 33. Paragraph (d) of subsection (3) of section
 924 744.331, Florida Statutes, is amended to read:

925 744.331 Procedures to determine incapacity.—

926 (3) EXAMINING COMMITTEE.—

927 (d) A member of an examining committee must complete a
 928 minimum of 4 hours of initial training. The person must complete

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2 hours of continuing education during each 2-year period after the initial training. The initial training and continuing education program must be developed under the supervision of the ~~Statewide Public Guardianship~~ Office of Public and Professional Guardians, in consultation with the Florida Conference of Circuit Court Judges; the Elder Law and the Real Property, Probate and Trust Law sections of The Florida Bar; the Florida State Guardianship Association; and the Florida Guardianship Foundation. The court may waive the initial training requirement for a person who has served for not less than 5 years on examining committees. If a person wishes to obtain his or her continuing education on the Internet or by watching a video course, the person must first obtain the approval of the chief judge before taking an Internet or video course.

Section 34. Paragraph (a) of subsection (1) of section 20.415, Florida Statutes, is amended to read:

20.415 Department of Elderly Affairs; trust funds.—The following trust funds shall be administered by the Department of Elderly Affairs:

(1) Administrative Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with ss. 215.32, 744.534, and 744.2001 ~~744.7021~~.

Section 35. Section 744.524, Florida Statutes, is amended to read:

744.524 Termination of guardianship on change of domicile of resident ward.—When the domicile of a resident ward has changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign court having jurisdiction over the ward at the ward's new

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domicile has appointed a guardian and that guardian has qualified and posted a bond in an amount required by the foreign court, the guardian in this state may file her or his final report and close the guardianship in this state. The guardian of the property in this state shall cause a notice to be published once a week for 2 consecutive weeks, in a newspaper of general circulation published in the county, that she or he has filed her or his accounting and will apply for discharge on a day certain and that jurisdiction of the ward will be transferred to the state of foreign jurisdiction. If an objection is filed to the termination of the guardianship in this state, the court shall hear the objection and enter an order either sustaining or overruling the objection. Upon the disposition of all objections filed, or if no objection is filed, final settlement shall be made by the Florida guardian. On proof that the remaining property in the guardianship has been received by the foreign guardian, the guardian of the property in this state shall be discharged. The entry of the order terminating the guardianship in this state shall not exonerate the guardian or the guardian's surety from any liability previously incurred.

Section 36. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: March 31, 2015

I respectfully request that **Senate Bill #1226**, relating to Guardianship, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28



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	Fav/1 amendment
3/10/15	JU	Fav/CS
4/7/15	CA	Favorable
4/17/15	FP	Favorable

December 31, 2014

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

Re: **CS/SB 36** – Judiciary Committee and Senator Miguel Diaz de la Portilla
Relief of Estate of Victor Guerrero

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$6,873,838.19 BASED ON A JURY AWARD AGAINST PASCO COUNTY TO COMPENSATE THE ESTATE OF VICTOR GUERRERO FOR HIS DEATH IN A COLLISION WITH A COUNTY VEHICLE.

FINDINGS OF FACT:

On May 1, 2008, Victor Guerrero, a 48-year old, off-duty Tampa police officer, was traveling southbound on U.S. Highway 41 on his motorcycle. Highway 41 is a north-south thoroughfare in Pasco County and is a two-lane, undivided highway with a 55 mph speed limit in the area where Mr. Guerrero was driving. At the same time, Daniel Whipple, a Pasco County employee, was driving a Pasco County truck northbound on Highway 41 on his way to inspect a subdivision off of that road. The weather was clear and the view was not obstructed. As Mr. Guerrero approached Mr. Whipple, Mr. Whipple made a left hand turn into the southbound lane.

As Mr. Whipple turned, the Pasco County truck he was driving and Mr. Guerrero's motorcycle collided in the southbound lane. Mr. Whipple stated that he simply did not see the motorcycle. Mr. Guerrero's motorcycle struck the side of the Pasco County pickup truck, and Mr. Guerrero was ejected from the motorcycle. Mr. Guerrero was not wearing a helmet

at the time of the accident and died as a result of a brainstem laceration which occurred as a result of the incident.

A witness to the accident testified that Mr. Whipple's vehicle turned in front of Mr. Guerrero's motorcycle. The witness testified that Mr. Guerrero did not have an opportunity to avoid the collision. The witness did not believe that the motorcycle driver, Mr. Guerrero, did anything wrong. In addition, the Tampa Police Department investigator believed that Mr. Whipple violated section 316.122, Florida Statutes, by making an improper left turn.

Following the accident, Pasco County's Driver Safety Review Board conducted an internal investigation relating to the accident, and found that Daniel Whipple was negligent in causing the accident, citing mistakes due to carelessness. The Board recommended that Daniel Whipple's driving privileges, as extended to County vehicles and equipment, be suspended. The jury was informed of the Board's finding but not that Daniel Whipple's driving privileges were suspended.

Mr. Guerrero is survived by his wife of 2 years, Lara Guerrero, with whom he had lived since 2000 with her three children. Mr. Guerrero is also survived by three sons from a prior marriage, Michael, David, and Kevin, aged 21, 19, and 15 at the time of their father's death, respectively. At the time of Mr. Guerrero's death, his sons lived in South Carolina with their mother and had lived there for less than one year. Mr. Guerrero had seen his sons three times after their move. Mr. Guerrero traveled to South Carolina once and his sons returned to Florida twice. Prior to moving to South Carolina in 2007, Mr. Guerrero's sons and their mother resided in the Tampa area.

The Guerrero estate (the "estate" or "claimant") filed a lawsuit against Pasco County and, on February 10, 2012, the jury returned a verdict for \$7,845,127.30. The parties stipulated to economic damages of \$1,095,127.30. The jury awarded Lara Guerrero \$1,500,000 and award \$1,750,000 to each of the three children. The jury verdict for noneconomic damages was less than sought for Mrs. Guerrero (counsel suggested \$2,500,000 in noneconomic damages for Mrs. Guerrero) and more than sought each of the children (counsel suggested \$500,000 in noneconomic damages for each of the children). The verdict amount was reduced by ten percent for comparative negligence due to Mr. Guerrero's failure to wear

a helmet. The verdict form gave the jury the option to apportion liability to Mr. Guerrero for speeding but the jury did not do so. The Second District Court of Appeal affirmed the final judgment.

Following the trial, Michael and Kevin Guerrero have remained in South Carolina with their mother. Michael is currently employed at an auto body shop, and Kevin graduated from Northeastern Technical College in May of 2013 after obtaining an Associate in Arts Degree. Kevin currently works at the Food Lion. David was discharged from the United States Marine Corps in January 2013 and is currently in the Reserves. David currently resides in Florida and will begin the Hillsborough Community College Law Enforcement Academy in January 2015. Lara Guerrero moved out of the Tampa area after the home she, Victor, and her three children lived in was foreclosed following Victor's death. She currently resides in Fleming Island, Florida with her boyfriend, daughter, and boyfriend's son. Lara Guerrero has been employed sporadically since Victor Guerrero's death but is not currently employed. Prior to Victor's death, Lara Guerrero was employed by the Home Depot for over fifteen years.

In December, 2014, the House and Senate special masters held a joint hearing on this contested claim. The Guerreros and Pasco County submitted documents from pretrial discovery, from the trial, from the appellate record, and supplemented the record after the hearing with other documents. The Guerreros testified at the hearing. At the hearing, Pasco County presented expert testimony that Mr. Guerrero would not have died if he had been wearing a motorcycle helmet. Pasco County also presented expert testimony that Mr. Guerrero was speeding and that the accident would not have occurred if Mr. Guerrero had been driving a safe speed.

The Guerreros presented expert testimony that Mr. Guerrero would have died even if he had been wearing a helmet and presented evidence that Mr. Guerrero was not speeding.

Pasco County opposes a claim bill in this case. The County argues that Mr. Guerrero was speeding and not wearing a helmet and that he would have avoided the accident had he not been speeding and would have survived the accident had he been wearing a helmet. The County further argues that jury

verdict was excessive and unduly influenced by emotional testimony in the case.

A medical examiner testified at the trial and his trial testimony, including testimony presented outside the presence of the jury, was provided for the hearing. The medical examiner stated that Mr. Guerrero would have died from the accident even if he was wearing a helmet. A second expert witness presented by the estate testified that Mr. Guerrero would have died whether or not he had been wearing a helmet. He testified that no helmet could have prevented Mr. Guerrero's death. Pasco County's expert testified that Mr. Guerrero would have survived if he had been wearing a helmet.

Both sides presented evidence relating to whether or not Mr. Guerrero was speeding at the time of the accident. The claimant's expert testified that Mr. Guerrero was travelling between 51 and 58 miles per hour. The Pasco County expert testified that Mr. Guerrero was traveling between 66 and 83 miles per hour.

Pasco County has paid \$200,000 of the final judgment. Of that \$200,000, \$186,776.38 was paid to the claimant and \$13,223.62 was paid to the claimant's automobile insurance carrier to satisfy its subrogated property damage claim. Pasco County was insured by a Public Entity Excess Liability Policy issued by Star Insurance Company which has liability limits of \$1,000,000 for each covered accident or occurrence. The Policy is subject to a self-retention limit of \$1,000,000 which is eroded by certain costs and expenses incurred by the County in the defense or payment of a covered claim. Approximately \$690,000 remains of Pasco County's self-insured retention limit which must be exhausted before Star Insurance Company's duty to indemnify the County is triggered. The self-insured retention and any amount above the \$1,000,000 insurance policy would be paid from the County's general fund.

The \$186,776.38 paid to the claimant was divided as follows:

Mrs. Guerrero: \$7,937.99

Kevin Guerrero: \$6,761.99

Michael Guerrero: \$6,467.99

David Guerrero: \$6,467.99

Estate: \$1,764.00

Attorneys (including \$5,000 in trust for future costs and probate fees): \$157,386.42.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether Pasco County is liable in negligence for the death of Mr. Guerrero and, if so, whether the amount of the claim is reasonable.

Section 316.122, Florida Statutes, requires the driver of a vehicle turning left to yield to oncoming traffic. Mr. Whipple, a Pasco County employee, failed to do so. Pasco County is liable as Mr. Whipple's employer.

Each side presented evidence relating to whether Mr. Guerrero would have died if he had been wearing a helmet. Given the conflicting testimony, the jury's finding apportioning most of the damages to the County but some of the damages to Mr. Guerrero was reasonable.

Similarly, there was conflicting expert testimony regarding Mr. Guerrero's speed at the time of the accident. However, an eyewitness saw the accident and believed that the driver of the truck, Mr. Whipple, was at fault. Given the conflicting expert testimony, the jury's apparent reliance on an eyewitness and finding that speed was not a factor was reasonable.

Pasco County objects to various evidentiary rulings made by the trial judge at trial. Specifically, the County objects to the admission of the Driver Safety Review Board finding that Mr. Whipple was at fault. The jury's finding of fault was reasonable in this case. An eyewitness saw the accident and believed that Mr. Whipple was at fault. Given eyewitness testimony, it is reasonable for the jury to find Mr. Whipple at fault even if one assumes the trial court erred in admitting the finding of the Driver Safety Review Board.

The County also argues that the jury was unduly influenced by emotional testimony at trial and that the jury award was excessive. Those issues were raised, or could have been raised, by the County on appeal, reviewed by the court under

an abuse of discretion standard, and rejected. The jury appears to have exercised independent judgment from that of the lawyers in the case. It awarded less than was asked for to Mrs. Guerrero and more than was sought to each of the three children. It is difficult to place a monetary value on the loss of a husband or a father but it is reasonable for a jury to determine that surviving children should receive more than a surviving spouse.

ATTORNEYS FEES:

The claimant's attorneys have agreed to limit their fees and lobbyist fees to not more than 25 percent of any amount awarded by the Legislature.

RECOMMENDED
AMENDMENT:

This bill provides post-judgment interest at the rate of 4.75 percent. While paying post-judgment interest in claim bills is not unprecedented, the general practice is not to include post-judgment interest. This bill provides for a lump sum payment to the estate of Victor Guerrero but the jury made separate awards to the estate, to Lara Guerrero, and to each of the three children.

The recommended amendment removes references to post-judgment interest and apportions the claim to the estate, Mrs. Guerrero, and the three children as follows:

Estate: \$962,337.34 (14%)
Mrs. Guerrero: \$1,312,903.09 (19.1%)
Kevin Guerrero: \$1,532,865.92 (22.3%)
Michael Guerrero: \$1,532,865.92 (22.3%)
David Guerrero: \$1,532,865.92 (22.3%)

I arrived at those amounts by calculating the percentage of the total award that the jury awarded to each claimant and multiplying those percentages by the total dollar amount of the bill.

RECOMMENDATIONS:

The undersigned recommends that the bill be reported favorably.

Respectfully submitted,

L. Michael Billmeier, Jr.
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary:

The committee substitute reduces the amount appropriated by the claim bill to \$1.5 million. The committee substitute also apportions the appropriation among the Estate of Victor Guerrero and his survivors.

By the Committee on Judiciary; and Senator Diaz de la Portilla

590-02145-15

201536c1

A bill to be entitled

An act for the relief of the Estate of Victor Guerrero by Pasco County; providing for an appropriation to compensate the Guerrero family for Officer Guerrero's death, which was the result of negligence by an employee of Pasco County; providing that the appropriation settles all present and future claims relating to the death of Officer Guerrero; providing a limitation on fees and costs; providing an effective date.

WHEREAS, on May 1, 2008, Victor Guerrero, a veteran of the United States Marine Corps and a decorated, 20-year veteran of the City of Tampa Police Department, was riding his motorcycle to visit his mother on his day off from work, and

WHEREAS, Officer Guerrero was traveling southbound on U.S. 41, about 1 mile north of S.R. 52, which is a straightaway with no obstructions, and

WHEREAS, at the same time, Pasco County employee Daniel Whipple was driving a Pasco County vehicle northbound on U.S. 41, and

WHEREAS, as Officer Guerrero approached Mr. Whipple, Mr. Whipple made a left hand turn directly into the path of Officer Guerrero, and

WHEREAS, an accident reconstruction expert estimated that Officer Guerrero was about 100 feet away when Mr. Whipple, who claimed that he never saw Officer Guerrero, made the turn, and

WHEREAS, Officer Guerrero had no time to brake or swerve and struck the side of Mr. Whipple's truck and was ejected from

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the motorcycle, and

WHEREAS, Officer Guerrero was airlifted to St. Joseph's Hospital in Tampa, where he was pronounced dead, and

WHEREAS, the Pasco County Driver Safety Review Board investigated the accident and determined that Mr. Whipple was at fault, citing carelessness, and

WHEREAS, after the accident, Officer Guerrero's widow, Lara Guerrero, was unable to return to her job at Home Depot due to severe emotional distress, and was prescribed anti-depressant medication to assist her in dealing with her loss, and

WHEREAS, Officer Guerrero left behind three sons, Michael, David, and Kevin, who were 21, 19, and 15, respectively, at the time of the accident, and

WHEREAS, Lara Guerrero, as personal representative of the Estate of Victor Guerrero, filed a law suit against Pasco County in the Circuit Court of the Sixth Judicial Circuit in Pasco County, and

WHEREAS, on February 10, 2012, the jury in the case returned a verdict for \$7,845,127.30 in favor of the Estate of Victor Guerrero, which was reduced 10 percent for comparative negligence for Officer Guerrero's failure to wear a helmet, leaving a total verdict of \$7,060,614.57, plus interest at the statutory rate of 4.75 percent per annum, and

WHEREAS, the amount awarded by the jury includes economic damages of \$1,095,127.30, which were stipulated to by the parties and include damages for future loss of income and funeral expenses, damages representing loss of support for Lara Guerrero, and damages representing loss of support for Kevin Guerrero, and

Page 2 of 4

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WHEREAS, the amount awarded by the jury also includes \$1.5 million for Lara Guerrero for loss of her husband's companionship and protection and for her pain and suffering, and \$1.75 million for each of Officer Guerrero's sons for loss of parental companionship, instruction, and guidance and for their pain and suffering, and

WHEREAS, Pasco County has paid \$186,776.38 of the final judgment, and

WHEREAS, on March 6, 2015, Pasco County and the Guerrero family reached a settlement in this matter for the payment of 1.5 million in addition to the amount previously paid, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Pasco County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant payable to Lara Guerrero, as personal representative of the Estate of Victor Guerrero in the amount of \$1,500,000.00, which shall be apportioned as follows: to the Estate of Victor Guerrero in the amount of \$90,000.00, to Lara Guerrero in the amount of \$405,000.00, to Kevin Guerrero in the amount of \$345,000.00, to Michael Guerrero in the amount of \$330,000.00, and to David Guerrero in the amount of \$330,000.00, as compensation for injuries and damages sustained as a result of the death of Victor Guerrero.

Section 3. The amount paid previously by Pasco County and

590-02145-15

201536c1

the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the death of Victor Guerrero. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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)

4/20

Meeting Date

36

Bill Number (if applicable)

Topic Guerrero claim bill

Amendment Barcode (if applicable)

Name Jason Unger

Job Title _____

Address 301 South Bronough St

Phone 577-9090

Street

TLH

FL

32301

Email junger@gray-robinson.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Meadowbrook

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/20/15

Meeting Date

CS/SB 36

Bill Number (if applicable)

Topic Claims/Guerrero

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title _____

Address 104 W. Jefferson Street

Street

Phone (850) 224-3427

Tallahassee, FL 32301

City

State

Zip

Email kelly@rlbackpa.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Estate of Victor Guerrero

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

April 20, 2015

The Honorable Anitere Flores
Chair
Fiscal Policy

Dear Chair Flores:

I am a member of the Rules committee and I also have a bill in Rules today at 1:00 PM.

I respectfully request that my Legislative Assistant, Patricia Gosney, be permitted to present CS SB 36, Relief of the Estate of Victor Guerreero, today in Fiscal Policy.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Miguel Diaz de la Portilla".

Miguel Diaz de la Portilla
State Senator, District 40

REPLY TO:

- ☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- ☐ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Capitol Building

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

DATE	COMM	ACTION
12/03/14	SM	Fav/2 amendments
02/17/15	JU	Fav/CS
03/23/15	CA	Favorable
04/17/15	FP	Favorable

December 3, 2014

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

Re: **CS/SB 42** – Judiciary Committee and Senator Oscar Braynon, II
Relief of Javier Soria

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$100,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN JAVIER SORIA, ET. AL., AND PALM BEACH COUNTY, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE NEGLIGENT OPERATION OF A COUNTY TRUCK THAT CAUSED SERIOUS BODILY INJURY TO JAVIER SORIA.

FINDINGS OF FACT:

On April 17, 2007, Javier Soria was traveling on his motorcycle northbound on SR 807 (near the 200 block of S. Congress Avenue) in Delray Beach, Palm Beach County, Florida. According to the police report prepared by the Delray Beach Police Department and an eye witness, Mr. Soria was traveling approximately 35-40 miles per hour in a 45 mph posted speed zone in the center of three lanes of northbound traffic. The eye witness was driving an automobile in the right lane of northbound traffic, alongside Mr. Soria, prior to her attempt to make a right turn into the Palm Beach County Complex at or near 225 S. Congress Avenue.

Mr. Juan Sepeda Casas, an employee of Palm Beach County, was driving a Ford dump truck with a utility trailer in tow that is owned by Palm Beach County. Mr. Casas exited the Palm Beach County complex, at or near 225 S. Congress Avenue,

from the east, which is controlled by a stop sign. Mr. Casas traveled westbound crossing the northbound lanes, violating Mr. Soria's right-of-way and causing Mr. Soria to strike the door of the county dump truck. Mr. Casas continued forward, dragging Mr. Soria who was still on his motorcycle underneath the dump truck, approximately 12 feet. The initial impact occurred in the left lane of northbound traffic as Mr. Soria attempted to avoid the collision.

The accident occurred at approximately 8:06 a.m., on a clear, dry day. Mr. Casas was charged with the accident for failure to yield the right-of-way. Mr. Soria was not cited in the police report as a contributing cause of the accident.

As a result of the collision, Mr. Soria suffered serious injuries, despite wearing a helmet. These injuries include: head trauma including a subarachnoid hemorrhage; right elbow fracture which required irrigation debridement with surgical placement of a temporary external fixator across the elbow joint, subsequent removal of the external fixator, and open reduction internal ulnar fixation; right arm swelling and deep lacerations requiring wound debridement; multiple abrasions to his face, hands, legs, and arms; upper back pain; aggravated disc herniation in lower back at L5-S1,¹ left hip pain; right wrist pain; right shoulder pain; right knee medial meniscus tear and articular cartilage damage; and cognitive impairments.

Delray Beach Fire-Rescue responded and provided emergency treatment to Mr. Soria at the scene, then transported him to Delray Medical Center, where he was admitted to trauma ICU. Mr. Soria remained in Delray Medical Center from April 17, until April 26, 2007. During that time he received a series of diagnostic and surgical procedures, including CT scans of his brain and other body parts, additional radiological imaging, and multiple operations to address the right elbow fracture. Medical expenses through discharge totaled \$171,900.

Subsequent medical expenses through November 13, 2009, totaled \$28,354. These expenses primarily arise from orthopedic medical care relating to post-operative treatment on the right elbow; physical therapy; pain in the lower lumbar, thoracic spine, right elbow, right shoulder, right arm, right wrist, right knee, and right leg; and neurological treatment for

the after-effects of the accident and concussion, including mental health counseling for nightmares, flashbacks, hypervigilance, depression, anxiety, insomnia, headaches, panic attacks, ringing in ears, difficulty coping with physical limitations, irritability, and memory loss.

Overall, counsel for Mr. Soria documented medical expenses in Florida totaling \$200,254. According to counsel for Mr. Soria, these medical expenses have been satisfied, and no further medical bills have been incurred in Florida.

Three of Mr. Soria's medical doctors assessed his injury-related disabilities as between 30% - 39% whole person impairment. The physician retained by Palm Beach County assessed Mr. Soria's physical disabilities at 39% whole person impairment, which is consistent with the assessments of the claimant's orthopedist. Mr. Soria's neurologist assessed Mr. Soria's neurological impairment (headaches, lumbar radiculopathy, insomnia, and anxiety) based on the combined values chart of the American Medical Association Guides to the Evaluation of Permanent Impairment as a 31 percent impairment to the body as a direct result of this accident.

Future medical care, with which the County's orthopedic physician concurs, is likely to include, among other things: surgery to address carpal tunnel syndrome in the right wrist, fusion or total elbow replacement in the right elbow, surgery on the lumbar spine, total knee replacement on the right knee, knee and shoulder arthroscopy, physical therapy, and medications for each of these joints.

A professional disability management specialist prepared a Life Care Plan based on a review of reports of the orthopedic and neurological medical specialists who had treated Mr. Soria, and concluded future medical expenses to be approximately \$641,905.

The disability management specialist also assessed Mr. Soria in order to perform a Vocational / Earning Capacity Assessment. She determined that his earning capacity had diminished by more than 50 percent as a result of his injuries and projected a loss of earning capacity of between \$474,104 and \$478,503 to age 67.

Mr. Soria is currently living in Argentina, his homeland, and receives minimal governmental medical care in Argentina. He is in the process of applying for more extensive state benefits due to his disability arising from this collision. However, according to counsel's representation, there are no assurances that Mr. Soria will obtain these additional benefits and he has not been provided with a definitive time frame on whether he will qualify for the supplemental medical coverage.

At the time of the accident, Mr. Soria was 36 years of age. Prior to the accident, Mr. Soria was employed in various manual-labor, physically demanding jobs, primarily as a construction worker. He was physically fit, having achieved the status of a master in taekwondo, enjoyed spending time with his children, and teaching them and others the art of taekwondo. Subsequent to the accident, he has not been able to resume these physical activities due to the injuries he suffered from the collision. Additionally, Mr. Soria is permanently cognitively impaired as a result of the accident.

Mr. Soria has three children. At the time of the accident, his eldest daughter was 17 years of age, less than one month from turning 18; his son was 13; and his youngest daughter was 7 years of age.

The third amended complaint, filed on March 23, 2009, alleged that Palm Beach County was vicariously liable for the negligence of its employee, Mr. Casas, in the operation of the county's truck; that Palm Beach County negligently retained Mr. Casas, and that Palm Beach County negligently supervised Mr. Casas. Mr. Casas had been involved in a series of prior motor vehicle accidents with county vehicles while employed with Palm Beach County as follows:

- August 28, 1989 – Palm Beach County determined the accident to be avoidable and serious. No specific facts of the accident were available.
- May 17, 1996 – Palm Beach County determined the accident to be avoidable. Mr. Casas had not thoroughly secured the trailer hitch onto the hitch ball. The trailer separated as equipment was loaded and the trailer struck the tailgate of the pick-up truck.
- July 7, 1997 – Palm Beach County determined the accident to be avoidable and a minor violation. The county truck Mr. Casas was driving struck a fixed object. No further details of the incident were provided.

- April 3, 2002 – Palm Beach County determined the accident to be avoidable and a minor violation. Mr. Casas was operating a loader, placing shellrock along the sidewalk and water's edge. He backed into an above ground hose bib.
- May 8, 2002 – Palm Beach County determined the accident to be avoidable. Mr. Casas struck a park entrance sign while backing a dump truck into a plant bed to dump mulch.

The complaint further alleged that in addition to the monetary damages suffered by Mr. Soria, as dependent children of Mr. Soria, the three children were deprived of the services, support, comfort, society, companionship and attention of their father as a result of the negligence of Mr. Casas.

Prior to the case proceeding to trial the parties agreed to settle the matter. Staff of the Palm Beach County Board of County Commissioners recommended that the board approve the settlement agreement, inclusive of attorney fees and costs, in the total amount of \$300,000. Justification to support this recommendation noted that the County's medical experts agreed that Mr. Soria sustained multiple orthopedic injuries and the County's neurologist diagnosed a permanent nerve injury to Mr. Soria's right brachial plexus, which innervates his right upper extremity. Furthermore, the justification noted, "Based upon the totality of Mr. Soria's injuries, medical bills, potential future medical care, pain and suffering, as well as the consortium claims of his three (3) children, exposure from a jury verdict could exceed \$1,000,000." The justification also acknowledged that settlement would save the County a significant amount of money in terms of litigation costs, and the County would only be required to pay its sovereign immunity limit of \$200,000 absent the Florida Legislature passing a claim bill in favor of the Plaintiffs for the additional sum of \$101,800. On August 17, 2010, the Palm Beach County Board of County Commissioners approved the settlement agreement in the amount of \$300,000.

In the Settlement Agreement and Release, Plaintiffs Javier Soria, Pamela Soria (eldest daughter who had reached majority at the time of the settlement agreement), Lucas Soria, a minor, by and through his father and next friend, and Agustina Soria, a minor, by and through her father and next

friend, and Defendant Palm Beach County agreed to entry of a Consent Final Judgment in the amount of \$300,000.

The settlement agreement indicated that Palm Beach County had already paid Javier Soria the sum of \$1,800 in full and final satisfaction of the property damage claim and that Palm Beach County would pay a total sum of \$198,200, subject to satisfaction of any liens, under the settlement agreement as follows:

- \$100,000 to Javier Soria
- \$ 39,280 to Pamela Soria, adult daughter
- \$ 29,460 to Lucas Soria, minor son
- \$ 29,460 to Agustina Soria, minor daughter.

Prior to distributing the \$198,200, Palm Beach County would pay the outstanding liens of the Palm Beach County Health Care District (lien amount of \$11,015.12, resolved for \$5,948.11) and an attorney lien (\$3,000) asserted by the plaintiff's prior attorney. The County would allocate satisfaction of the liens on a pro-rata basis among the plaintiffs based on the above allocation.

Finally, the settlement agreement provided that in order for the plaintiffs to be entitled to receive the remaining sum of \$101,800, the plaintiffs must obtain a claim bill from the Florida Legislature. Palm Beach County agreed not to oppose a claim bill seeking \$101,800.

Accordingly, Palm Beach County does not oppose the claim bill in an amount up to \$101,800 and has a self-insured retention of \$500,000 on this claim in the Casualty and Property Self-Insurance Fund from which the claim bill, if enacted, will be paid.

Recommended Amendments

As previously noted, the settlement agreement for \$300,000 was in addition to the \$1,800 property claim previously paid by Palm Beach County.² Accordingly, the settlement agreement provided for \$101,800 to be paid through a claim bill. Senate Bill 42 as filed, provides for Palm Beach County to pay \$100,000. Claimant's counsel has indicated a willingness to stipulate to the amount in the claim bill as filed.

Under the settlement agreement, all four plaintiffs are defined as the "First Party". The settlement agreement provides, "In

order for First Party to be entitled to receive the remaining sum of \$101,800, First Party shall be required to ... obtain a claim bill from the Florida Legislature. Further, the Consent Final Judgment refers to plaintiffs (in the plural) when providing for the claim bill in the amount of \$101,800. One of the whereas clauses in Senate Bill 42 refers to the right of action for loss of consortium for Mr. Soria's three children. Another whereas clause refers to the settlement agreement reached between Mr. Soria only and Palm Beach County. Senate Bill 42 also refers to payment under the claim bill to Mr. Soria only. According to counsel for all four plaintiffs, the consortium claims of the three children were fully satisfied in the settlement agreement prior to the claim bill and that the compensation under the claim bill is to be directed to Mr. Soria only. In order to eliminate any ambiguity between the settlement agreement, consent final order, and the claim bill, the whereas clauses in the claim bill should be amended to reflect the fact that the three children were a party to the settlement agreement and that their claims have been fully compensated by Palm Beach County from the \$200,000 paid under the waiver of sovereign immunity limit.

The first whereas clause in SB 42 indicates that Mr. Soria was traveling on SR 807 in West Palm Beach. The accident occurred in Delray Beach and the claim bill should be amended to correct this fact. Other technical corrections are necessary to conform the facts in the whereas clauses to the evidence presented to the Special Master.

CONCLUSIONS OF LAW:

Section 316.123, F.S., requires a driver of a vehicle approaching a stop intersection indicated by a stop sign to stop before entering the intersection. After stopping, the driver is to yield the right-of-way to any vehicle which ... is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. Mr. Casas had a statutory duty to yield the right-of-way to Mr. Soria's vehicle, which he negligently failed to do. This breach was the direct cause of the collision between the two vehicles and the serious bodily injuries suffered by Mr. Soria as a result of the collision. Furthermore, the serious bodily injuries suffered by Mr. Soria as a result of the collision, support the claim for loss of consortium by Mr. Soria's three children pursuant to s. 768.0415, F.S.

Under the doctrine of respondeat superior, Palm Beach County is vicariously liable for the negligence of its agents and employees, when such acts are within the course and scope of the agency or employment. See Mallory v. O'Neil, 69 So.2d 313 (Fla.1954), and s. 768.28, F.S. At the time of the accident, Mr. Casas was an employee of Palm Beach County who was acting within the course and scope of his employment and operating a county vehicle which caused the collision and resulting injuries. Accordingly, the negligence of Mr. Casas is attributable to Palm Beach County.

This Special Master is not persuaded that the evidence supports the remaining two counts, relating to Palm Beach County negligently retaining and supervising Mr. Casas. Nevertheless, the evidence does support a claim upon which relief may be granted as discussed above and the parties have reasonably and thoughtfully executed a settlement agreement to resolve the matter.

Palm Beach County, as respondeat superior, is 100 percent responsible for the damages suffered by Mr. Soria and his three children. The sum of \$300,000 in the settlement agreement, which was agreed to prior to lengthy litigation, is a reasonable and responsible resolution for all parties given the medical expenses incurred prior to settlement and the probable medical expenses and other financial exposure the county might face upon an adverse trial verdict and judgment.

As provided in s. 768.28, F.S. (2010), when the settlement agreement was executed, sovereign immunity shields Palm Beach County against tort liability in excess of \$200,000 per occurrence, absent Legislative enactment of a claim bill. Unless a claim bill is enacted, Mr. Soria will not be able to realize the full benefit of the settlement agreement.

ATTORNEYS FEES:

Section 768.28(8), F.S., states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement. Claimant's counsel, Diana Santa Maria, Esq., has submitted an affidavit that her fees, as well as the lobbying fees, costs, and other similar expenses relating to this claim will not exceed 25 percent of the total amount awarded under the claim bill.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 42 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Sandra R. Stovall
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary on February 17, 2015:

The committee substitute corrects several factual errors in the “whereas clauses” of the original bill based on information presented to the special master. Specifically, the committee substitute:

- Corrects the location of the accident, which occurred in Delray Beach, not West Palm Beach.
- Corrects the claimant’s disability impairment ratings.
- Clarifies that the consortium claims of the claimant’s three children have been fully satisfied and that the claim bill is for the relief of Javier Soria only.

The committee substitute also increases the amount of the appropriation in the underlying claim bill by \$1,800 for a total appropriation of \$101,800. According to the special master, the increased amount reflects the full amount of the settlement between the claimant and Palm Beach County.

¹ Mr. Soria had a pre-existing L5-S1 injury due to a motor vehicle accident (not a motorcycle) that occurred approximately one year earlier. According to counsel, Mr. Soria had sought chiropractic care and was doing well at the time of this accident.

² All payments made by Palm Beach County, prior to a Legislatively enacted claim bill, totaled \$200,000, in accordance with the waiver of sovereign immunity limit per occurrence.

By the Committee on Judiciary; and Senator Braynon

590-01683-15

201542c1

A bill to be entitled

An act for the relief of Javier Soria by Palm Beach County; providing for an appropriation to compensate him for injuries sustained as a result of negligence by an employee of Palm Beach County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on April 17, 2007, 36-year-old Javier Soria was lawfully traveling on his motorcycle northbound in the center lane on SR 807 in Delray Beach in the 200 block of South Congress Avenue, and

WHEREAS, at the same time, an employee of Palm Beach County, Juan Sepeda Casas, was driving a Palm Beach County dump truck with a utility trailer in tow, and

WHEREAS, as Mr. Casas exited the Palm Beach County maintenance complex, he failed to stop at a stop sign, pulling out into the path of Mr. Soria and causing a violent collision between the two vehicles, and

WHEREAS, the Palm Beach County truck continued forward, dragging Mr. Soria and the motorcycle under the dump truck for approximately 12 feet, and

WHEREAS, Mr. Casas was charged in the accident by the investigating law enforcement agency, the Delray Beach Police Department, and

WHEREAS, as a result of the collision, Mr. Soria sustained severe head trauma, including a subarachnoid hemorrhage, a right-elbow fracture, deep lacerations requiring wound debridement, multiple abrasions to his face, hands, legs, and

Page 1 of 5

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arms, upper-back pain, low-back disc herniation, left-hip pain, right-wrist pain, right-shoulder pain, and a right-knee linear tear that required bracing, physical therapy, and surgery, and

WHEREAS, Mr. Soria has undergone numerous surgical procedures, including irrigation debridement with placement of a temporary external fixator across the elbow joint, subsequent removal of the external fixator, and open reduction internal fixation on ulnar fractures, and

WHEREAS, Mr. Soria needs additional surgery to his right elbow, including elbow fusion or total elbow replacement; surgeries to his right wrist and shoulder; and arthroscopic surgery to his right knee; and is a candidate for total knee replacement in the future, and

WHEREAS, Mr. Soria suffers from multiple neurological injuries that cause chronic headaches, low-back pain, vision problems, sleep disturbance, depression, memory loss, anxiety, dizziness, tiredness, buzzing in the ears, numbness, tingling, and knee pain, which limit his routine daily activities, and

WHEREAS, according to American Medical Association guidelines, Mr. Soria's treating neurologist, Dr. Waden Emery, has assigned him a 31 percent impairment rating with 5 percent for headaches, 14 percent for lumbar radiculopathy, 5 percent for insomnia, and 10 percent for anxiety, and

WHEREAS, Mr. Soria's treating orthopedist, Dr. Fernando Moya, has assigned him a 39 percent whole person orthopedic disability impairment rating, which includes 36 percent for injuries to the right elbow, 6 percent for injuries to the right knee, 6 percent for injuries to the lumbar spine, and 5 percent for injuries to the right wrist, and

Page 2 of 5

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WHEREAS, Mr. Soria's medical expenses have totaled approximately \$200,254, and experts in life care planning and economics have determined that his future medical expenses are approximately \$640,000, and past and future lost earnings total approximately \$478,000, with total economic damages exceeding \$1.3 million, and

WHEREAS, Mr. Soria's injuries resulted in permanent cognitive impairment, with the neuropsychological assessment of Dr. Robert Brick concluding that Mr. Soria suffers from post-traumatic stress disorder, memory loss, poor management and organizational skills, mood swings, daily headaches, constant ringing in his ears, insomnia, panic attacks, and amnesia that require cognitive therapy, and

WHEREAS, Mr. Soria continues to suffer from pain and instability in his head, neck, back, body, and limbs and, in addition, continues to suffer from severe depression brought about by his pain, suffering, disability, and limitations, all of which are a direct result of the accident, and

WHEREAS, before the accident, Mr. Soria was in excellent physical condition and had dreams of one day opening his own martial arts studio and becoming a certified martial arts instructor, and

WHEREAS, Mr. Soria's three children have a corresponding right of action and claim given that Mr. Soria is now permanently disabled with physical limitations and injuries and cognitive restrictions and depression that limit his ability to provide the companionship and support that he was once capable of providing his family, and

WHEREAS, a settlement was reached between Mr. Soria, his

590-01683-15

201542c1

three children, and Palm Beach County in the amount of \$300,000, which is in addition to an \$1,800 property damage claim previously paid by Palm Beach County related to the accident, and

WHEREAS, Palm Beach County paid the claimants a total of \$200,000 under the statutory limits of liability per occurrence set forth in s. 768.28, Florida Statutes, which fully satisfied the loss of consortium claims of each of the three children, and

WHEREAS, Palm Beach County has agreed to and pledged its support for a claim bill in the amount of \$101,800, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Palm Beach County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of \$101,800, payable to Javier Soria as compensation for injuries and damages sustained.

Section 3. The amount paid by Palm Beach County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims against Palm Beach County arising out of the factual situation described in this act which resulted in the injuries to Javier Soria. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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201542c1

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



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
12/23/14	SM	Favorable
3/31/15	JU	Favorable
04/14/15	CA	Favorable
04/17/15	FP	Favorable

December 23, 2014

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

Re: **SB 44** – Senator Grimsley
HB 3505 – Representative Steube
Relief of Estate of Lazaro Rodriguez by the City of Hialeah

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$485,000 BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF HIALEAH FOR THE DEATH OF LAZARO RODRIGUEZ DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS POLICE OFFICERS.

FINDINGS OF FACT:

At about 10:15 p.m. on July 30, 2000, 29 year old Lazaro Rodriguez was on his way home from work when his Ford Explorer was struck on the left front side by a City of Hialeah police cruiser driven by Officer Jorge Rodriguez. Lazaro Rodriguez was driving west on East 32nd Street and Officer Rodriguez was driving north on Palm Avenue when the accident occurred in the intersection of the two roads. The collision caused Lazaro Rodriguez' vehicle to run into the curb, where it tipped and struck a large concrete pole on the roadside. The impact with the pole crushed the roof above the driver, but the vehicle righted itself and continued moving before striking a third vehicle. Lazaro Rodriguez died at the scene as a result of blunt trauma injuries. He was not wearing his seat belt, but the use of a seat belt would not have prevented his death.

Just prior to the accident, Officer Rodriguez and another police officer had concluded working a domestic violence incident. The other officer was dispatched to a separate incident and Officer Rodriguez chose to respond as well. Both officers proceeded north on Palm Avenue with lights and sirens activated. The traffic light was red as they approached the intersection with East 32nd Street. The other officer, who was in the right northbound lane and slightly ahead of Officer Rodriguez, stopped at the light and made a right turn onto East 32nd Street. Officer Rodriguez, who was in the left northbound lane, slowed at the intersection. Perceiving that his path was clear, he accelerated straight through the light. His police car struck Lazaro Rodriguez' vehicle in the westbound through lane of East 32d Street as it moved from Officer Rodriguez' right. There is no indication that either vehicle took evasive maneuvers, and Officer Rodriguez stated that he did not see Lazaro Rodriguez' vehicle until immediately before the impact.

Two vehicles were stopped in the left turn lane of eastbound 32nd Avenue East and may have obscured each driver's view of the other vehicle. In addition, there was a concrete sign, foliage, and a chain link fence on the corner that may also have obscured the drivers' views.

Officer Rodriguez was traveling at 20-24 miles per hour when the collision occurred, having accelerated after slowing down to ascertain whether the intersection was clear. Lazaro Rodriguez was traveling 35-45 miles per hour at the time of impact, equal to or in excess of the 35 mile per hour speed limit on 32nd Avenue East.

Section 316.072(5)(b)2., F.S., authorizes the operator of an emergency vehicle to proceed past a red stop signal when responding to an emergency call. However, the driver may do so only after slowing down as may be necessary for safe operation and is not relieved from the duty to drive with due regard for the safety of all persons. A City of Hialeah Police Department administrative order imposes an additional requirement that the driver of a police car come to a complete stop before proceeding through an intersection against a stop signal. Officer Rodriguez slowed down, but did not stop, before proceeding into the intersection. He was issued traffic citations for violation of s. 316.075, F.S.

(Running a Red Light) and s. 316.1925 (Careless Driving), but the disposition of the traffic violations is not known.

With regard to Lazaro Rodriguez' actions, s. 316.126(1), F.S., provides: "Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, or visible signals by the use of displayed blue or red lights, yield the right-of-way to the emergency vehicle and shall immediately proceed to a position parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by a law enforcement officer." Lazaro Rodriguez did not stop, and there was no evidence that he slowed down or swerved prior to the collision.

Tests of blood samples taken from Officer Rodriguez and from Lazaro Rodriguez' body detected no alcohol or drugs in either driver's system.

Lazaro Rodriguez was a native of Cuba who entered the United States in March 1995 by way of an airline flight from Spain. At the time of his entry, immigration officials detected that he presented another man's Spanish passport as his own. He was detained and his legitimate Cuban passport was found on his person. He was paroled (allowed to remain in the United States) pending an exclusion hearing before an immigration judge. On April 22, 1997, Lazaro Rodriguez was ordered excluded and deported from the United States. However, he was allowed to remain in the United States while he pursued legal avenues, including requesting asylum due to persecution by the Cuban government and requesting waiver of inadmissibility due to extreme hardship. His extreme hardship waiver request was denied months before his death because his U.S. citizen daughter (Kathryn) was not a qualifying relative for purposes of waiver and he was not yet married to Beatrice Luquez, who is a permanent resident alien. Subsequent to that denial, he applied for adjustment of status as a NACARA applicant. Also, he and Beatrice Luquez were married in April 2000 and she petitioned for him to receive an immigrant visa as the spouse of a permanent resident alien. These petitions were pending

at the time of Lazaro Rodriguez' death. Lazaro Rodriguez had no criminal record, and he worked and paid federal income taxes throughout his five-year stay in the United States.

Lazaro Rodriguez is survived by his wife, Beatriz Luquez, with whom he lived for five years before getting married shortly before his death. He is also survived by his 22 year old son, Lazaro, Jr., and his 17 year old daughter, Katherine. Katherine will turn 18 on March 5, 2015. Lazaro is the child of Lazaro Rodriguez and his first wife. Katherine is the child of Lazaro Rodriguez and Beatriz Luquez.

In 2001, the claimants filed a wrongful death claim against the City of Hialeah and Hialeah, Inc. Hialeah, Inc. was owner of the land at the corner of the intersection and was alleged to be responsible for the obscured view.¹ The City settled in 2011, after nearly ten years of pre-trial discovery and motions, for \$685,000 plus \$25,000 in costs. The City has paid the statutory sovereign immunity limit of \$200,000 and the costs, and has budgeted the amount of each additional payment from July 2012 through July 2016.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the City is liable in negligence for damages suffered by the Claimants and, if so, whether the amount of the claim is reasonable. This report is based on the evidence presented to the Special Master prior to and during the hearing.

Officer Rodriguez had a duty to exercise reasonable care in operating his police cruiser. Although he was authorized by s. 316.072(5)(b)2., F.S., to proceed through the red stop signal because he was responding to an emergency call, he was permitted to do so "only after slowing down as may be necessary for safe operation." His department had imposed a more restrictive requirement to come to a complete stop before proceeding through a stop signal. Although he slowed down and was driving under the speed limit, the fact that his vehicle collided with Lazaro Rodriguez' vehicle indicates that he did not proceed appropriately under the circumstances. Although Lazaro Rodriguez may have been speeding as much as ten miles per hour over the speed limit, his speed

¹ Hialeah, Inc., which owns and operates Hialeah Park Racing & Casino, settled with claimants for \$60,000.

was not so excessive as to completely relieve Officer Rodriguez of responsibility. Therefore, the qualified immunity provided by section 316.072(5)(b)2., F.S., is inapplicable.

Officer Rodriguez was acting within the course and scope of his employment at the time of the crash. Therefore, his negligence is attributable to the City of Hialeah.

Lazaro Rodriguez also had a duty to exercise reasonable care in operating his motor vehicle. Although there is insufficient evidence to conclude that he was speeding, s. 316.126(1), F.S., required him to stop his vehicle clear of the intersection until the Officer Rodriguez' police car had passed. It is possible that Lazaro Rodriguez saw the first police car turning from Palm Avenue and did not perceive that there was a second police car continuing through the intersection. Nevertheless, he was negligent in failing to stop until Officer Rodriguez' vehicle had cleared the intersection.

After considering all of the factors in this case, I conclude that the amount of this claims bill is appropriate.

ATTORNEYS FEES:

From the \$225,000 already paid by the City (\$200,000 of the settlement amount plus \$25,000 in costs), trial and appellate counsel received \$67,500 in attorney fees and the client was charged \$44,243.29 for costs and expenses. A total of \$87,908.04 has been paid by claimants for costs and expenses.

Information provided by claimants' counsel indicates that the claimants have entered into attorney fee agreements for payment of a total of 37%, plus costs, for trial counsel (25%), appellate counsel (5%), and claims bill counsel (7%). However, the bill provides that the total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to the claim may not exceed 25 percent of the total amount awarded under the act. The Florida Supreme Court has held that the Legislature has the authority to limit attorney fees in a claim bill even if the attorney has contracted for a higher amount. *Gamble v. Wells*, 450 So.2d 850 (Fla. 1984).

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 44 (2015) be reported FAVORABLY.

Respectfully submitted,

Scott E. Clodfelter
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

By Senator Grimsley

21-00013-15

201544__

A bill to be entitled

An act for the relief of the Estate of Lazaro Rodriguez and his legal survivors by the City of Hialeah; providing an appropriation to compensate the Estate and Lazaro Rodriguez's legal survivors for injuries sustained as a result of the negligence of the City of Hialeah; providing a limitation on the payment of fees and costs; providing that the appropriation settles all present and future claims related to the wrongful death of Lazaro Rodriguez; providing an effective date.

WHEREAS, on July 30, 2000, at approximately 10:14 p.m., 29-year-old Lazaro Rodriguez was lawfully and properly operating his 1997 Ford Explorer in the westbound lanes of East 32nd Street in the City of Hialeah, and

WHEREAS, at the same time, Officer Jorge Rodriguez, a City of Hialeah road patrolman, was on duty and overheard a radio summons of another unit and, despite the fact that he was not dispatched to the call, decided to respond, and

WHEREAS, in responding to the call, Officer Rodriguez was traveling northbound on Palm Avenue in the City of Hialeah while Lazaro Rodriguez was traveling westbound on East 32nd Street, and

WHEREAS, Officer Rodriguez ran the red light at the intersection of Palm Avenue and East 32nd Street, crashing his police cruiser into the driver side of the vehicle driven by Lazaro Rodriguez, and

WHEREAS, the severe impact of the collision forced Lazaro

Page 1 of 4

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21-00013-15

201544__

Rodriguez's vehicle into a concrete utility pole at the northwest corner of the intersection and then into another vehicle, and

WHEREAS, the force of the crash was so great that it caused massive and fatal blunt trauma injuries to Lazaro Rodriguez, and he was pronounced dead at the scene, and

WHEREAS, at the conclusion of the traffic homicide investigation concerning the death of Lazaro Rodriguez, the City of Hialeah Police Department found that Officer Rodriguez had violated Florida traffic statutes by unlawfully running the red light at the intersection of Palm Avenue and East 32nd Street and operating his motor vehicle in a careless manner, and that these violations were the legal cause of the traffic collision and the death of Lazaro Rodriguez, and

WHEREAS, Lazaro Rodriguez left a widow, Beatriz Luquez, and children, Lazaro, Jr., and Katherine, all of whom were dependent upon him financially and emotionally and loved him dearly, and

WHEREAS, in 2001, Ms. Luquez, individually and as the personal representative of the Estate of Lazaro Rodriguez, filed a wrongful death lawsuit in the 11th Judicial Circuit Court in and for Miami-Dade County, styled *Beatriz Luquez, individually and as Personal Representative of the Estate of Lazaro Rodriguez v. City of Hialeah*, Case No. 01-3691 CA 08, and

WHEREAS, the parties to the lawsuit entered into a formal settlement agreement following mediation and a unanimous vote by the Hialeah City Council, and

WHEREAS, the terms of the settlement agreement required the claimants to dismiss their case with prejudice and provide a full release of liability to the city and its employees, which

Page 2 of 4

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

21-00013-15 201544__

the claimants have done, in exchange for payments by the City of Hialeah totaling \$685,000, plus \$25,000 for costs, to be paid over 5 years if the Legislature approves the unpaid amounts, and

WHEREAS, pursuant to the settlement agreement, the City of Hialeah has paid \$200,000 to the claimants, plus \$25,000 for costs, leaving an unpaid balance of \$485,000, and

WHEREAS, as part of the terms of the settlement agreement and general release, the City of Hialeah has agreed to support the passage of a claim bill and to pay the remaining balance of \$485,000 in installments, with the last payment to be made on July 1, 2016, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Hialeah is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw warrants totaling the amount of \$485,000, payable to Beatriz Luquez, individually and as personal representative of the Estate of Lazaro Rodriguez, and to Lazaro Rodriguez, Jr., and Katherine Rodriguez, as compensation for injuries and damages sustained by the claimants as a result of the death of Lazaro Rodriguez. The amount of \$385,000 shall be paid on July 1, 2015, and \$100,000 shall be paid on July 1, 2016.

Section 3. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

21-00013-15 201544__

Section 4. The amounts awarded pursuant to the waiver of sovereign immunity under s. 768.28, Florida Statutes, and under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the death of Lazaro Rodriguez.

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



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 15, 2015

I respectfully request that **Senate Bill #44**, relating to Estate of Lazaro Rodriguez, be placed on the:

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

A handwritten signature in cursive script, reading "Denise Grimsley", is written over a horizontal line.

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 16, 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 Monday, Senate Bill 44, relating to the Estate of Lazaro Rodriguez. I've asked a member of my staff to present this bill, since I will be presenting three (3) bills in the Committee on Rules.

I am respectfully requesting permission for Anne Bell to present SB 44 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

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
12/19/14	SM	Unfavorable
4/7/15	JU	Favorable
04/14/15	CA	Favorable
04/17/15	FP	Favorable

December 19, 2014

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

Re: **SB 64** – Senator John Legg
Relief of Monica Cantillo Acosta and Luis Alberto Acosta

SPECIAL MASTER'S FINAL REPORT

THIS UNOPPOSED, NEGLIGENCE-BASED EQUITABLE CLAIM FOR \$940,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR NON-ECONOMIC DAMAGES IS BROUGHT BY THE TWO CHILDREN OF A PASSENGER WHO FELL IN A BUS AND SUFFERED A FATAL HEAD INJURY AFTER THE DRIVER STOPPED SUDDENLY TO AVOID A COLLISION.

CURRENT STATUS:

On December 21, 2010, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 60 (2011). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported unfavorably. The same administrative law judge served as the Senate special master for the identical bill the following year, SB 50 (2012). The judge issued an effectively identical report and recommended that the bill be reported unfavorably. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Sandra Stovall. My responsibilities were to review the records relating to the claim

bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the parties, no changes have occurred since the hearing which might have altered the findings and recommendations in the report.

The prior claim bill, SB 50 (2012), is effectively identical to the 2015 bill filed for the 2015 Legislative Session, except the full amount to be paid by Miami-Dade County under the claim bill correctly reflects the amount agreed upon in the settlement agreement (\$940,000) rather than the entire amount of the judgment.

Respectfully submitted,

Sandra R. Stovall
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



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
12/2/11	SM	Unfavorable

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 50 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Monica Cantillo Acosta and Luis Alberto Acosta

SPECIAL MASTER'S FINAL REPORT

THIS UNOPPOSED, NEGLIGENCE-BASED EQUITABLE CLAIM FOR \$940,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR NON-ECONOMIC DAMAGES IS BROUGHT BY THE TWO CHILDREN OF A PASSENGER WHO FELL IN A BUS AND SUFFERED A FATAL HEAD INJURY AFTER THE DRIVER STOPPED SUDDENLY TO AVOID A COLLISION.

FINDINGS OF FACT:

On November 12, 2004, at 2:28 p.m., Nhora Acosta, 53, and her friend Zunilda Vargas boarded a bus operated by the Miami-Dade Transit Authority (MTA). The bus was eastbound on SW 8th Street in Miami. Ms. Acosta was returning to work after having lunched with Ms. Vargas. Neither woman was elderly, handicapped, infirm, or burdened with packages; both were able-bodied and apparently healthy.

The bus was crowded, and there were no seats for the women near the front. They began walking down the center aisle to the rear of the bus, where seats were available in an elevated seating area. To access this raised seating platform, a passenger must climb two steps, which are incorporated into the center aisle. As Ms. Acosta and Ms. Vargas headed to the back of the bus, the driver, Fernando Arrieta, pulled away

from the bus stop and proceeded to drive eastward on SW 8th Street, in the right lane.

About 11 seconds after the bus began moving, an SUV traveling in the left eastbound lane began pulling into the right lane, in front of the bus. This maneuver took nearly 4 seconds to complete. Immediately upon changing lanes, however, the SUV began breaking. Mr. Arrieta simultaneously stepped on the bus's breaks, to avoid a rear-end collision with the SUV.

The SUV needed to stop suddenly because a jaywalker was standing in the middle of the road, in between the two eastbound lanes. Two vehicles in the left eastbound lane had come to a complete stop. (The SUV had changed lanes, moving left-to-right in front of the bus, to pass these vehicles on the right.) It is reasonable to infer, and the undersigned finds, that the jaywalker had not anticipated that the SUV would cut in front of the bus when he began to cross the eastbound lanes on SW 8th Street. When the SUV suddenly appeared in the right lane, ahead of, and moving faster than, the bus, the jaywalker froze, calculating that he might not beat the SUV if it failed to slow down. Once the SUV began to break, however, the jaywalker dashed in front of it, safely reaching the sidewalk 2 seconds later. The SUV continued forward, and the two vehicles in the left lane, which had stopped, now took off. The bus came to a complete stop in the right lane, at the curb. Twenty seconds had elapsed from the time the bus pulled away after picking up Ms. Acosta and Ms. Vargas.

Inside the bus, a tragic accident had occurred. At about the moment the SUV began to change lanes, Ms. Acosta stepped up onto the rear seating platform. Ms. Vargas, who was right behind her, did the same about 2 seconds later. When the bus stopped to avoid running into the SUV, both Ms. Acosta and Ms. Vargas lost balance. Ms. Acosta tripped over Ms. Vargas's leg and fell off the elevated platform, striking her head on the lower center aisle. The injury proved to be fatal. Ms. Acosta died the next day in the hospital, having never regained consciousness.

The foregoing findings are based not only on the testimony presented, but also on the undersigned's independent review of the videos that the bus's onboard cameras recorded.

Based on a careful review of the videos, the following chronology of the material events has been created:

Hour	Minute	Second(s)	Event
2PM	28	44	Front doors are open
		46	Acosta steps onto bus
		47	Vargas boards
		48-53	Acosta pays fare; begins walking to back of crowded bus
		53-56	Vargas pays fare; begins walking to back of crowded bus
		57	Bus starts moving forward
		57-59	Acosta and Vargas walking to back of moving bus
	29	00-06	Acosta and Vargas still walking to back of moving bus
		06-08	Acosta steps up onto rear seating platform; Vargas approaching her from behind
		08-12	SUV, moving left to right, pulls into the right eastbound lane, in front of bus
		09-10	Vargas steps up onto rear seating platform, behind Acosta
		09-16	Two vehicles have stopped moving in the left eastbound lane, one behind the other
		11-13	Drives applies the breaks
		12-13	Pedestrian stands between the left and right eastbound lanes; two vehicles are parked in the left lane, having stopped for the pedestrian
		12	SUV is breaking
		13-14	Vargas loses balance, begins to fall

		14-15	Acosta begins to trip on Vargas's outstretched leg, falls
		14-16	Pedestrian dashes, left to right, toward sidewalk, directly in front of the SUV in the right eastbound lane
		16-18	Acosta is down; Vargas recovers balance, stands without having fallen
		17	Bus is at complete stop; SUV proceeds eastbound
		17-21	Two vehicles in left lane drive off, eastbound
		29-33	Front doors open
		36	Driver gets up from seat
		40	Driver begins walking back

At the conclusion of the trial in the civil action that Ms. Acosta's daughter Monica and son Luis brought against Miami-Dade County, which will be discussed below, the jury returned a verdict in favor of the plaintiffs, awarding each of them \$3 million for non-economic damages, i.e., "pain and suffering." No award for economic damages, e.g., lost earnings, was made because Ms. Acosta, a Venezuelan citizen, was in the U.S. illegally, having overstayed her tourist visa, and hence her children could not prove earnings from lawful employment.

The jury in the civil trial was asked to compare the negligence, if any, of Ms. Acosta; the unnamed pedestrian; the unnamed driver of the SUV; and Mr. Arrieta, and to apportion the fault between them by percentages. The jury determined that Mr. Arrieta's negligence was the sole cause of Ms. Acosta's fatal injury.

The undersigned considers the jury's apportionment of 100 percent of the fault to the bus driver to be inexplicable (except as the product of sympathy and emotion) and, ultimately, indefensible. Clearly, the unnamed pedestrian, who decided to cross a busy road outside of a marked crosswalk, acted recklessly and endangered himself and others. This jaywalker therefore owned the lion's share of the blame for this unfortunate accident, and the undersigned charges him with 90 percent of the fault. The unnamed driver of the SUV

was partially responsible for the accident; had he remained in the left lane and slowed to a stop, as the two vehicles in front of him did, it is likely that this accident would not have occurred. The undersigned places 10 percent of the blame on this driver. Mr. Arrieta's conduct in bringing the bus to a controlled, nonviolent stop to avoid rear-ending the SUV, which had stopped suddenly to avoid hitting the jaywalker standing the middle of the busy road, was reasonable under the circumstances.

The claimants argue that Mr. Arrieta was negligent in failing to wait for Ms. Acosta and her friend to sit down or grab a handrail. As will be discussed below, the standard of care does not generally require a bus driver to wait for a boarding passenger to sit down before pulling away, unless the passenger is elderly, infirm, disabled, etc., or the driver knows or reasonably should know of some reason (besides ordinary traffic conditions) that might cause him to make a sudden stop. Based on the evidence presented in this case, the undersigned finds that (a) both Ms. Acosta Ms. Vargas were able-bodied and apparently healthy; and (b) Mr. Arrieta had no reason to anticipate that a jaywalker soon would cross his bus's path and disrupt traffic. Thus, it is determined that Mr. Arrieta did not breach the duty of care by driving the bus while Ms. Acosta and Ms. Vargas were still in the process of finding seats.

Even if Mr. Arrieta were negligent in failing to wait for Ms. Acosta to take her seat before driving off, however, which the undersigned (based on the law and the evidence presented here) does not believe was the case, he was certainly not more responsible for the accident than the unnamed driver of the SUV. At most, therefore, Mr. Arrieta was 5 percent at fault, the SUV driver 5 percent responsible, and the jaywalker 90 percent to blame.

LEGAL PROCEEDINGS:

In 2005, the Monica and Luis Acosta, Ms. Acosta's children, brought a wrongful death action against Miami-Dade County based on the alleged negligence of the MTA employee, Mr. Arrieta. The action was filed in the circuit court in Miami-Dade County.

The case was tried before a jury in or around November 2007. The jury returned a verdict awarding Monica and Luis \$3 million each for pain and suffering. As mentioned above, the

jury apportioned 100 percent the fault for Ms. Acosta's death to the bus driver, finding specifically that neither the jaywalker, the SUV driver, nor Ms. Acosta herself were in any way negligent in causing Ms. Acosta's death. On November 8, 2007, trial court entered a judgment against Miami-Dade County in accordance with the jury's verdict.

The county appealed the judgment. In April 2010, while the appeal was pending before the Third District Court, the parties agreed to a settlement of the case, under which the county, in exchange for a release of liability, would: (a) pay \$200,000 to the claimants (which it since has done); (b) dismiss the appeal; and (c) support a claim bill in the amount of \$940,000.

Upon the county's payment of \$200,000, the claimants received net proceeds of \$98,237.30, after deductions for attorneys' fees (\$50,000) and costs (\$51,762.70).

CLAIMANTS' ARGUMENTS:

Miami-Dade County is vicariously liable for the negligence of its employee, Mr. Arrieta, who breached the duty of a common carrier to exercise the highest degree of care consistent with the practical operation of the bus by:

- Failing to wait for Ms. Acosta to take a seat before pulling away from the bus stop;
- Failing to pay attention to his surroundings while driving; and
- Slamming the brakes and making a sudden, violent stop.

RESPONDENT'S POSITION:

The county supports a claim bill in the amount of \$940,000. If the claim bill were enacted, the county would satisfy the award using the operating funds of the MTA.

CONCLUSIONS OF LAW:

As provided in section 768.28, Florida Statutes (2010), sovereign immunity shields Miami-Dade County against tort liability in excess of \$200,000 per occurrence.

The operator of a bus system is vicariously liable for any negligent act committed by a driver whom it employs, provided the act is within the scope of the driver's employment. See, e.g., Metro. Dade Cnty. v. Asusta, 359 So. 2d 58, 59 (Fla. 3d DCA 1978); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA

1964). Mr. Arrieta was the county's employee and was clearly acting within the scope of his employment at the time of the accident in question. Accordingly, the negligence of Mr. Arrieta, if any, is attributable to the county.

As a general rule, the duty of a common carrier is "to exercise the highest degree of care consistent with the practical operation of the bus." Jacksonville Coach Co. v. Rivers, 144 So. 2d 308, 310 (Fla. 1962). That the bus stopped suddenly, however, is insufficient, without more, to establish negligence on the part of the driver, as the Florida Supreme Court announced in Rivers:

Ruling out stops of extraordinary violence, not incidental to ordinary travel, as inapplicable to the stop which occurred here, the sudden stopping of the bus was not a basis for a finding that the bus was negligently operated, in the absence of other evidence, relating to the stop, of some act of commission or omission by the driver which together with the 'sudden' stop would suffice to show a violation of the carrier's duty. This is so because a sudden or abrupt stop, which could be the result of negligent operation, could as well result from conditions and circumstances making it entirely proper and free of any negligence.

Id. (emphasis added; reinstating directed verdict in favor of defense; quoting Blackman v. Miami Transit Co., 125 So. 2d 128, 130 (Fla. 3d DCA 1960)).

Here, the evidence establishes that the stop in question, while sudden and unexpected, was not extraordinarily violent and was incidental to ordinary travel, inasmuch as making a sudden stop in traffic, unexpectedly, is commonly understood to be one of the recurring inconveniences (and risks) of driving a motor vehicle. The evidence, moreover, does not establish that the driver failed to pay attention to his surroundings; rather, as the videos show, Mr. Arrieta reacted prudently and reasonably to an unexpected situation, namely the slowing of the SUV (which had just pulled ahead of the

bus) to avoid hitting a jaywalker who was standing in the middle of the road, in traffic.

The question whether the driver should have waited for Ms. Acosta to take a seat before putting the bus in motion is somewhat closer. Florida law, however, does not generally require that a driver wait for passengers to be seated before proceeding, although such a duty might arise where the driver prevents the passenger from taking a seat, Ginn v. Broward Cnty. Transit, 396 So. 2d 804, 806 (Fla. 4th DCA 1981), or reasonably could have anticipated the need to make a sudden stop, Metro. Dade Cnty. V. Asusta, 359 So. 2d 58, 60 (Fla. 3d DCA 1978). Indeed, courts have entered judgments as a matter of law against plaintiffs who have fallen on moving buses while on their way to a seat. See, e.g., Peterson v. Cent. Fla. Reg'l Transp., 769 So. 2d 418, 421 (Fla. 5th DCA 2000)(affirming directed verdict in favor of bus operator, where plaintiff, who was carrying a large, rain-soaked bag, was injured in fall on bus while walking down a wet aisle to take a seat in the back); Artigas v. Allstate Ins. Co., 541 So. 2d 739, 740(Fla. 3d DCA 1989)(affirming summary judgment in favor of bus operator because, although plaintiff had fallen after boarding bus while on her way to seat, standard of care was not violated); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA 1964)(bus operator entitled to JNOV where plaintiff, who had been proceeding to a seat, fell when bus made a sudden, but nonviolent, stop).

Claimants argue that the MTA's Procedures Manual required the driver to wait for Ms. Acosta to take a seat before starting to move, but this is not accurate. The manual requires the driver to wait only when the passenger is "an elderly person, customer with a disability, a person holding a child, or a person with arms full of packages." Ms. Acosta was none of these. Otherwise, the driver is instructed to "be careful not to make a sudden start or stop" when passengers are standing in the aisle or walking to a seat. Here, the evidence fails to prove that the driver was not being careful; rather, Mr. Arrieta was required to stop suddenly because of an unexpected situation over which he had no control and could not reasonably have anticipated. In any event, the Procedures Manual does not fix the standard of care. See Artigas, 541 So. 2d at 740 n.1.

Based on the foregoing legal principles, as applied to the evidence presented in the case, the undersigned makes the ultimate determination that the driver was not negligent, in that

he did not breach the standard of care owed to a passenger when he stopped his bus to avoid rear-ending an SUV, which had slowed suddenly to avoid striking a jaywalker who was standing in the middle of traffic.

ATTORNEYS FEES:

Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." Claimants' attorney, Judd G. Rosen, Esquire, has submitted an affidavit attesting that all attorney's fees, lobbying fees, and costs will be paid in accordance with the limitations specified in the claim bill.

SPECIAL ISSUES:

If enacted in its current form, the claim bill would direct that the entire judgment amount of \$6 million be paid to Ms. Acosta's children. Thus, the bill needs to be amended to conform to the parties' settlement agreement, pursuant to which claimants have agreed to accept the smaller sum of \$940,000.

At the time of her death in November 2004, Ms. Acosta was a citizen of Venezuela. She had come into the U.S. in July 2003 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which expired on January 22, 2004.

Monica and Luis Acosta are citizens of Venezuela. Monica Cantillo Acosta, who was in the U.S. on a Non-Immigrant B2 (Visitor for Pleasure) Visa for some period of time, had returned to Venezuela to attend school before her mother's death, apparently without having overstayed her visa. Luis Acosta, who was a teenager at the time of his mother's death, was in the U.S. in November 2004 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which had expired on June 18, 2004.

GENERAL CONCLUSIONS:

This sad case arises out of a freak accident, which tragically cost Ms. Acosta her life. Clearly her children have suffered a grievous loss—one for which, in a perfect world, they would be richly compensated. The problem here is that the party who is mostly to blame for Ms. Acosta's death, the negligent jaywalker, was not identified. Nor was the driver of the SUV identified; yet that person, too, rightfully bears a smaller, but nontrivial, share of the fault. Although the bus driver's (and through him the county's) fair share of the blame falls in the range from 0 percent to 5 percent (and at the bottom end of

the range, in the undersigned's estimation), the jury decided to make the county pay the entire loss, assigning 100 percent of the fault to the bus driver. This was unfair and unsupportable based on the facts and law. The county's financial responsibility to the plaintiffs should not exceed \$300,000 (5 percent of \$6 million). Having paid \$200,000, the county, at a minimum, already has satisfied two-thirds of its maximum liability—and probably has overpaid.

That said, the county did agree to support a claim bill in the amount of \$940,000. This, in itself, is a compelling reason to support the bill, and should be given great weight. Nevertheless, the undersigned concludes that, on balance, the present settlement, if consummated via approval of this claim bill, would not be a responsible use of taxpayer money.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 50 (2012) be reported UNFAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Ellyn Setnor Bogdanoff
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Legg

17-00069-15

201564__

A bill to be entitled

An act for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, the surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Ms. Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 12, 2004, at approximately 4:16 p.m., Nhora Acosta entered Miami-Dade County bus number 04142 at a stop on SW 8th Street in Miami, paid the driver, and tried to find a seat on the crowded bus, and

WHEREAS, while Ms. Acosta walked toward the rear of the bus in search of a seat, the bus driver, ignoring her safety and failing to appropriately anticipate the stop-and-go traffic patterns on the busy street, accelerated so quickly that, in order to avoid a collision with another vehicle, he suddenly slammed on the brakes, and

WHEREAS, the sudden change in velocity caused Ms. Acosta to fall and strike her head on an interior portion of the bus, and

WHEREAS, as a result of the fall, Ms. Acosta suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations, and

WHEREAS, Ms. Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed

Page 1 of 3

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

17-00069-15

201564__

on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day, and

WHEREAS, Ms. Acosta was a 54-year-old single mother of two children, Monica and Luis, who had been raised exclusively by their mother, and because of her death, her children were left orphaned, and

WHEREAS, Monica and Luis loved their mother, their only parent, dearly and have lost her support, love, and guidance and have suffered intense mental pain due to her untimely death, as a result of the negligence of the Miami-Dade bus driver, and

WHEREAS, on November 5, 2007, a Miami-Dade County jury rendered a verdict and found the Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Ms. Acosta, and determined the damages of Monica and Luis to be \$3 million each, and

WHEREAS, the parties have subsequently settled this matter for \$1.14 million, and Miami-Dade County has paid the claimants \$200,000 under the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of \$470,000, payable to Monica Cantillo Acosta, and a warrant in the sum of \$470,000, payable to Luis Alberto Cantillo Acosta, as compensation for the

Page 2 of 3

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

17-00069-15

201564__

59 wrongful death of their mother, Nhora Acosta.

60 Section 3. The amount paid by Miami-Dade County pursuant to
61 s. 768.28, Florida Statutes, and the amounts awarded under this
62 act are intended to provide the sole compensation for all
63 present and future claims arising out of the factual situation
64 described in this act which resulted in the death of Ms. Acosta.
65 The total amount paid for attorney fees, lobbying fees, costs,
66 and other similar expenses relating to this claim may not exceed
67 25 percent of the total amount awarded under this act.

68 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)

4/20/15
Meeting Date

64
Bill Number (if applicable)

Topic Relief of Acosta

Amendment Barcode (if applicable)

Name Mat Forrest

Job Title _____

Address 403 E. Park Ave

Phone 850-577-0444

Street

Tallahassee FL 32301

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Acosta Family

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 120/2015
Meeting Date

Topic _____ Bill Number 64
(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

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
10/23/14	SM	Fav/1 amendment
3/24/15	JU	Fav/CS
04/14/15	CA	Favorable
04/17/15	FP	Favorable

February 2, 2015 (Rev. 3/24/15)

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

Re: **CS/SB 66** – Judiciary Committee and Senator Legg
Relief of Ronald Miller by the City of Hollywood

SPECIAL MASTER'S FINAL REPORT

THIS SETTLED EXCESS JUDGMENT CLAIM FOR \$100,000 AGAINST THE CITY OF HOLLYWOOD, WHICH WOULD BE PAID FROM LOCAL FUNDS, ARISES OUT OF AN AUTOMOBILE ACCIDENT CAUSED BY A MUNICIPAL EMPLOYEE WHOSE NEGLIGENT DRIVING ALLEGEDLY LEFT RONALD MILLER WITH INJURIES TO HIS KNEES.

CURRENT STATUS:

On November 17, 2008, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill. On February 1, 2011, for SB 64 (2011), the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported unfavorably. Since that time, the matter has been settled between Mr. Miller and the City of Hollywood. Subsequently, the special master's December 2, 2011, report for SB 8 (2012) reflected the settlement and recommended that the bill be reported favorably. The report reflecting the settlement is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Diana Caldwell. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and

determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the claimant, Ronald Miller, changes have not occurred since the hearing which might have altered the findings and recommendations in the report.

Additionally, the prior claim bill, SB 8 (2012), is effectively identical to claim bill filed for the 2015 Legislative Session.

Respectfully submitted,

Diana W. Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary on March 24, 2015:

The committee substitute corrects the spelling of the last name of the city employee who caused the accident leading to the claim bill.



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
12/02/11	SM	Favorable

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 8 (2012)** – Senator Eleanor Sobel
HB 43 (2012) – Representative Evan Jenne
Relief of Ronald Miller

SPECIAL MASTER'S FINAL REPORT

THIS SETTLED EXCESS JUDGMENT CLAIM FOR \$100,000 AGAINST THE CITY OF HOLLYWOOD, WHICH WOULD BE PAID FROM LOCAL FUNDS, ARISES OUT OF AN AUTOMOBILE ACCIDENT CAUSED BY A MUNICIPAL EMPLOYEE WHOSE NEGLIGENT DRIVING ALLEGEDLY LEFT RONALD MILLER WITH INJURIES TO HIS KNEES.

FINDINGS OF FACT:

At about 5:30 p.m. on July 30, 2002, Ronald Miller, a self-employed lawn service provider, was driving north on Federal Highway. As he approached Sheridan Street in the City of Hollywood, Florida, Miller encountered traffic congestion in both of the northbound lanes on Federal Highway; cars were backed up for several blocks south of Sheridan Street, where the light was red.

Miller planned to turn left and travel west on Sherman Street, which is one block south of Sheridan Street. Avoiding the lines of traffic waiting for the light to turn green at Sheridan, Miller maneuvered his pickup truck—which was pulling a trailer carrying his lawn equipment—into the center left-turn lane, which is a common lane providing for the two-way movement of traffic. Miller's speed was at least 20 MPH—within the posted limit but faster than the circumstances warranted, as

the left-turn lane is not meant to be used, as Miller was using it, for passing cars waiting at a red light.

Meantime, Robert Mettler, an employee of the City of Hollywood, was attempting to leave a Burger King restaurant which is located on the east side of Federal Highway, facing Sherman Street. (The Burger King thus was off to Miller's right as he approached from the south.) Mettler was on duty, behind the wheel of a City-owned pickup truck. He wanted to head south on Federal Highway, and thus needed to make a difficult left-hand turn across three lanes of rush-hour traffic: the two northbound lanes, where traffic was currently stopped, and the common turn lane, in which Miller (unbeknownst to Mettler) was presently moving north.

Drivers stopped on Federal Highway (in the northbound lanes) let Mettler out of the Burger King parking lot. As he edged his way between the parked cars, Mettler saw one of the drivers give him a hand signal, which he interpreted as a sign that the center lane was clear. Mettler himself could not get an unobstructed southward view of the turn lane because of the vehicles backed up on Federal Highway.

Mettler decided that the turn lane was clear and began nosing his truck forward. By this time, Miller was almost there; he was looking both forward and to his left and didn't see Mettler on his right. Mettler accelerated, pulling forward into the turn lane. In so doing, he failed to exercise reasonable care under the circumstances. Instantly, the trucks collided head-to-head.

Miller was not wearing his seatbelt. The force of the impact thrust him forward, and his knees struck the dashboard. Though hurt, Miller was not incapacitated; indeed, he walked away from the crash without assistance and later declined medical treatment at the accident site. Mettler was not badly injured.

The Hollywood Police Department was called, and an officer investigated the accident. Metter was given a ticket for failing to yield the right-of-way, in violation of s. 316.125(1), Florida Statutes. (Several months later, Mettler would be found guilty of this infraction.)

Hours after the crash, Miller's knees were painful and his neck was sore, so he sought treatment at Hollywood Medical

Center, checking into the emergency room at around midnight. The emergency room doctor prescribed painkillers and a cervical collar and sent Miller home.

Miller saw a chiropractor on July 31, 2002. After several visits, Miller switched to another chiropractor, Dr. Keith Buchalter, from whom he received treatment for neck and knee pain beginning August 12, 2002, and continuing until March 5, 2003. While under Dr. Buchalter's care, on September 16, 2002, Miller had magnetic resonance imaging (MRI) scans taken of his cervical spine, left knee, and right knee. These MRI scans, taken about one-and-a-half months after the crash, produced the first (and only) post-accident radiologic studies of Miller's knees and neck. The radiologist who read the scans believed the images showed, among other things, a torn anterior cruciate ligament (ACL) in both of Miller's knees.

On October 16, 2002, Miller was seen by Dr. Stephen Wender, an orthopedic surgeon. Dr. Wender prescribed a course of non-steroidal anti-inflammatory drugs for Miller's still-painful knees. On March 20, 2003, approximately eight months after the accident, Dr. Wender performed arthroscopic surgery on Miller's left and right knees. Dr. Wender did not repair the ACL in either of Miller's knees because, it turned out, Miller did not have ligament damage after all.

This was not the first time that an orthopedic surgeon had operated on Miller's right knee. It was, in fact, the *fourth* surgery on Miller's right knee, which had been damaged years earlier when Miller, as a pedestrian, had been hit by a car. The previous accident had led to three knee surgeries by two different doctors. Medical records from the prior surgeries were not produced at hearing, and the orthopedic surgeons who performed them did not testify.

The undersigned is persuaded, and finds, that Miller's right knee sustained some injury as a result of the July 2002 crash. Without information concerning the nature and extent of the previous injuries to Miller's right knee, however, it cannot be determined, with reasonable particularity, which damage was proximately caused by the accident in 2002, and which was present before this accident. That said, the evidence shows (and the undersigned finds) that, broadly speaking, roughly 80

to 90 percent of the damage to Miller's right knee existed before the 2002 accident.

Miller's left knee, too, was injured in the 2002 crash. While the left knee (unlike the right) had not previously suffered a traumatic injury, by July 2002 Miller's left knee already had begun to deteriorate due to degenerative arthritis. In other words, Miller's left knee had a chronic, preexisting condition. There is no evidence, however, that Miller's left knee was bothering him before the accident in question.

Miller incurred approximately \$75,000 in medical expenses following the 2002 accident, beginning with the next-day treatment in the emergency room and continuing until he had knee surgery in March 2003. These medical expenses constitute an economic loss that was directly and proximately caused by the 2002 accident.

Miller wants to be compensated for "pain and suffering" (which category includes, in addition to pain and suffering, such noneconomic losses as mental anguish, inconvenience, and loss of capacity to enjoy life). At the trial on the civil suit in which Miller sued the City for negligence, the jury awarded Miller \$700,000 for pain and suffering—\$200,000 for past suffering and \$500,000 for future suffering.

Mettler's failure to use reasonable care to avoid colliding with Miller's pickup truck unquestionably constituted negligence. Miller, however, was negligent too, for he drove too fast for the circumstances and failed to pay reasonable attention to all of the traffic on the road. The jury in the civil trial was asked to compare the negligence of Mettler to that of Miller and apportion the fault between them by percentages. The jury determined that Mettler's negligence comprised 95 percent of the cause of Miller's injuries, while finding Miller himself five percent at fault.

While the undersigned might have placed a bit more blame on Miller, he nonetheless considers the jury's apportionment of the fault to be consistent with the evidence and will defer to the jury's collective wisdom in the matter. It is found, therefore, that Metter was 95 percent responsible for the crash, Miller five percent.

LEGAL PROCEEDINGS:

In January 2005, Miller brought suit against the City. The action was filed in the Broward County Circuit Court.

The case was tried before a jury in June 2006. The jury returned a verdict awarding Miller a total of \$1.19 million in damages, broken down as follows: (a) \$200,000 for past pain and suffering; (b) \$500,000 for future pain and suffering; (c) \$75,000 for past medical expenses; and (d) \$415,000 for future medical expenses. The trial court entered a judgment against the City in the amount of \$1.13 million—or 95 percent of the total damages, in accordance with the jury's apportionment of fault. (All of the foregoing numbers were rounded for ease of reference.)

The City appealed the adverse judgment. The Fourth District Court of Appeal affirmed, per curiam, without issuing an opinion.

On August 16, 2007, the City paid \$100,000 to Miller, satisfying so much of the judgment as falls outside the protection of sovereign immunity. The City previously (in 2002) had compensated Miller in full for his property damage, which consequently is not in issue here.

The proceeds recovered on the judgment were distributed to Miller in February 2008. His net recovery, after paying attorney's fees (\$30,000), litigation costs (\$21,000), and medical bills (\$6,400), was \$43,000. (These numbers have been rounded for convenience.)

CLAIMANT'S ARGUMENTS:

The City is vicariously liable for its employee's negligent operation of a municipal vehicle, which negligence caused an accident wherein Miller suffered severe and permanent bodily injuries.

RESPONDENT'S POSITION:

In a letter dated September 23, 2011, counsel for the City stated that "the parties involved have agreed on the amounts requested in SB 8/HB 43, as well as the 'whereas' clause findings. Accordingly, it is the parties' intent to ask members to pass this bill as a stipulated matter."

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the City against tort liability in excess of \$200,000 per occurrence.

Under the doctrine of respondeat superior, the City is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003). Metter, a City employee, was acting within the course and scope of his employment when he negligently collided with Miller. The City, therefore, is liable for Mettler's negligence.

Miller was negligent, too, and his negligence was a contributory cause of the accident. Therefore, it is necessary to determine the extent of Mettler's fault as compared to Miller's. As noted above, the jury's allocation of 95 percent of the fault to the City (through Miller) is reasonable. The undersigned accordingly concludes that the City was 95 percent to blame for the accident.

Miller proved that Mettler's negligence proximately caused acute injuries that resulted in Miller's incurring \$75,000 in medical expenses. An award for these past medical expenses is factually and legally justified (apart from sovereign immunity considerations). Miller established, as well, that he is entitled to an award for pain and suffering.

LEGISLATIVE HISTORY:

This is the fourth year that this claim has been presented to the Florida Legislature.

ATTORNEYS FEES:

Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." Miller's attorney, Winston & Clark, P.A., has submitted proposed distribution statement showing that the attorneys' and lobbyist's fees would be limited, in the aggregate, to 25 percent of the compensation being sought.

SPECIAL ISSUES:

The parties have agreed to settle this claim for the payment by the City of \$100,000. This amount is reasonable and responsible.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 8 (2012) be reported FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 8

December 2, 2011

Page 7

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Eleanor Sobel
Representative Evan Jenne
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By the Committee on Judiciary; and Senator Legg

590-02823-15

201566c1

A bill to be entitled

An act for the relief of Ronald Miller by the City of Hollywood; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the City of Hollywood; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on July 30, 2002, Ronald Miller was driving his pickup truck home from work, northbound on Federal Highway in the left-turn lane, and

WHEREAS, at that time Robert Mettler, a City of Hollywood employee, driving a city utilities truck, cut across the northbound lanes of traffic and crashed head-on into Ronald Miller's vehicle, and

WHEREAS, the impact of the crash caused Ronald Miller to have corrective surgeries for damage to both knees, and

WHEREAS, the jury returned a verdict in favor of Ronald Miller, and a final judgment was entered in the amount of \$1,130,731.89, and a cost judgment was entered in the amount of \$17,257.82, and

WHEREAS, the City of Hollywood has paid \$100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, the parties have negotiated in good faith and have arrived at a stipulated resolution of this matter for the payment by the City of Hollywood of an additional \$100,000 to Ronald Miller, NOW, THEREFORE,

Page 1 of 2

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

590-02823-15

201566c1

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Hollywood is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant, payable to Ronald Miller, for the total amount of \$100,000 as compensation for injuries and damages sustained as a result of the negligence of an employee of the City of Hollywood.

Section 3. The amount paid by the City of Hollywood pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries to Ronald Miller. All expenses that constitute a part of Ronald Miller's judgments described in this claim shall be paid from the amount awarded under this act on a pro rata basis. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

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)

4/20

Meeting Date

66

Bill Number (if applicable)

Topic Miller claim bill

Amendment Barcode (if applicable)

Name Jason Unger

Job Title _____

Address 301 South Bronough St

Phone 577-9090

Street

TLH

FL

32301

Email junger@gray-robinson.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Hollywood

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/20/2015

Meeting Date

Topic _____

Bill Number 66
(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

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
12/31/14	SM	Favorable
3/31/15	JU	Fav/CS
04/14/15	CA	Favorable
04/17/15	FP	Favorable

December 31, 2014

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

Re: **CS/SB 78** – Judiciary Committee and Senator Flores
Relief of Maricelly Lopez, as Personal Representative of the Estate of
Omar Mieles

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,611,237 BASED ON A JURY VERDICT AGAINST THE CITY OF NORTH MIAMI, IN WHICH THE JURY DETERMINED THAT THE CITY OF NORTH MIAMI WAS 50 PERCENT RESPONSIBLE FOR THE DEATH OF OMAR MIELES DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

CONCLUSIONS AND RECOMMENDATIONS:

On February 11, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 342 (2011), filed on January 3, 2011. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with one amendment. That bill was never heard in committee. The bill was subsequently filed in the next legislative session – SB 58 (2012) – and Special Master Bauer updated his report. That report is attached as an addendum to this report. The bill has been filed subsequently in each successive legislative session - SB 36 (2013), SB 40 (2014), and SB 78 (2015).

Due to the passage of time since the hearing, the Senate President reassigned the claim to me. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

The prior claim bill upon which a Special Master's Report was conducted, SB 58 (2012), is substantially similar to the claim bill filed for the 2015 Legislative Session.

According to counsel for Ms. Lopez, no changes have occurred since the hearing that might have altered the findings and recommendations in the report. Counsel for the City of Miami raise several issues:

1. The Plaintiff failed to exhaust all remedies pursuant to Senate Rule 4.81(6) because plaintiff did not appeal the final judgment.
2. The Plaintiff's claim is time barred by operation of section 11.065, Florida Statutes.
3. The bill fails to accurately reflect the driver of the vehicle in which Omar Miele was a passenger caused the accident.
4. The bill fails to accurately reflect that Omar Miele was not wearing his seatbelt, thus contributing to his injuries.
5. The passage of the bill would create a financial strain on the City's general revenue fund that would "significantly hurt the critical municipal services that the City provides to its residents" as well as "negatively impact both the city's internal functions but also the residents it serves."

Addressing each point in turn, I find the City's contentions to be insufficient to justify disturbing the original findings and recommendations contained in Senate Special Master's Report.

Senate Rule 4.81 provides "[t]he hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted." The plaintiff's failure to appeal a judgment with which they were apparently content is not the failure to exhaust administrative and judicial remedies. There is nothing in the

rule that requires a claimant to resort to appeals that may be deemed unnecessary or undesirable if they are content with their judgment. The essence of the rule is that all relevant proceedings be final, not that each party be required to pursue litigation to the highest permissible point of the administrative and judicial processes. The underlying case became final for judicial relief when the time for appeal passed. As such, the case is ripe for relief within the parameters of Senate Rule 4.81.

Likewise, the claim that the bill is now time barred from consideration by the legislature is without merit. While it is an open question whether section 11.065(1), Florida Statutes, could prevent a future legislature from taking up a bill that presents a claim outside the limitation period, one need not decide that question at this time. As noted in the introduction, the initial bill was presented and filed in the Legislature on January 3, 2011- within four years of both the accident that occurred on November 11, 2007, and the final judgment entered on April 21, 2010. Moreover, the bill has been presented for consideration in every subsequent legislative session. Claimants have plainly presented their claims in a timely manner that is entirely consistent with section 11.065, Florida Statutes.

As to the third and fourth points, the bill adequately describes relevant facts reflected in both the jury's verdict and the Special Master's Report, and plaintiffs' arguments are merely attempts to re-litigate those conclusions. The introductory clauses clearly set forth "the jury apportioned 50 percent of the responsibility for the death of Omar Mieles to the City of North Miami, and 50 percent to the driver of the vehicle in which Omar Mieles was traveling as a passenger." The claim bill is not made against the driver, but against the City of Miami whose officer was traveling at 60 mph in a nonemergency situation – twice the posted legal limit. The fault of the driver as well as Mr. Mieles' failure to wear his seatbelt are simply attempts to question the findings of both the jury and the Special Master which apportioned fault and re-litigate those conclusions. The City presented no new evidence to support their position. As such, I find no compelling reason to set aside or overturn the reasonable findings and recommendations of either the jury or Special Master Bauer.

Finally, the City argues the financial hardship to the general revenue fund that will result if SB 78 passes. The original Special Master's Report noted that the City had "\$252,000 available in a claims payment account, as well as \$538,000 in a risk management reserve account" as of February 2011 for payment of the claim. The City did not provide any additional information concerning either of these accounts or the general revenue fund or evidence of any kind in support of its claim for financial hardship. Accordingly, I am unable to assess the merits of the City's claim. Additionally, no alternative proposal or solution was suggested by the City in the event the claim bill was passed by the Legislature and they become obligated to pay the judgment. In any event, such a question does not go to the merits of the claim and is best left to the discretion of legislators deciding whether to bestow legislative grace through the passage of legislation.

Accordingly, the findings of the original Senate Special Master are adopted by the undersigned.

Respectfully submitted,

George Levesque
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary on March 31, 2015:

The committee substitute reduces the appropriation in the bill to \$200,000. This amount is intended to reflect a recent settlement between the claimant and the City of North Miami.

SPECIAL MASTER'S FINAL REPORT – SB 58 (2012)

December 2, 2011

Page 5



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
12/2/11	SM	Favorable

December 2, 2011

The Honorable Mike Haridopoulos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 58 (2012)** – Senator Anitere Flores
Relief of Maricelly Lopez, as Personal Representative of the Estate of
Omar Mieles

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,611,237 BASED ON A JURY VERDICT AGAINST THE CITY OF NORTH MIAMI, IN WHICH THE JURY DETERMINED THAT THE CITY OF NORTH MIAMI WAS 50 PERCENT RESPONSIBLE FOR THE DEATH OF OMAR MIELES DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

FINDINGS OF FACT:

The instant claim arises out of a traffic accident that occurred in Miami on November 11, 2007, at the intersection of Northwest 7th Avenue and Northwest 46th Street. Northwest 46th Street runs from east to west, and intersects Northwest 7th Avenue (which runs from north to south) at a right angle. At the time of the accident, the intersection was controlled by four traffic signals: two blinking red lights that directed vehicles traveling east and west on Northwest 46th Street to stop, and two blinking yellow lights for vehicles proceeding north and south on Northwest 7th Avenue.

At approximately 4:10 a.m., 19-year-old Omar Mieles was traveling east on Northwest 46th Street in a 2005 Ford Focus, which was being driven by Madelayne Ibarra. The vehicle was owned by Ms. Ibarra's mother, who was not present. Mr. Mieles' girlfriend, Raiza Areas, was positioned in the front passenger's seat. Although Ms. Ibarra and Ms. Areas were both wearing seatbelts, Mr. Mieles was lying down unrestrained on the back seat, with his head behind the front passenger's seat. Mr. Mieles, Ms. Areas, and Ms. Ibarra had spent the evening eating dinner in Coconut Grove and socializing with friends in South Beach.

Although Ms. Ibarra was not under the influence of alcohol or controlled substances, she was unfamiliar with the area and fatigued due to the late hour. As a consequence, Ms. Ibarra failed to come to a complete stop at the red traffic signal prior to entering the Northwest 7th Avenue intersection. At the same time, a City of North Miami police cruiser traveling north on Northwest 7th Avenue entered the intersection through the yellow caution light. The police vehicle, which was on routine patrol and not operating in emergency mode (i.e., the siren and emergency lights were not activated), was substantially exceeding the 30 MPH limit.

Tragically, the police cruiser, which was being operated by Officer James Thompson, struck the right rear passenger door of Ms. Ibarra's Ford Focus. Mr. Mieles, who was ejected through a rear window due to the force and location of the impact, landed approximately 35 feet from the final resting position of Ms. Ibarra's vehicle. Although Mr. Mieles sustained catastrophic head injuries as a result of the accident, neither Ms. Ibarra nor Ms. Areas was seriously injured.

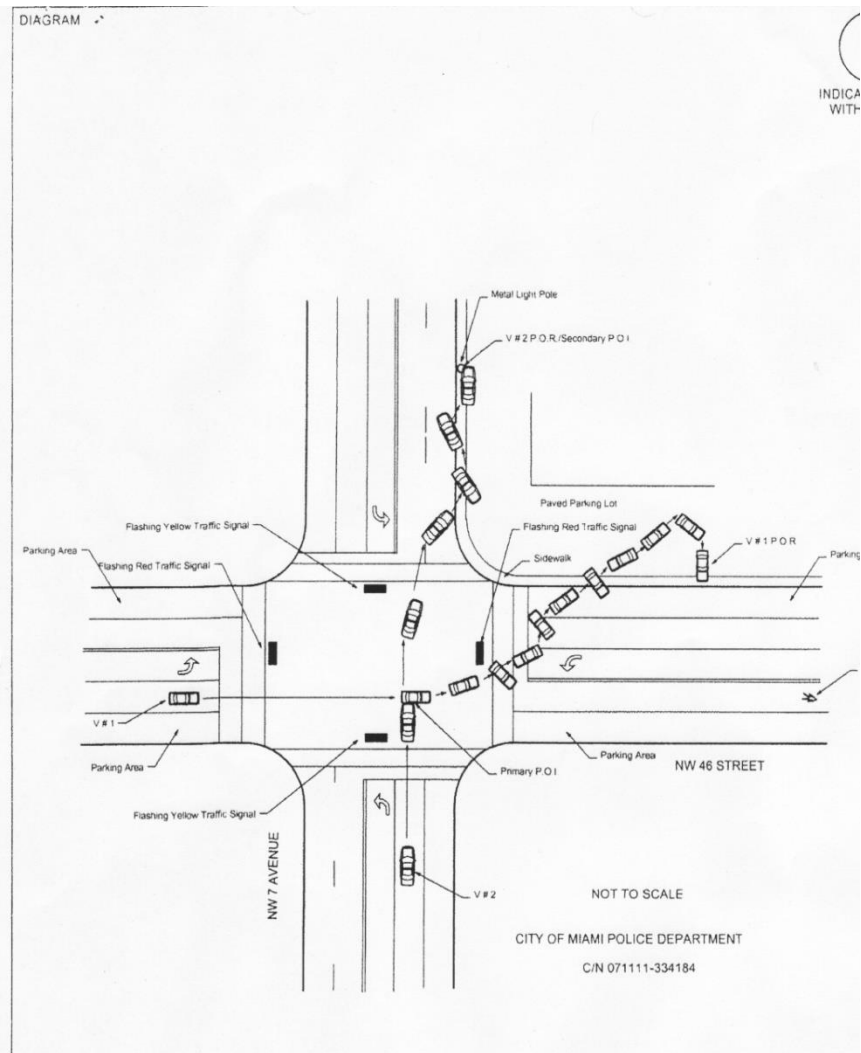
Officer Thompson, who likewise was not significantly injured in the collision, immediately radioed for emergency assistance. Paramedics responded to the scene minutes later and transported Mr. Mieles to Jackson Memorial Hospital. Soon after his arrival at the hospital, Mr. Mieles was pronounced brain dead. On November 14, 2007, with the consent of Maricelly Lopez (Mr. Mieles' mother and the Claimant in this proceeding), hospital staff harvested Mr. Mieles' heart, liver, and kidneys for donation, and he expired.

Approximately 90 minutes after the collision, K. Andrews, a detective employed with the City of Miami Police Department, arrived at the scene of the crash and initiated an accident investigation. During the investigation, Officer Thompson advised Detective Andrews that Ms. Ibarra had failed to stop at the red light and that he was unable to avoid the accident. However, Officer Thompson failed to mention that he was needlessly exceeding the speed limit at the time of the crash. Based upon the incomplete information in her possession, Detective Andrews concluded that Ms. Ibarra was solely at fault in the accident and issued her a citation for running a red light.

During the ensuing litigation between Mr. Mieles' estate and the City of North Miami, it was determined (based upon data from the patrol vehicle's "black box") that one second prior to the crash, Officer Thompson was traveling 61 MPH. As noted above, the speed limit on Northwest 7th Street at the accident location was 30 MPH.

At the time of his death, Mr. Mieles had recently graduated from high school and was working two jobs. In addition, he had been accepted to Valencia Community College and was scheduled to begin classes in January 2008. Mr. Mieles, who is survived by his mother, stepfather, and two siblings, was by all accounts a hard-working and well-liked young man.

DIAGRAM:



LITIGATION HISTORY:

On June 23, 2008, Maricelly Lopez, in her individual capacity and as the personal representative of the estate of Omar Mieles, filed a complaint for damages in Miami-Dade County circuit court against the City of North Miami. The complaint alleged that Officer Thompson's operation of his police vehicle on November 11, 2007, was negligent, and that such negligence was the direct and proximate cause of Mr. Mieles' death. In addition, the complaint alleged that Mr. Mieles' estate sustained various damages, which included medical and funeral expenses, as well as lost earnings. The complaint further asserted that Ms. Lopez sustained damages in her individual capacity, such as the loss of past and future support

and services, past and future mental pain and suffering, and loss of companionship.

The matter subsequently proceeded to a jury trial, during which the parties presented conflicting theories regarding the cause of the accident. Specifically, the plaintiff contended that Ms. Ibarra had properly stopped at the intersection and that Officer Thompson was solely responsible for the collision, while the City of North Miami argued that Ms. Ibarra had run the red light and was entirely at fault. In addition, both sides presented conflicting expert testimony regarding whether Mr. Mieles would have sustained fatal injuries had been wearing a seatbelt. In particular, the plaintiff's expert opined that due to the location of the collision (the right rear passenger's door of the Ford Focus) and its force, Mr. Mieles would have been killed even if he had been properly restrained. In contrast, the City of Miami presented expert testimony indicating that the use of a seatbelt would have saved Mr. Mieles' life.

On March 19, 2010, the jury returned a verdict, in which it determined that the City of North Miami and Ms. Ibarra were negligent, and that each was 50 percent responsible for Mr. Mieles' death. The jury apportioned no fault to Mr. Mieles. The jury further concluded that Mr. Mieles' estate and Ms. Lopez sustained the following damages:

Damages to the Estate

- \$163,950.15 for medical expenses.
- \$1,630 for funeral expenses.

Damages to Maricelly Lopez

- \$2,000 for loss of past support.
- \$40,000 for loss of future support.
- \$1,750,000 for past pain and suffering.
- \$1,750,000 for future pain and suffering.

Based on the jury's finding that the City of North Miami was 50 percent responsible, final judgment was entered against it in the amount of \$1,719,808.63 (this figure is comprised of \$1,688,195.10, which represents fifty percent of the total damages outlined above, minus various setoffs, plus costs of \$31,613.53).

No appeal of the final judgment was taken to the Third District Court of Appeal.

The City of North Miami has tendered \$108,571.30 against the final judgment, leaving \$1,611,237.33 unpaid.

CLAIMANT'S POSITION:

The City of North Miami is vicariously liable for the negligence of Officer Thompson, which was the direct and proximate cause of Omar Miele's death. The Claimant further argues that Mr. Miles did nothing to contribute to his death.

RESPONDENT'S POSITION:

The City of North Miami objects to any payment to the Claimant through a claim bill. The City of Miami also contends that Mr. Miele's catastrophic head injuries would have been avoided had he been properly restrained by a seat belt, and that the jury should not have apportioned any fault to Officer Thompson.

CONCLUSIONS OF LAW:

Like any motorist, Officer Thompson had a duty to operate his patrol vehicle with consideration for the safety of other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). Specifically, Officer Thompson owed a duty to observe the 30 MPH posted speed limit and to use caution (as directed by the yellow flashing light) as he entered the intersection. See § 316.076(1)(b), Fla. Stat. (2007) ("When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution."); § 316.183(2), Fla. Stat. (2007) ("On all streets or highways, the maximum speed limits for all vehicles must be 30 miles per hour in business . . . districts"). By entering the intersection at 61 MPH, Officer Thompson breached his duty of care, which was a direct and proximate cause of Mr. Miele's death.

The City of North Miami, as Officer Thompson's employer, is liable for his negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

As discussed above, the jury determined that Officer Thompson and Ms. Ibarra, based upon the negligent operation of their respective vehicles, were equally at fault in this tragic event. Further, in apportioning no fault to Mr. Mieles, the jury presumably found that Mr. Mieles would have been killed in the collision even if he had been properly restrained. These conclusions are reasonable and will not be disturbed by the undersigned. The undersigned also concludes that the damages awarded by the jury were appropriate.

LEGISLATIVE HISTORY:

This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 342) died in Committee.

ATTORNEYS FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees are included with the attorney's fees.

FISCAL IMPACT:

As the City of North Miami is self-insured, its general funds would be used to satisfy the instant claim bill. In February 2011, the City of North Miami reported that it had \$252,000 available in a claims payment account, as well as \$538,000 in a risk management reserve account.

COLLATERAL SOURCES:

Prior to the litigation against the City of North Miami, the Claimant recovered the bodily injury limits from Ms. Ibarra's GEICO policy in the amount of \$10,000, as well as \$10,000 from the Claimant's underinsured motorist coverage.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 58 (2012) be reported FAVORABLY.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Anitere Flores
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By the Committee on Judiciary; and Senator Flores

590-03271-15

201578c1

A bill to be entitled

An act for the relief of Maricelly Lopez by the City of North Miami; providing for an appropriation to compensate Maricelly Lopez, individually and as personal representative of the Estate of Omar Mieleles, for the wrongful death of her son, Omar Mieleles, which was due to the negligence of a police officer of the City of North Miami; providing a limitation on the payment of fees and costs; providing that the appropriation settles all present and future claims related to the death of Omar Mieleles; providing an effective date.

WHEREAS, on November 11, 2007, 18-year-old Omar Mieleles was a passenger in the back seat of a vehicle traveling eastbound on NW 46th Street in North Miami, Florida, and

WHEREAS, at that time and place, Officer James Ray Thompson, a police officer employed by the City of North Miami Police Department, while in the course and scope of his duties as a police officer, negligently drove a police department vehicle at a high rate of speed and collided with the vehicle in which Omar Mieleles was a passenger, and

WHEREAS, as a direct result of the collision caused by Officer Thompson's negligence, Omar Mieleles was thrown from the rear window of the vehicle in which he was traveling, landed 35 feet from the vehicle, and died shortly thereafter from the injuries he sustained, and

WHEREAS, the mother of Omar Mieleles, Maricelly Lopez, has endured continuous mental pain and suffering since the date of

Page 1 of 4

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

590-03271-15

201578c1

her son's death and seeks to recover damages, individually, for loss of support, services, and companionship due to the death of her son, and

WHEREAS, the Estate of Omar Mieleles seeks to recover damages for medical expenses, funeral expenses, loss of earnings, and net accumulation of earnings, and

WHEREAS, on June 23, 2008, Maricelly Lopez, as personal representative of the Estate of Omar Mieleles and in her individual capacity as mother of Omar Mieleles, filed an action against the City of North Miami in the Miami-Dade County Circuit Court, styled *Maricelly Lopez, Plaintiff, v. City of North Miami, Defendants*, Case No. 13-2008-CA-035955-0000-01, to recover damages for the wrongful death of Omar Mieleles as a result of the negligence of a police officer of the City of North Miami, and

WHEREAS, on March 19, 2010, the case was tried before a jury that returned a verdict for damages against the City of North Miami and in favor of Maricelly Lopez, as personal representative of the Estate of Omar Mieleles and in her individual capacity as mother of Omar Mieleles, in the amount of \$3,542,000, and

WHEREAS, the jury apportioned 50 percent of the responsibility for the death of Omar Mieleles to the City of North Miami, and 50 percent to the driver of the vehicle in which Omar Mieleles was traveling as a passenger, and

WHEREAS, on April 21, 2010, a final judgment was entered against the City of North Miami for \$1,719,808.63, of which the city has paid \$108,571.30 pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

Page 2 of 4

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

590-03271-15

201578c1

59 WHEREAS, on March 24, 2015, the City of North Miami passed
60 a resolution unanimously authorizing the settlement of the claim
61 for \$200,000, and supporting the passage of a claim bill in that
62 amount for Maricelly Lopez, individually and as personal
63 representative of Omar Mieleles, and

64 WHEREAS, the City of North Miami and Maricelly Lopez have
65 agreed to settle the claim for \$200,000, NOW, THEREFORE,

66
67 Be It Enacted by the Legislature of the State of Florida:

68
69 Section 1. The facts stated in the preamble to this act are
70 found and declared to be true.

71 Section 2. The City of North Miami is authorized and
72 directed to appropriate from funds of the city not otherwise
73 appropriated and to draw a warrant in the amount of \$200,000.00,
74 payable to Maricelly Lopez, individually and as personal
75 representative of the Estate of Omar Mieleles, as compensation for
76 the death of her son due to the negligence of a police officer
77 of the City of North Miami.

78 Section 3. The total amount paid for attorney fees,
79 lobbying fees, costs, and other similar expenses relating to
80 this claim may not exceed 25 percent of the amount awarded under
81 this act.

82 Section 4. The amount paid by the City of North Miami
83 pursuant to s. 768.28, Florida Statutes, and the amount awarded
84 under this act are intended to provide the sole compensation for
85 all present and future claims arising out of the factual
86 situation described in this act which resulted in the death of
87 Omar Mieleles.

590-03271-15

201578c1

88 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)

4/20/15

Meeting Date

CS/SB 78

Bill Number (if applicable)

Topic Lopez/Claims

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title _____

Address 104 West Jefferson Street
Street

Phone (850) 224-3427

Tallahassee, FL 32301
City State Zip

Email kelly@rlbodepa.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing City of North Miami

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.20.2015

Meeting Date

78

Bill Number (if applicable)

Topic Relief of Maricelly Lopez

Amendment Barcode (if applicable)

Name Sarrah Carroll

Job Title _____

Address 123 S. Adams

Phone 671-4401

Street

Tallahassee

FL

32301

Email carroll@sostrategy.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Estate of Omar Miele

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4 120/2015
Meeting Date

Topic _____ Bill Number 78
(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
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 Committee Fiscal Policy

BILL: PCS/SB 7076 (123208)

INTRODUCER: Fiscal Policy Committee (Recommended by the Appropriations Subcommittee on General Government) and Military and Veterans Affairs, Space, and Domestic Security Committee

SUBJECT: Military and Veteran Support

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Ryon	Ryon		MS SPB 7076 as introduced
1.	Davis	DeLoach	AGG	Recommended: Fav/CS
2.	McKay	Hrdlicka	FP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7076 makes various changes to current law related to military and veteran support. In part, the bill:

- Revises the term “activities” to include, for purposes of the Florida Defense Reinvestment Grant Program, economic development grants provided to businesses in defense-dependent communities;
- Amends Florida’s grant programs for defense-dependent communities to clarify that an existing 30 percent match requirement applies only to the Defense Reinvestment Grant Program;
- Requires the Florida Department of Veterans’ Affairs (FDVA) to include a section on agricultural farming opportunities for veterans in the Florida Veterans’ Benefits Guide (Benefits Guide), and to make the guide available to military installations in Florida;
- Modifies and expands a provision authorizing local governing bodies to assist honorably discharged veterans who have wartime service, to also include any veteran who has wartime service, any veteran who has an honorable discharge, and any veteran who has received a general discharge under honorable conditions;
- Revises the Department of Business and Professional Regulation’s (DBPR) general licensure fee waiver program to allow the waiver to apply to a veteran with a general discharge under honorable conditions; and

- Requires the Department of Highway Safety and Motor Vehicles (DHSMV) and Department of Military Affairs (DMA) to create a pilot program to provide on-site commercial driver license testing opportunities available to qualified members of the Florida National Guard.

The bill may have a minimal, indeterminate fiscal impact on state funds; however, most provisions reflect current practice, or existing state resources are sufficient.

II. Present Situation:

Defense Grant Programs

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state, administered by Enterprise Florida, Inc., (EFI) and the Department of Economic Opportunity (DEO). Among these programs are the Florida Defense Reinvestment Grant Program (DRG)¹ and the Defense Infrastructure Grant Program (DIG).²

The DRG program competitively funds projects proposed by defense-dependent communities to develop and implement strategies to help support the missions of a community's military installation, or diversify the defense-dependent community's economy. The DRG-funded activities can include studies, presentations, analyses, plans, marketing, modeling, and reasonable travel costs. For Fiscal Year 2014-2015, the Legislature provided an \$850,000 recurring appropriation from the State Economic Enhancement and Development Trust Fund to the DEO to fund the DRG program. Twelve DRG projects were approved for Fiscal Year 2014-2015, totaling \$850,000.

The DIG program competitively funds local infrastructure projects deemed to have a positive impact on the military value of installations within the state. Authorized DIG projects include, but are not limited to, those relating to encroachment, transportation and access, utilities, communications, housing, environment, and security. For Fiscal Year 2014-2015, the Legislature provided a \$1.6 million recurring appropriation from the State Economic Enhancement and Development Trust Fund to the DEO to fund the DIG program. Ten DIG projects were approved for Fiscal Year 2014-2015, totaling \$1.6 million.

The Legislature created the DIG program in 2004 in s. 288.980(4), F.S, with a provision that the now-defunct Office of Tourism, Trade, and Economic Development (OTTED) *could require* a match by the county or local community grant applicants.³ However, s. 288.980(2)(c)2., F.S., provided in 2004 that OTTED *must require*, with one exception, that a grant applicant agree to match at least 30 percent of any grant awarded.⁴ This apparent conflict between the required grant match and permissive grant match for DIG projects has therefore existed since 2004. According to EFI, in administering the two programs, the DEO and EFI require the 30 percent match for DRG projects only, and the 30 percent match requirement is appropriate for the DRG program, not the DIG program.

¹ Section 288.980(4), F.S.

² Section 288.980(5), F.S.

³ Chapter 2004-230, L.O.F.

⁴ This 30 percent match requirement has remained in law since 2004, and is currently codified at s. 288.980(3)(c)2., F.S.

Military Discharges

Florida law defines a “veteran” as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs (VA) on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge has been authorized, or during specified periods of wartime service.⁵

Federal law defines a “veteran” as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”⁶

Types of Discharges

There are five types of discharges issued by the military services:^{7,8}

- *Honorable Discharge*: The servicemember met the conduct and performance standards of the military and is eligible for most veteran benefits including VA education benefits (*i.e.*, GI Bill), military health benefits, military retirement, and military travel benefits.
- *General Discharge under Honorable Conditions*: The servicemember’s service has been honest, faithful and satisfactory. However, this characterization of service is warranted when significant negative aspects of the member’s conduct or performance of duty outweigh positive aspects of the member’s military conduct or performance of duty outweigh positive aspects of the record. This discharge means a member is eligible for most veteran benefits but **not** for VA education benefits.
- *Other than Honorable Discharge*: This discharge is warranted when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of servicemembers. Examples include abuse of authority, serious misconduct that endangers other members of the military, and use of deliberate force to seriously hurt another person. Generally, a servicemember that has this discharge is ineligible for all VA benefits.
- *Bad Conduct Discharge*: A punitive discharge that is imposed by court-martial (criminal trial conducted by the military). A servicemember is not entitled to any VA benefits.
- *Dishonorable Discharge*: This discharge is provided when a serious crime has been committed such as desertion, rape, or murder. This discharge is only given if a servicemember is convicted at a general court-martial. The servicemember is not entitled to any VA benefits.

Generally, in order to receive federal VA benefits, the veteran’s character of discharge or service must be under other than dishonorable conditions (e.g., honorable and general discharge under honorable conditions). However, individuals receiving undesirable, bad conduct, and other types

⁵ Section 1.01(14), F.S.

⁶ 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).

⁷ Congressional Research Service, Who is a “Veteran”? - Basic Eligibility for Veterans’ Benefits, February 13, 2015, available at: <https://www.fas.org/sgp/crs/misc/R42324.pdf> (last visited on April 16, 2015).

⁸ 32 C.F.R. Appendix A to Part 41, Part 2.

of dishonorable discharges may qualify for VA benefits depending on a determination made by the VA.⁹

A discharge characterized by the military as under honorable conditions is binding on the VA and allows for the VA to provide benefits if other eligibility requirements are met. If a discharge was not characterized as under honorable conditions, benefits are not payable unless the VA determines the discharge was “under conditions other than dishonorable.” Under federal law, certain situations resulting in a discharge under less than honorable conditions constitute a legal bar to the payment of benefits.¹⁰

A release or discharge for any of the following reasons constitutes a statutory bar to benefits, unless it is determined that the servicemember was insane at the time he or she committed the offense that resulted in the discharge:¹¹

- Sentence of a general court-martial;
- Being a conscientious objector;
- Desertion;
- Resignation by an officer for the good of the service;
- Absence without official leave (AWOL) for a continuous period of 180 days or more, without compelling circumstances to warrant such prolonged unauthorized absence (as determined by the VA); or
- Requesting release from service as an alien during a period of hostilities.

Local Governing Bodies Authorized to Assist War Veterans

Section 292.10, F.S., authorizes the governing body of every county and city in Florida to assist veterans of the U.S. Armed Forces in presenting claims for, and securing, the following benefits and privileges:

- Compensation;
- Hospitalization;
- Education;
- Loans;
- Career training; and
- Other state or federal benefits or privileges to which they may become entitled.

The law applies to honorably discharged veterans who have wartime service, and their dependents.

Florida Department of Business and Professional Regulation License Fee Waiver

The DBPR is responsible for licensing and regulating various businesses and professionals in the state, including but not limited to, cosmetologists, veterinarians, real estate agents, and pari-

⁹ US Department of Veterans Affairs Veterans Benefits Administration, available at: http://www.benefits.va.gov/benefits/character_of_discharge.asp (last visited on April 16, 2015).

¹⁰ US Department of Veterans Affairs, Factsheet on Claims for Benefits Involving Other-Than-Honorable Discharges, available at: http://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf (last visited April 16, 2015).

¹¹ 38 U.S.C. § 5303.

mutuel wagering facilities.¹² Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR, and provides a waiver of the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for honorably discharged veterans of the U.S. Armed Forces and their spouses within 60 months after the veteran is discharged.

Agricultural Careers for Veterans

Periodically, Congress establishes agricultural and food policy in a multi-year, omnibus farm bill. The Federal Agricultural Act of 2014¹³ (Farm Bill), provides opportunities for veterans to pursue agricultural farming jobs. Among other things, the Farm Bill creates a definition for “veteran farmer or rancher” to mean a farmer or rancher who has served in the Armed Forces and who has not operated a farm or ranch, or has operated a farm or ranch for not more than 10 years.¹⁴ The veteran farmer or rancher classification allows veterans to receive additional assistance for agricultural programs, including the following:¹⁵

- *Conservation Reserve Program (CRP) Transition Incentive Program*: This program allows retiring farmers with land in the CRP to receive additional payments for leasing or selling the land to a beginning farmer or rancher, a socially disadvantaged farmer or rancher, or a veteran farmer or rancher. The purpose is to make land available to new farmers while ensuring that land coming out of the CRP is farmed or grazed in a sustainable manner.
- *Conservation Programming Preference for Veteran Farmers*: The United States Department of Agriculture (USDA) is required to set aside a portion of funding for the Environmental Quality Incentives Program (EQIP) and a portion of the acres available for the Conservation Stewardship Program (CSP) for beginning and socially disadvantaged farmers and ranchers. The amount is five percent for beginning farmers and ranchers and five percent for socially disadvantaged farmers and ranchers. Under the Farm Bill, a preference must be given to veteran farmers and ranchers that fall within one of the set-aside categories.
- *Value-Added Development Grants*: Under this program, private farmers may directly receive grants for their business to assist them in developing business plans and strategies to market value-added products. The USDA must also give a priority to veteran farmers and ranchers.
- *Beginning Farmer and Rancher Development Grants*: This program administers grants to organizations that provide training, education, outreach, and technical assistance to beginner farmers and ranchers. Under the Farm Bill, assistance for veteran farmers is a priority and 5 percent of funding is set aside for programs serving veterans.
- *Outreach and Assistance Program for Socially Disadvantaged Farmers and Ranchers*: This program allows the USDA to provide additional technical assistance to veterans focused on enabling farm ownership and operation as well as outreach to encourage participation in the USDA programs.

¹² DBPR website, available at: <http://www.myfloridalicense.com/dbpr/index.html>.

¹³ Pub. L. No. 113-79, H.R. 2642, 113th Cong.

¹⁴ U.S. Department of Agriculture website on “Natural Resources Conservation Service,” available at: <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmbill/?cid=stelprdb1256753> (last visited April 16, 2015).

¹⁵ Farmer Veteran Coalition, available at: <http://www.farmvetco.org/archives/2872> (last visited April 16, 2015).

Commercial Drivers' Licenses

The Federal Motor Carrier Safety Administration (FMCSA), established within the U.S. Department of Transportation, is the federal agency responsible for establishing minimum federal standards that states must meet regarding the issuance of a commercial driver license (CDL). Administration of the actual CDL program and issuance of the license itself is the exclusive function of the states. To obtain a CDL in Florida, an applicant must pass certain knowledge, endorsement, and skills tests depending on the type of CDL sought.¹⁶

In 2011, the FMCSA formalized a provision that gives states the authority to substitute 2 years of commercial motor vehicle safe driving experience in the military for the skills test required upon application for a CDL.¹⁷ In Florida, the CDL skills test waiver is available to military servicemembers (including National Guard members and reservists) and those who are within 90 days of separation from the military. To qualify for the military skills test waiver, the applicant must:¹⁸

- Pass all required written knowledge exams and endorsements required for the class of CDL sought;
- Certify that for at least 2 years immediately preceding the application, the applicant operated a motor vehicle representative of the class of CDL sought; and
- Present the Department of Highway Safety and Motor Vehicles (DHSMV) Certification for Waiver of Skill Test for Military Personnel form, filled out in its entirety, and signed by the applicant's commanding officer or designee.¹⁹

The skills test waiver process must be completed, and the CDL issued, within 120 days of separation from the military.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 288.980, F.S., to remove the 30 percent match requirement for grants awarded under the Defense Infrastructure Grant Program. The bill clarifies that the 30 percent match requirement applies only to the Defense Reinvestment Grant Program.

The bill also revises the definition of the term “activities” for the purposes of the Florida Defense Reinvestment Grant Program, to include, but is not limited to, economic development grants provided to businesses in defense-related communities.

Section 2 amends s. 292.10, F.S., to increase the number of veterans that local governments may assist. Currently, local governments may assist honorably discharged veterans who have wartime service. The bill will allow local governments to assist any veteran who:

- Has wartime service, regardless of discharge;

¹⁶ Section 322.12, F.S.

¹⁷ Substitute for Driving Skills Tests for Drivers with Military CMV Experience, 49 CFR s. 383.77 (2011).

¹⁸ Rule 15A-7.018, F.A.C., Military Qualifications for Waiver of Commercial Driver License Skills Test.

¹⁹ DHSMV Certification for Waiver of Skill Test for Military Personnel form. Available at:

<http://www.flhsmv.gov/html/HSMV71054.pdf>.

²⁰ Florida Department of Highway Safety and Motor Vehicles, Information for Military Drivers, available at: <http://www.flhsmv.gov/ddl/militarydrivers.html> (last visited on April 16, 2015).

- Has an honorable discharge; and
- Received a general discharge under honorable conditions.

Section 3 amends s. 455.213, F.S., to expand the existing general licensing fee waiver DBPR provides to an honorably discharged veteran, to also apply to a veteran with a general discharge under honorable conditions.

Section 4 requires the FDVA, through the direct-support organization established under s. 292.055, F.S., (The Florida Veterans Foundation), and in consultation with the Department of Agriculture and Consumer Services (DACS), to include a section in the FDVA Benefits Guide²¹ on agricultural farming opportunities in the state for veterans. The Benefits Guide must include information on federal, state, and local agricultural farming programs, incentives, assistance, and grants available to veterans.

Additionally, the FDVA must make the Benefits Guide available at all military installations in Florida, and provide a concise description of the Guide's agricultural farming section on the FDVA website, including a link to the new section.

Section 5 requires the DHSMV and the DMA to create a pilot program by June 30, 2016, to make commercial driving license testing opportunities available to qualified members of the Florida National Guard. The testing must be held at a Florida National Guard Armory, an Armed Forces Reserve Center, or Camp Blanding Joint Training Center. The pilot program must be accomplished using existing funds appropriated to each department.

Section 6 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.

²¹ The 2015 guide is available at: <http://floridavets.org/resources/va-benefits-guide/> (last visited April 16, 2015).

B. Private Sector Impact:

The bill has the following impacts:

Section 2: A broader group of veterans and their families may be eligible for assistance provided by local governing bodies under the bill.

Section 3: Expanding eligibility for the DBPR general licensing fee waiver may encourage additional applicants to participate in the fee waiver program.

Section 4: Providing information on veteran-specific farming opportunities in the Benefits Guide may encourage veterans to seek career opportunities in the agricultural farming industry.

Section 5: A successful pilot program providing commercial driver license testing opportunities for members of the Florida National Guard may lead to recruiting and training of new commercial motor vehicle drivers.

C. Government Sector Impact:

Section 1: The expansion of the Florida Defense Reinvestment Grant Program includes economic development grants provided to businesses that are defense-dependent. While additional business projects may become eligible for grant funding, the program remains subject to an annual appropriation.

Section 3: In administering the licensure fee waiver program for honorably discharged veterans, DBPR's current practice allows veterans with a general discharge under honorable conditions to participate. However, the extent to which veterans with a discharge under this category have knowledge about DBPR's current practice is unknown. The bill codifies the DBPR's current practice²² and, therefore, has no fiscal impact.

Section 4: The Benefits Guide is an annual publication printed by the Florida Veterans Foundation (Foundation), the FDVA's direct-support organization. The cost to print (approximately \$16,000) and distribute the Benefits Guide (currently 100,000 copies) is paid through donations collected by the Foundation.²³ The bill requires that the Benefits Guide contain information on agricultural farming opportunities for veterans. This information will be incorporated into the existing Benefits Guide; therefore there is no fiscal impact to state funds. However, the Benefits Guide has been published and distributed for the 2015 year, and the Foundation will incur an expense if it must print updated Benefits Guides that include the new section on agricultural farming opportunities for veterans.

²² Email from the DBPR to staff of the Senate General Government Appropriations Committee, received 4/9/15.

²³ Telephone conversation between staff of the Senate General Government Appropriations Committee and FDVA staff, April 9, 2015.

The requirement for the FDVA to make the Benefits Guide available to all military installations in Florida can be accomplished via e-mail within existing resources.

Section 5: The bill requires the DHSMV to partner with the DMA to jointly create a pilot program to provide on-site commercial driver license testing opportunities to Florida National Guard members. The pilot program may be incorporated into the DHSMV's existing Florida Licensing on Wheels (FLOW) program with minimal fiscal impact. The FLOW program provides a convenient method to renew a driver license, obtain a replacement driver license, change a name or address on a driver license, etc. The DHSMV has five FLOW mobiles that provide services from a large bus and six mini-FLOWS that can be set up at tables at smaller venues and indoor events.²⁴ The bill requires the DHSMV and the DMA to implement the pilot program within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.980, 292.10, and 455.213

This bill creates two undesignated sections of Florida law.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on April 14, 2015:

The committee substitute expands the scope of the Defense Reinvestment Grant Program to provide economic development grants to defense-related businesses.

- B. Amendments:

None.

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

²⁴ DHSMV Florida Licensing on Wheels (FLOW) program. Available at: <http://www.flhsmv.gov/offices/FLOW.htm> (last visited April 16, 2015).



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594-04122-15

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to military and veteran support;
amending s. 288.980, F.S.; revising the definition of
the term "activities"; removing the requirement that
an applicant to the Defense Infrastructure Grant
Program provide matching funds of a certain amount;
amending s. 292.10, F.S.; revising the categories of
veterans eligible to receive assistance from local
governing bodies; amending s. 455.213, F.S.; requiring
the Department of Business and Professional Regulation
to waive initial professional licensing fees for a
veteran who has received a general discharge under
honorable conditions; requiring the Department of
Veterans' Affairs to create, in consultation with the
Department of Agriculture and Consumer Services, a
section in the Florida Veterans' Benefits Guide on
agricultural farming opportunities for veterans;
prescribing requirements; requiring the Department of
Highway Safety and Motor Vehicles and the Department
of Military Affairs to create a pilot program for
commercial driver license testing for qualified
members of the Florida National Guard by a specified
date; requiring that such testing be conducted at
certain locations; providing for funding; providing an
effective date.

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



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594-04122-15

Section 1. Subsections (3) and (4) of section 288.980,
Florida Statutes, are amended to read:

288.980 Military base retention; legislative intent; grants
program.—

(3) (a) The department is authorized to award grants on a
competitive basis from any funds available to it to support
activities related to the Florida Defense Reinvestment Grant
Program and the Florida Defense Infrastructure Grant Program.

(b) As used in this section, the term "activities" as used
in this section means studies, presentations, analyses, plans,
and modeling. For the purposes of the Florida Defense
Reinvestment Grant Program, the term also includes, but is not
limited to, economic development grants provided to businesses
in defense-dependent communities. For the purposes of the
Florida Defense Infrastructure Grant Program, the term
"activities" also includes, but is not limited to, construction,
land purchases, and easements. Staff salaries are not considered
an "activity" for which grant funds may be awarded. Travel costs
and costs incidental thereto incurred by a grant recipient shall
be considered an "activity" for which grant funds may be
awarded.

(c) The department shall require that an applicant:

1. Represent a local government with a military
installation or military installations that could be adversely
affected by federal actions.
2. ~~Agree to match at least 30 percent of any grant awarded.~~
3. Prepare a coordinated program or plan of action
delineating how the eligible project will be administered and



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accomplished.

3.4- Provide documentation describing the potential for changes to the mission of a military installation located in the applicant's community and the potential impacts such changes will have on the applicant's community.

(d) In making grant awards the department shall consider, at a minimum, the following factors:

1. The relative value of the particular military installation in terms of its importance to the local and state economy relative to other military installations.

2. The potential job displacement within the local community should the mission of the military installation be changed.

3. The potential impact on industries and technologies which service the military installation.

(4) The Florida Defense Reinvestment Grant Program is established to respond to the need for this state to work in conjunction with defense-dependent communities in developing and implementing strategies and approaches that will help communities support the missions of military installations, and in developing and implementing alternative economic diversification strategies to transition from a defense economy to a nondefense economy. Eligible applicants include defense-dependent counties and cities, and local economic development councils located within such communities. The program shall be administered by the department and grant awards may be provided to support community-based activities that:

(a) Protect existing military installations;

(b) Diversify or grow the economy of a defense-dependent



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community; or

(c) Develop plans for the reuse of closed or realigned military installations, including any plans necessary for infrastructure improvements needed to facilitate reuse and related marketing activities.

Applications for grants under this subsection must include a coordinated program of work or plan of action delineating how the eligible project will be administered and accomplished, which must include a plan for ensuring close cooperation between civilian and military authorities in the conduct of the funded activities and a plan for public involvement. An applicant must agree to match at least 30 percent of any grant awarded.

Section 2. Section 292.10, Florida Statutes, is amended to read:

292.10 Local governing bodies authorized to assist war veterans; powers.—The board of county commissioners of each county and the governing body of each city in the state are authorized ~~hereby granted full and complete power and authority~~ to aid and assist wherever practical and feasible the veterans, male and female, who have served in the Armed Forces of the United States in any war, ~~and~~ received an honorable discharge, or received a general discharge under honorable conditions from any branch of the military service of the United States, and their dependents, in presenting claims for and securing such compensation, hospitalization, education, loans, career training, and other benefits or privileges to which said veterans, or any of them, are or may become entitled under any federal or state law or regulation by reason of their service in



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the Armed Forces of the United States.

Section 3. Subsection (12) of section 455.213, Florida Statutes, is amended to read:

455.213 General licensing provisions.—

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if he or she applies to the department for a license, in a format prescribed by the department, within 60 months after the veteran is discharged from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged or received a general discharge under honorable conditions.

Section 4. Agricultural farming opportunities for veterans.—

(1) The Department of Veterans' Affairs, through the direct-support organization established under s. 292.055, Florida Statutes, and in consultation with the Department of Agriculture and Consumer Services, shall include a section in the Florida Veterans' Benefits Guide on agricultural farming opportunities in this state for veterans of the Armed Forces of the United States. The section must, at a minimum, include information on:

(a) Federal, state, and local agricultural farming programs, incentives, assistance, and grants that are available to veterans.

(b) Federal and state agricultural farming outreach and advocacy programs that are available to veterans.

(2) The Department of Veterans' Affairs shall:



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(a) Make the guides available to all military installations in this state.

(b) Provide a concise description of the contents of the section and a link to the section on its website.

Section 5. No later than June 30, 2016, the Department of Highway Safety and Motor Vehicles and the Department of Military Affairs shall jointly create a pilot program to provide opportunities for commercial driver license testing to qualified members of the Florida National Guard through the commercial driver license skills test waiver available under s. 322.12, Florida Statutes. Testing held pursuant to the pilot program must be conducted at a Florida National Guard armory, an Armed Forces Reserve Center, or the Camp Blanding Joint Training Center. The pilot program must be administered using existing funds appropriated to each department.

Section 6. 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 Committee on Fiscal Policy

BILL: CS/SB 7076

INTRODUCER: Fiscal Policy Committee (Recommended by the Appropriations Subcommittee on General Government) and Military and Veterans Affairs, Space, and Domestic Security Committee

SUBJECT: Military and Veteran Support

DATE: April 21, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Ryon	Ryon		MS SPB 7076 as introduced
1.	Davis	DeLoach	AGG	Recommended: Fav/CS
2.	McKay	Hrdlicka	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7076 makes various changes to current law related to military and veteran support. In part, the bill:

- Revises the term “activities” to include, for purposes of the Florida Defense Reinvestment Grant Program, economic development grants provided to businesses in defense-dependent communities;
- Amends Florida’s grant programs for defense-dependent communities to clarify that an existing 30 percent match requirement applies only to the Defense Reinvestment Grant Program;
- Requires the Florida Department of Veterans’ Affairs (FDVA) to include a section on agricultural farming opportunities for veterans in the Florida Veterans’ Benefits Guide (Benefits Guide), and to make the guide available to military installations in Florida;
- Modifies and expands a provision authorizing local governing bodies to assist honorably discharged veterans who have wartime service, to also include any veteran who has wartime service, any veteran who has an honorable discharge, and any veteran who has received a general discharge under honorable conditions;
- Revises the Department of Business and Professional Regulation’s (DBPR) general licensure fee waiver program to allow the waiver to apply to a veteran with a general discharge under honorable conditions; and

- Requires the Department of Highway Safety and Motor Vehicles (DHSMV) and Department of Military Affairs (DMA) to create a pilot program to provide on-site commercial driver license testing opportunities available to qualified members of the Florida National Guard.

The bill may have a minimal, indeterminate fiscal impact on state funds; however, most provisions reflect current practice, or existing state resources are sufficient (see Section V.).

II. Present Situation:

Defense Grant Programs

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state, administered by Enterprise Florida, Inc., (EFI) and the Department of Economic Opportunity (DEO). Among these programs are the Florida Defense Reinvestment Grant Program (DRG)¹ and the Defense Infrastructure Grant Program (DIG).²

The DRG program competitively funds projects proposed by defense-dependent communities to develop and implement strategies to help support the missions of a community's military installation, or diversify the defense-dependent community's economy. The DRG-funded activities can include studies, presentations, analyses, plans, marketing, modeling, and reasonable travel costs. For Fiscal Year 2014-2015, the Legislature provided an \$850,000 recurring appropriation from the State Economic Enhancement and Development Trust Fund to the DEO to fund the DRG program. Twelve DRG projects were approved for Fiscal Year 2014-2015, totaling \$850,000.

The DIG program competitively funds local infrastructure projects deemed to have a positive impact on the military value of installations within the state. Authorized DIG projects include, but are not limited to, those relating to encroachment, transportation and access, utilities, communications, housing, environment, and security. For Fiscal Year 2014-2015, the Legislature provided a \$1.6 million recurring appropriation from the State Economic Enhancement and Development Trust Fund to the DEO to fund the DIG program. Ten DIG projects were approved for Fiscal Year 2014-2015, totaling \$1.6 million.

The Legislature created the DIG program in 2004 in s. 288.980(4), F.S, with a provision that the now-defunct Office of Tourism, Trade, and Economic Development (OTTED) *could require* a match by the county or local community grant applicants.³ However, s. 288.980(2)(c)2., F.S., provided in 2004 that OTTED *must require*, with one exception, that a grant applicant agree to match at least 30 percent of any grant awarded.⁴ This apparent conflict between the required grant match and permissive grant match for DIG projects has therefore existed since 2004. According to EFI, in administering the two programs, the DEO and EFI require the 30 percent match for DRG projects only, and the 30 percent match requirement is appropriate for the DRG program, not the DIG program.

¹ Section 288.980(4), F.S.

² Section 288.980(5), F.S.

³ Chapter 2004-230, L.O.F.

⁴ This 30 percent match requirement has remained in law since 2004, and is currently codified at s. 288.980(3)(c)2., F.S.

Military Discharges

Florida law defines a “veteran” as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs (VA) on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge has been authorized, or during specified periods of wartime service.⁵

Federal law defines a “veteran” as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”⁶

Types of Discharges

There are five types of discharges issued by the military services:^{7,8}

- *Honorable Discharge*: The servicemember met the conduct and performance standards of the military and is eligible for most veteran benefits including VA education benefits (*i.e.*, GI Bill), military health benefits, military retirement, and military travel benefits.
- *General Discharge under Honorable Conditions*: The servicemember’s service has been honest, faithful and satisfactory. However, this characterization of service is warranted when significant negative aspects of the member’s conduct or performance of duty outweigh positive aspects of the member’s military conduct or performance of duty outweigh positive aspects of the record. This discharge means a member is eligible for most veteran benefits but **not** for VA education benefits.
- *Other than Honorable Discharge*: This discharge is warranted when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of servicemembers. Examples include abuse of authority, serious misconduct that endangers other members of the military, and use of deliberate force to seriously hurt another person. Generally, a servicemember that has this discharge is ineligible for all VA benefits.
- *Bad Conduct Discharge*: A punitive discharge that is imposed by court-martial (criminal trial conducted by the military). A servicemember is not entitled to any VA benefits.
- *Dishonorable Discharge*: This discharge is provided when a serious crime has been committed such as desertion, rape, or murder. This discharge is only given if a servicemember is convicted at a general court-martial. The servicemember is not entitled to any VA benefits.

Generally, in order to receive federal VA benefits, the veteran’s character of discharge or service must be under other than dishonorable conditions (e.g., honorable and general discharge under honorable conditions). However, individuals receiving undesirable, bad conduct, and other types

⁵ Section 1.01(14), F.S.

⁶ 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).

⁷ Congressional Research Service, Who is a “Veteran”? - Basic Eligibility for Veterans’ Benefits, February 13, 2015, available at: <https://www.fas.org/sgp/crs/misc/R42324.pdf> (last visited on April 16, 2015).

⁸ 32 C.F.R. Appendix A to Part 41, Part 2.

of dishonorable discharges may qualify for VA benefits depending on a determination made by the VA.⁹

A discharge characterized by the military as under honorable conditions is binding on the VA and allows for the VA to provide benefits if other eligibility requirements are met. If a discharge was not characterized as under honorable conditions, benefits are not payable unless the VA determines the discharge was “under conditions other than dishonorable.” Under federal law, certain situations resulting in a discharge under less than honorable conditions constitute a legal bar to the payment of benefits.¹⁰

A release or discharge for any of the following reasons constitutes a statutory bar to benefits, unless it is determined that the servicemember was insane at the time he or she committed the offense that resulted in the discharge:¹¹

- Sentence of a general court-martial;
- Being a conscientious objector;
- Desertion;
- Resignation by an officer for the good of the service;
- Absence without official leave (AWOL) for a continuous period of 180 days or more, without compelling circumstances to warrant such prolonged unauthorized absence (as determined by the VA); or
- Requesting release from service as an alien during a period of hostilities.

Local Governing Bodies Authorized to Assist War Veterans

Section 292.10, F.S., authorizes the governing body of every county and city in Florida to assist veterans of the U.S. Armed Forces in presenting claims for, and securing, the following benefits and privileges:

- Compensation;
- Hospitalization;
- Education;
- Loans;
- Career training; and
- Other state or federal benefits or privileges to which they may become entitled.

The law applies to honorably discharged veterans who have wartime service, and their dependents.

Florida Department of Business and Professional Regulation License Fee Waiver

The DBPR is responsible for licensing and regulating various businesses and professionals in the state, including but not limited to, cosmetologists, veterinarians, real estate agents, and pari-

⁹ US Department of Veterans Affairs Veterans Benefits Administration, available at: http://www.benefits.va.gov/benefits/character_of_discharge.asp (last visited on April 16, 2015).

¹⁰ US Department of Veterans Affairs, Factsheet on Claims for Benefits Involving Other-Than-Honorable Discharges, available at: http://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf (last visited April 16, 2015).

¹¹ 38 U.S.C. § 5303.

mutuel wagering facilities.¹² Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR, and provides a waiver of the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for honorably discharged veterans of the U.S. Armed Forces and their spouses within 60 months after the veteran is discharged.

Agricultural Careers for Veterans

Periodically, Congress establishes agricultural and food policy in a multi-year, omnibus farm bill. The Federal Agricultural Act of 2014¹³ (Farm Bill), provides opportunities for veterans to pursue agricultural farming jobs. Among other things, the Farm Bill creates a definition for “veteran farmer or rancher” to mean a farmer or rancher who has served in the Armed Forces and who has not operated a farm or ranch, or has operated a farm or ranch for not more than 10 years.¹⁴ The veteran farmer or rancher classification allows veterans to receive additional assistance for agricultural programs, including the following:¹⁵

- *Conservation Reserve Program (CRP) Transition Incentive Program*: This program allows retiring farmers with land in the CRP to receive additional payments for leasing or selling the land to a beginning farmer or rancher, a socially disadvantaged farmer or rancher, or a veteran farmer or rancher. The purpose is to make land available to new farmers while ensuring that land coming out of the CRP is farmed or grazed in a sustainable manner.
- *Conservation Programming Preference for Veteran Farmers*: The United States Department of Agriculture (USDA) is required to set aside a portion of funding for the Environmental Quality Incentives Program (EQIP) and a portion of the acres available for the Conservation Stewardship Program (CSP) for beginning and socially disadvantaged farmers and ranchers. The amount is five percent for beginning farmers and ranchers and five percent for socially disadvantaged farmers and ranchers. Under the Farm Bill, a preference must be given to veteran farmers and ranchers that fall within one of the set-aside categories.
- *Value-Added Development Grants*: Under this program, private farmers may directly receive grants for their business to assist them in developing business plans and strategies to market value-added products. The USDA must also give a priority to veteran farmers and ranchers.
- *Beginning Farmer and Rancher Development Grants*: This program administers grants to organizations that provide training, education, outreach, and technical assistance to beginner farmers and ranchers. Under the Farm Bill, assistance for veteran farmers is a priority and 5 percent of funding is set aside for programs serving veterans.
- *Outreach and Assistance Program for Socially Disadvantaged Farmers and Ranchers*: This program allows the USDA to provide additional technical assistance to veterans focused on enabling farm ownership and operation as well as outreach to encourage participation in the USDA programs.

¹² DBPR website, available at: <http://www.myfloridalicense.com/dbpr/index.html>.

¹³ Pub. L. No. 113-79, H.R. 2642, 113th Cong.

¹⁴ U.S. Department of Agriculture website on “Natural Resources Conservation Service,” available at: <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmbill/?cid=stelpdb1256753> (last visited April 16, 2015).

¹⁵ Farmer Veteran Coalition, available at: <http://www.farmvetco.org/archives/2872> (last visited April 16, 2015).

Commercial Drivers' Licenses

The Federal Motor Carrier Safety Administration (FMCSA), established within the U.S. Department of Transportation, is the federal agency responsible for establishing minimum federal standards that states must meet regarding the issuance of a commercial driver license (CDL). Administration of the actual CDL program and issuance of the license itself is the exclusive function of the states. To obtain a CDL in Florida, an applicant must pass certain knowledge, endorsement, and skills tests depending on the type of CDL sought.¹⁶

In 2011, the FMCSA formalized a provision that gives states the authority to substitute 2 years of commercial motor vehicle safe driving experience in the military for the skills test required upon application for a CDL.¹⁷ In Florida, the CDL skills test waiver is available to military servicemembers (including National Guard members and reservists) and those who are within 90 days of separation from the military. To qualify for the military skills test waiver, the applicant must:¹⁸

- Pass all required written knowledge exams and endorsements required for the class of CDL sought;
- Certify that for at least 2 years immediately preceding the application, the applicant operated a motor vehicle representative of the class of CDL sought; and
- Present the Department of Highway Safety and Motor Vehicles (DHSMV) Certification for Waiver of Skill Test for Military Personnel form, filled out in its entirety, and signed by the applicant's commanding officer or designee.¹⁹

The skills test waiver process must be completed, and the CDL issued, within 120 days of separation from the military.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 288.980, F.S., to remove the 30 percent match requirement for grants awarded under the Defense Infrastructure Grant Program. The bill clarifies that the 30 percent match requirement applies only to the Defense Reinvestment Grant Program.

The bill also revises the definition of the term “activities” for the purposes of the Florida Defense Reinvestment Grant Program, to include, but is not limited to, economic development grants provided to businesses in defense-related communities.

Section 2 amends s. 292.10, F.S., to increase the number of veterans that local governments may assist. Currently, local governments may assist honorably discharged veterans who have wartime service. The bill will allow local governments to assist any veteran who:

- Has wartime service, regardless of discharge;

¹⁶ Section 322.12, F.S.

¹⁷ Substitute for Driving Skills Tests for Drivers with Military CMV Experience, 49 CFR s. 383.77 (2011).

¹⁸ Rule 15A-7.018, F.A.C., Military Qualifications for Waiver of Commercial Driver License Skills Test.

¹⁹ DHSMV Certification for Waiver of Skill Test for Military Personnel form. Available at:

<http://www.flhsmv.gov/html/HSMV71054.pdf>.

²⁰ Florida Department of Highway Safety and Motor Vehicles, Information for Military Drivers, available at: <http://www.flhsmv.gov/ddl/militarydrivers.html> (last visited on April 16, 2015).

- Has an honorable discharge; and
- Received a general discharge under honorable conditions.

Section 3 amends s. 455.213, F.S., to expand the existing general licensing fee waiver DBPR provides to an honorably discharged veteran, to also apply to a veteran with a general discharge under honorable conditions.

Section 4 requires the FDVA, through the direct-support organization established under s. 292.055, F.S., (The Florida Veterans Foundation), and in consultation with the Department of Agriculture and Consumer Services (DACS), to include a section in the FDVA Benefits Guide²¹ on agricultural farming opportunities in the state for veterans. The Benefits Guide must include information on federal, state, and local agricultural farming programs, incentives, assistance, and grants available to veterans.

Additionally, the FDVA must make the Benefits Guide available at all military installations in Florida, and provide a concise description of the Guide's agricultural farming section on the FDVA website, including a link to the new section.

Section 5 requires the DHSMV and the DMA to create a pilot program by June 30, 2016, to make commercial driving license testing opportunities available to qualified members of the Florida National Guard. The testing must be held at a Florida National Guard Armory, an Armed Forces Reserve Center, or Camp Blanding Joint Training Center. The pilot program must be accomplished using existing funds appropriated to each department.

Section 6 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.

²¹ The 2015 guide is available at: <http://floridavets.org/resources/va-benefits-guide/> (last visited April 16, 2015).

B. Private Sector Impact:

Section 2: A broader group of veterans and their families may be eligible for assistance provided by local governing bodies under the bill.

Section 3: Expanding eligibility for the DBPR general licensing fee waiver may encourage additional applicants to participate in the fee waiver program.

Section 4: Providing information on veteran-specific farming opportunities in the Benefits Guide may encourage veterans to seek career opportunities in the agricultural farming industry.

Section 5: A successful pilot program providing commercial driver license testing opportunities for members of the Florida National Guard may lead to recruiting and training of new commercial motor vehicle drivers.

C. Government Sector Impact:

Section 1: The expansion of the Florida Defense Reinvestment Grant Program includes economic development grants provided to businesses that are defense-dependent. While additional business projects may become eligible for grant funding, the program remains subject to an annual appropriation.

Section 3: In administering the licensure fee waiver program for honorably discharged veterans, DBPR's current practice allows veterans with a general discharge under honorable conditions to participate. However, the extent to which veterans with a discharge under this category have knowledge about DBPR's current practice is unknown. The bill codifies the DBPR's current practice²² and, therefore, has no fiscal impact.

Section 4: The Benefits Guide is an annual publication printed by the Florida Veterans Foundation (Foundation), the FDVA's direct-support organization. The cost to print (approximately \$16,000) and distribute the Benefits Guide (currently 100,000 copies) is paid through donations collected by the Foundation.²³ The bill requires that the Benefits Guide contain information on agricultural farming opportunities for veterans. This information will be incorporated into the existing Benefits Guide; therefore there is no fiscal impact to state funds. However, the Benefits Guide has been published and distributed for the 2015 year, and the Foundation will incur an expense if it must print updated Benefits Guides that include the new section on agricultural farming opportunities for veterans.

The requirement for the FDVA to make the Benefits Guide available to all military installations in Florida can be accomplished via e-mail within existing resources.

²² Email from the DBPR to staff of the Senate General Government Appropriations Committee, received 4/9/15.

²³ Telephone conversation between staff of the Senate General Government Appropriations Committee and FDVA staff, April 9, 2015.

Section 5: The bill requires the DHSMV to partner with the DMA to jointly create a pilot program to provide on-site commercial driver license testing opportunities to Florida National Guard members. The pilot program may be incorporated into the DHSMV's existing Florida Licensing on Wheels (FLOW) program with minimal fiscal impact. The FLOW program provides a convenient method to renew a driver license, obtain a replacement driver license, change a name or address on a driver license, etc. The DHSMV has five FLOW mobiles that provide services from a large bus and six mini-FLOWS that can be set up at tables at smaller venues and indoor events.²⁴ The bill requires the DHSMV and the DMA to implement the pilot program within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.980, 292.10, and 455.213

This bill creates two undesignated sections of Florida law.

IX. Additional Information:

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

CS by Fiscal Policy on April 20, 2015:

As recommended by the Appropriations Subcommittee on General Government, the committee substitute expands the scope of the Defense Reinvestment Grant Program to provide economic development grants to defense-related businesses.

- B. **Amendments:**

None.

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

²⁴ DHSMV Florida Licensing on Wheels (FLOW) program. Available at: <http://www.flhsmv.gov/offices/FLOW.htm> (last visited April 16, 2015).

By the Committee on Military and Veterans Affairs, Space, and
Domestic Security

583-03205-15

20157076__

A bill to be entitled

An act relating to military and veteran support;
amending s. 288.980, F.S.; removing the requirement
that an applicant to the Defense Infrastructure Grant
Program provide matching funds of a certain amount;
amending s. 292.10, F.S.; revising the categories of
veterans eligible to receive assistance from local
governing bodies; amending s. 455.213, F.S.; requiring
the Department of Business and Professional Regulation
to waive initial professional licensing fees for a
veteran who has received a general discharge under
honorable conditions; requiring the Department of
Veterans' Affairs to create, in consultation with the
Department of Agriculture and Consumer Services, a
section in the Florida Veterans' Benefits Guide on
agricultural farming opportunities for veterans;
prescribing requirements; requiring the Department of
Highway Safety and Motor Vehicles and the Department
of Military Affairs to create a pilot program for
commercial driver license testing for qualified
members of the Florida National Guard by a specified
date; requiring that such testing be conducted at
certain locations; providing for funding; providing an
effective date.

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

Section 1. Paragraph (c) of subsection (3) and subsection
(4) of section 288.980, Florida Statutes, are amended to read:

Page 1 of 5

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

583-03205-15

20157076__

288.980 Military base retention; legislative intent; grants
program.—

(3)

(c) The department shall require that an applicant:

1. Represent a local government with a military
installation or military installations that could be adversely
affected by federal actions.

~~2. Agree to match at least 30 percent of any grant awarded.~~

2.3- Prepare a coordinated program or plan of action
delineating how the eligible project will be administered and
accomplished.

3.4- Provide documentation describing the potential for
changes to the mission of a military installation located in the
applicant's community and the potential impacts such changes
will have on the applicant's community.

(4) The Florida Defense Reinvestment Grant Program is
established to respond to the need for this state to work in
conjunction with defense-dependent communities in developing and
implementing strategies and approaches that will help
communities support the missions of military installations, and
in developing and implementing alternative economic
diversification strategies to transition from a defense economy
to a nondefense economy. Eligible applicants include defense-
dependent counties and cities, and local economic development
councils located within such communities. The program shall be
administered by the department and grant awards may be provided
to support community-based activities that:

(a) Protect existing military installations;

(b) Diversify the economy of a defense-dependent community;

Page 2 of 5

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

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59 or

60 (c) Develop plans for the reuse of closed or realigned
61 military installations, including any plans necessary for
62 infrastructure improvements needed to facilitate reuse and
63 related marketing activities.

64
65 Applications for grants under this subsection must include a
66 coordinated program of work or plan of action delineating how
67 the eligible project will be administered and accomplished,
68 which must include a plan for ensuring close cooperation between
69 civilian and military authorities in the conduct of the funded
70 activities and a plan for public involvement. An applicant must
71 agree to match at least 30 percent of any grant awarded.

72 Section 2. Section 292.10, Florida Statutes, is amended to
73 read:

74 292.10 Local governing bodies authorized to assist war
75 veterans; powers.—The board of county commissioners of each
76 county and the governing body of each city in the state are
77 authorized hereby granted full and complete power and authority
78 to aid and assist wherever practical and feasible the veterans,
79 male and female, who have served in the Armed Forces of the
80 United States in any war, and received an honorable discharge,
81 or received a general discharge under honorable conditions from
82 any branch of the military service of the United States, and
83 their dependents, in presenting claims for and securing such
84 compensation, hospitalization, education, loans, career
85 training, and other benefits or privileges to which said
86 veterans, or any of them, are or may become entitled under any
87 federal or state law or regulation by reason of their service in

583-03205-15

20157076__

88 the Armed Forces of the United States.

89 Section 3. Subsection (12) of section 455.213, Florida
90 Statutes, is amended to read:

91 455.213 General licensing provisions.—

92 (12) The department shall waive the initial licensing fee,
93 the initial application fee, and the initial unlicensed activity
94 fee for a military veteran or his or her spouse at the time of
95 discharge, if he or she applies to the department for a license,
96 in a format prescribed by the department, within 60 months after
97 the veteran is discharged from any branch of the United States
98 Armed Forces. To qualify for this waiver, the veteran must have
99 been honorably discharged or received a general discharge under
100 honorable conditions.

101 Section 4. Agricultural farming opportunities for
102 veterans.—

103 (1) The Department of Veterans' Affairs, through the
104 direct-support organization established under s. 292.055,
105 Florida Statutes, and in consultation with the Department of
106 Agriculture and Consumer Services, shall include a section in
107 the Florida Veterans' Benefits Guide on agricultural farming
108 opportunities in this state for veterans of the Armed Forces of
109 the United States. The section must, at a minimum, include
110 information on:

111 (a) Federal, state, and local agricultural farming
112 programs, incentives, assistance, and grants that are available
113 to veterans.

114 (b) Federal and state agricultural farming outreach and
115 advocacy programs that are available to veterans.

116 (2) The Department of Veterans' Affairs shall:

583-03205-15

20157076__

117 (a) Make the guides available to all military installations
118 in this state.

119 (b) Provide a concise description of the contents of the
120 section and a link to the section on its website.

121 Section 5. No later than June 30, 2016, the Department of
122 Highway Safety and Motor Vehicles and the Department of Military
123 Affairs shall jointly create a pilot program to provide
124 opportunities for commercial driver license testing to qualified
125 members of the Florida National Guard through the commercial
126 driver license skills test waiver available under s. 322.12,
127 Florida Statutes. Testing held pursuant to the pilot program
128 must be conducted at a Florida National Guard armory, an Armed
129 Forces Reserve Center, or the Camp Blanding Joint Training
130 Center. The pilot program must be administered using existing
131 funds appropriated to each department.

132 Section 6. 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)

4/26/2015

Meeting Date

SB 7076

Bill Number (if applicable)

Topic Military & Veteran Support

Name Col. Mike Prendergast

Job Title Executive Director

Address Suite 2105, The Capitol

Street

Tallahassee

City

FL

State

32399

Zip

Phone (850) 487-1533

Email exdir@fldva.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Florida Dept. of Veterans' Affairs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 120/2015
Meeting Date

Topic _____

Bill Number 7076
(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)



666312

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 67 and 68
insert:

Section 4. Section 1013.385, Florida Statutes, is created
to read:

1013.385 School district construction flexibility.-

(1) A district school board, with a supermajority vote at a
public meeting that begins no earlier than 5 p.m., may adopt a
resolution to implement one or more of the exceptions to the



666312

educational facilities construction requirements provided in this section. Before voting on the resolution, a district school board must conduct a cost-benefit analysis prepared according to a professionally accepted methodology that describes how each exception selected by the district school board achieves cost savings, improves the efficient use of school district resources, and impacts the life-cycle costs and life span, as applicable, for each educational facility to be constructed, as applicable, and demonstrates that implementation of the exception will not compromise student safety or the quality of student instruction. The district school board must conduct at least one public workshop to discuss and receive public comment on the proposed resolution and cost-benefit analysis, which must begin no earlier than 5 p.m. and may occur at the same meeting at which the resolution will be voted upon.

(2) A resolution adopted under this section may propose implementation of exceptions to requirements of the uniform statewide building code for the planning and construction of public educational and ancillary plants adopted pursuant to ss. 553.73 and 1013.37 relating to:

(a) Interior nonload-bearing walls, by approving the use of fire-rated wood stud walls in new construction or remodeling for interior nonload-bearing wall assemblies that will not be exposed to water or located in wet areas.

(b) Walkways, roadways, driveways, and parking areas, by approving the use of designated, stabilized, and well-drained gravel or grassed student parking areas.

(c) Standards for relocatables used as classroom space, as specified in s. 1013.20, by approving construction



666312

specifications for installation of relocatable buildings that do not have covered walkways leading to the permanent buildings onsite.

(d) Site lighting, by approving construction specifications regarding site lighting which:

1. Do not provide for lighting of gravel or grassed auxiliary or student parking areas.

2. Provide lighting for walkways, roadways, driveways, paved parking lots, exterior stairs, ramps, and walkways from the exterior of the building to a public walkway through installation of a timer that is set to provide lighting only during periods in which the site is occupied.

3. Allow lighting for building entrances and exits to be installed with a timer that is set to provide lighting only during periods in which the building is occupied. The minimum illumination level at single-door exits may be reduced to no less than 1 footcandle.

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

And the title is amended as follows:

Delete line 13

and insert:

determination; creating s. 1013.385, F.S.; providing for school district construction flexibility; authorizing exceptions to educational facilities construction requirements under certain circumstances; providing an effective date.



534278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 67 and 68
insert:

Section 4. Subsection (4) of section 1013.40, Florida
Statutes, is amended to read:

1013.40 Planning and construction of Florida College System
institution facilities; property acquisition.—

(4) The campus of a Florida College System institution
within a municipality designated as an area of critical state



534278

concern, as defined in s. 380.05, and having a comprehensive plan and land development regulations containing a building permit allocation system that limits annual growth, may construct dormitories for up to 400 ~~100~~ beds for Florida College System institution students. Such dormitories are ~~shall be~~ exempt from the building permit allocation system and may be constructed up to 45 feet in height if the dormitories provided ~~that they~~ are otherwise consistent with the comprehensive plan, the Florida College System institution has a hurricane evacuation plan that requires all dormitory occupants to be evacuated 48 hours in advance of tropical force winds, and ~~that~~ transportation is provided for dormitory occupants during an evacuation.

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

And the title is amended as follows:

Delete line 13

and insert:

determination; amending s. 1013.40, F.S.; increasing the number of beds that may be in a dormitory constructed by certain Florida College System institutions; 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: CS/SB 1262

INTRODUCER: Fiscal Policy Committee and Senator Legg

SUBJECT: Education

DATE: April 22, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	Favorable
2.	Sikes	Elwell	AED	Recommend: Favorable
3.	Jones	Hrdlicka	FP	Fav/CS

I. Summary:

CS/SB 1262 deletes obsolete deadlines and streamlines communication and reporting of information by the Florida Department of Education (DOE) and the Commission for Independent Education (CIE). Specifically, the bill:

- Provides clarification regarding the use of an individual education plan (IEP) by requiring that the IEP and the electronic IEP system developed by the DOE be available for statewide use and deletes an obsolete, July 1, 2007, deadline.
- Deletes the obsolete, December 31, 2013, deadline for reporting of student data by the CIE to the DOE.
- Allows the Commissioner of Education's in personnel discipline proceedings regarding certified Florida educators the option, in lieu of finding probable cause, to issue a letter of guidance.
- Allows district school boards, with a super majority vote, to adopt a resolution to implement exceptions to the education facilities construction requirements in the State Requirements for Educational Facilities of the Florida Building Code.
- Requires the board, before voting on the resolution, to conduct a cost-benefit analysis and at least one public workshop to discuss and receive public comment on the proposed resolution
- Allows Florida Keys Community College to construct dorms for up to 400 beds instead of only 100 beds.

The bill has an insignificant fiscal impact.

II. Present Situation:

Individual Education Plans

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, including children with

disabilities who have been suspended or expelled from school.¹ As the state educational agency, the Florida Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.²

For each eligible child with a disability served by a school district, or other state agency that provides special education and related services directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.³ In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.⁴

States receiving Individuals with Disabilities Education Act funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.⁵ States must also provide students with disabilities and their parents with certain procedural safeguards, including:

- Notice of any proposal or refusal to change the student's identification, evaluation, or educational placement;
- The opportunity to present a complaint and to have an impartial due process hearing; and
- The right to keep the student in his or her current educational placement pending administrative or judicial review proceedings.⁶

A student with a disability and his or her parents also have the right to bring a civil action in state court, if they are aggrieved by the decision of the state administrative hearing officer relating to a due process hearing or alternative placement.⁷

Commission for Independent Education

The Commission for Independent Education (CIE), established in the DOE, consists of seven members who are residents of this state.⁸ The Governor appoints the members of the CIE who are subject to confirmation by the Senate.⁹ The CIE is responsible for independently exercising

¹ 20 U.S.C. s. 1400 et. seq., as amended by Pub. L. No. 108-446; 34 C.F.R. s. 300.17.

² 34 C.F.R. s. 300.149.

³ Rule 6A-6.03028(3), F.A.C.

⁴ 20 U.S.C. s. 1414(d)(3)(A) and (B).

⁵ 20 U.S.C. s. 1412. See also U.S. Department of Education, *Building the Legacy: IDEA 2004*, available at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C12%2C> (last visited April 14, 2015).

⁶ 20 U.S.C. s. 1415(b), (c), (d), (e), (f), and (j). There is an exception to keeping a student in his or her current placement if it involves an alternative educational setting.

⁷ 20 U.S.C. s. 1415(i)(2).

⁸ Section 1005.21(1) and (2), F.S.

⁹ Section 1005.21(2), F.S., and Florida Department of Education, *Commission Members*, available at <http://www.fldoe.org/policy/cie/commission-members.stml> (last visited April 14, 2015).

all powers, duties, and functions concerning independent postsecondary educational institutions¹⁰ in consumer protection, program improvement, and licensure of institutions under its purview.¹¹ The CIE is also responsible for authorizing the granting of diplomas and degrees by independent postsecondary educational institutions under its jurisdiction. The DOE serves as the administrative agent of the CIE by providing services, including payroll, procurement, and legal counsel.¹²

Personnel Discipline

The DOE is required to investigate complaints of misconduct by certified educators.¹³ The DOE must prioritize investigation of a legally sufficient complaint that “involves misconduct by any certificated personnel which affects the health, safety, or welfare of a student” over other pending complaints.¹⁴ The DOE may contract with the Department of Business and Professional Regulation for conducting the investigations.¹⁵ The DOE general counsel and staff must review the findings of such investigations and advise the Commissioner of Education (commissioner) regarding probable cause or lack thereof. The commissioner must make the determination of probable cause. Unless the complaint involves a felony or crime of moral turpitude, the commissioner may enter into a deferred prosecution agreement with a certified educator in lieu of finding probable cause. The commissioner must dismiss a complaint if probable cause does not exist to commence prosecution.¹⁶

State Requirements for Educational Facilities

The Florida Building Commission (commission) adopts the State Requirements for Educational Facilities (SREF) within the Florida Building Code (FBC), which governs the planning and construction of public educational and ancillary plants.¹⁷ The State Fire Marshal adopts standards for public school fire safety within the Florida Fire Prevention Code (FFPC).¹⁸ The SREF specifies standards including, but not limited to:

- Interior walls;
- Walks, roads, drives, and parking areas;
- Covered walks; and
- Site lighting.¹⁹

¹⁰ Independent postsecondary educational institution means “any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government.” s. 1005.02(11), F.S.

¹¹ Section 1005.21(1) and (2), F.S.

¹² Section 1005.21(1), F.S.

¹³ Section 1012.796(1), F.S.

¹⁴ Section 1012.796(1)(b), F.S.

¹⁵ Section 1012.796(2), F.S.

¹⁶ Section 1012.796(3), F.S.

¹⁷ Sections 553.73 and 1013.37(1), F.S.; Rule 6A-2.0010, F.A.C.; and section 423, FBC. The 2014 *State Requirements for Educational Facilities* (effective November 1, 2014) are available at <http://www.fldoe.org/core/fileparse.php/7738/urlt/srefrule14.pdf> (last visited April 21, 2015). See Florida Department of Education, Office of Educational Facilities, *2015 Agency Bill Analysis* (March 5, 2015) (on file with the Committee on Education Pre-K – 12).

¹⁸ Sections 633.206(1)(b), 1013.03(6), and 1013.37(1) and (4), F.S., and section 443, FBC.

¹⁹ Section 423 of the FBC contains the State Requirements for Educational Facilities (SREF). However, the FBC has been redrafted and section 423 will be renumbered as section 453. *The Florida Building Code, Draft Building Chapters*, 5th

Review by the District School Board

Before the commencement of the construction, renovation, or remodeling of any educational or ancillary plants, a district school board must review the construction plans, including any related documents.²⁰ In reviewing the plans, the district school board must consider certain information, including but not limited to:²¹

- The need for the new facility;
- The energy efficiency and conservation of design;
- Life-cycle cost considerations;
- The proposed construction cost per gross square foot;
- Plans for future expansion;
- The type of construction;
- Sanitary provisions;
- The design to accommodate physically handicapped persons; and
- Conformity with the FBC and FFPC standards.

Approval by the District School Board

Before approving any construction plans, a district school board must ensure that the plans comply with the applicable standards of the FBC and the FFPC.²² For each proposed new facility and each proposed new addition exceeding 2,500 square feet, the district school board must submit a copy of the plans²³ to the county, municipality, or independent special fire control district providing fire protection services to the facility for review at no charge.²⁴ Upon determining that the construction plans comply with the applicable standards, the district school board may approve the plans and construction may begin on the facilities.²⁵

Waivers or Variances

The Florida Constitution prohibits the enactment of any special act or general law of local application that proposes to amend, alter, or contravene the provisions of the SREF.²⁶ Legislative intent is that building officials, local enforcement agencies, and the commission interpret the FBC in a manner that protects the public safety, health, and welfare at the most reasonable cost.²⁷

The commission is not authorized to accept a petition for and may not grant any waiver or variance from the requirements of the FBC.²⁸ However, the commission is required to adopt

Edition (2014) is available at

http://ecodes.biz/ecodes_support/free_resources/14FloridaDraft/Building/14FL_Building_Draft.html (last visited April 21, 2015).

²⁰ Section 1013.37(2)(a) and (b), F.S.

²¹ Section 1013.37(2)(b), F.S.

²² Sections 1013.37(2), 1013.371(1)(c), and 1013.38(4)(a), F.S.

²³ Such site plans are exempt from all other state building codes; local amendments to the FBC and FFPC; local ordinances; building permits, including related fees; road closures; and impact fees or service availability fees. ss. 1013.371(1)(a) and 1013.38(1)(b), F.S.

²⁴ Section 1013.38(1)(a) and (b), F.S.

²⁵ Sections 1013.37(2)(a) and 1013.38(4)(a), F.S.

²⁶ Section 1013.37(5), F.S. The enactment of a special law or general law of local application is prohibited if pertaining to a subject prohibited by general law. Art. III, s. 11(a)(21), Fla. Const.

²⁷ Section 553.775(1), F.S.

²⁸ Sections 120.80(16)(a) and (b) and 553.512(1), F.S.

criteria and procedures for granting alternative means of compliance with the FBC standards, or local amendments to the FBC, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the FBC.²⁹

Upon a determination by the commission of unnecessary, unreasonable, or extreme economic hardship, provided the waiver does not violate federal accessibility laws and regulations, the commission must grant an applicant's request for waiver.³⁰

If planned or actual construction of a facility deviates from the standards, a district school board must, at a public hearing, quantify and compare the costs of constructing the facility with the proposed deviations and in compliance with the adopted standards and the FBC, and explain the reason for the proposed deviations.³¹

III. Effect of Proposed Changes:

Individual Education Plans (Section 1)

The bill provides clarification regarding the use of an individual education plan (IEP) by requiring that the IEP and the electronic IEP system developed by the DOE be available for statewide use and deletes an obsolete deadline. Current law requires the IEP and the electronic IEP system be available for potential statewide use no later than July 1, 2007.³²

Commission for Independent Education (Section 2)

The bill deletes an obsolete deadline for reporting of student data (e.g., retention rates, transfer rates, completion rates, graduation rates, and employment and earnings) by the CIE to the DOE. Specifically, the bill deletes December 31, 2013, as the deadline for submitting student data for 2012-2013 academic year and maintains October 1 as the annual deadline for reporting such data.

Personnel Discipline (Section 3)

The bill allows the commissioner the option, in lieu of finding probable cause, to issue a letter of guidance. Current law authorizes the commissioner to enter into a deferred prosecution agreement with a certified educator in lieu of finding probable cause.³³

State Requirements for Educational Facilities (Section 4)

The bill authorizes a district school board to adopt, by supermajority vote, a resolution to implement exceptions to the State Requirements for Educational Facilities (SREF). The bill requires that the district school board adopt the resolution at a public meeting that begins no

²⁹ Section 120.80(16)(b), F.S. Each local government and each code enforcement agency with statutory authority must regulate building construction and enforce the FBC standards. s. 553.513, F.S.

³⁰ Section 553.512(1), F.S.

³¹ Section 1013.371(2), F.S.

³² Section 1003.576, F.S.

³³ Section 1012.796(3), F.S.

earlier than 5 p.m., and conduct a cost-benefit analysis using a professionally accepted methodology for each exception selected by the district school board.

The bill authorizes implementation of the following exceptions to the SREF relating to:

- Interior nonload-bearing walls, by approving the use of fire-rated wood stud walls in new construction or remodeling for interior nonload-bearing wall assemblies that will not be exposed to water or located in wet areas.
- Walkways, roadways, driveways, and parking areas, by approving the use of designated, stabilized, and well-drained gravel or grassed student parking areas.
- Standards for relocatables used as classroom space, by approving construction specifications for installation of relocatable buildings that do not have covered walkways leading to the permanent buildings onsite.
- Site lighting, by approving construction specifications regarding site lighting that:
 - Do not provide for lighting of gravel or grassed auxiliary or student parking areas.
 - Provide lighting for walkways, roadways, driveways, paved parking lots, exterior stairs, ramps, and walkways from the exterior of the building to a public walkway through installation of a timer that is set to provide lighting only during periods when the site is occupied.
 - Allow lighting for building entrances and exits to be installed with a timer that is set to provide lighting only during periods in which the building is occupied. The minimum illumination level at single-door exits may be reduced to no less than 1 foot-candle.

Before voting on a resolution, the district school board must conduct a cost-benefit analysis using a professionally accepted methodology that describes how each proposed exception:

- Achieves cost savings;
- Improves the efficient use of school district resources;
- Impacts the life-cycle costs and life span for each educational facility to be constructed; and
- Preserves student safety or the quality of student instruction.

The bill requires that the district school board hold at least one public workshop, beginning no earlier than 5 p.m., to discuss and receive public comment on the proposed resolution and cost-benefit analysis, and authorizes the district school board to vote on the resolution at the same meeting. Otherwise, the vote on the resolution must be made during a public meeting beginning no earlier than 5 p.m.

Florida Keys Community College (Section 5)

Currently, s. 1013.40, F.S., allows Florida Keys Community College to construct dormitories for up to 100 beds. The bill increases the number of beds the college can construct a dormitory to have to 400 beds.

Effective Date (Section 6)

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:

None.

C. Government Sector Impact:

If a district school board elects to use one of the exceptions authorized in the bill, the fiscal impact to the district school board would be insignificant.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

In order to not have a deficit of safe public hurricane evacuation shelter space the Division of Emergency Management must conduct a survey to identify buildings that can serve as shelters. Section 1013.372, F.S., requires the DOE to create criteria that ensures that appropriate new educational facilities can serve as public shelters for emergency management purposes. This criteria must be incorporated into the Florida Building Code. A facility, or an appropriate area within a facility, must be built in compliance with the amended code unless the facility or a part of it is exempt.³⁵ If the regional planning council region in which the county is located does not have a hurricane evacuation shelter deficit, the educational facilities within the planning council region are not required to incorporate the public shelter criteria. It is unclear if the bill's

³⁴ Florida Department of Education, Office of Educational Facilities, *2015 Agency Bill Analysis* (March 5, 2015) (on file with the Committee on Education Pre-K – 12).

³⁵ Any educational facility located or proposed to be located in an identified category 1, 2, or 3 evacuation zone is not subject to the requirements of s. 1013.372, F.S.

exceptions to the educational facilities construction requirements affect which educational facilities can serve as public shelters.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.576, 1005.22, 1012.796, 1013.385, and 1013.40.

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 20, 2015:

The committee substitute:

- Allows district school boards, with a super majority vote, to adopt a resolution to implement exceptions to the education facilities construction requirements. The exceptions to the requirements of the uniform statewide building code relate to:
 - Interior nonload bearing walls;
 - Walkways, roadways driveways and parking areas;
 - Standards for relocatables; and
 - Site lighting.
- Requires before voting on the resolution the board must conduct a cost-benefit analysis and at least one public workshop to discuss and receive public comment on the proposed resolution.
- Allows Florida Keys Community College to construct dorms for up to 400 beds instead of only 100 beds.

B. Amendments:

None.

By Senator Legg

17-00964A-15

20151262__

A bill to be entitled

An act relating to education; amending s. 1003.576, F.S.; requiring the Department of Education to have an operating electronic IEP system in place for statewide use; amending s. 1005.22, F.S.; requiring the Commission for Independent Education to report certain data to the department annually by a certain date regarding institutions licensed by the commission; amending s. 1012.796, F.S.; authorizing the Commissioner of Education to issue a letter of guidance in response to a complaint against a teacher or administrator in lieu of a probable cause determination; providing an effective date.

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

Section 1. Section 1003.576, Florida Statutes, is amended to read:

1003.576 Individual education plans for exceptional students.—The Department of Education must develop and have an operating electronic IEP system in place for ~~potential~~ statewide use ~~no later than July 1, 2007~~. The statewide system shall be developed collaboratively with school districts and must include input from school districts currently developing or operating electronic IEP systems.

Section 2. Paragraph (i) of subsection (1) of section 1005.22, Florida Statutes, is amended to read:

1005.22 Powers and duties of commission.—

(1) The commission shall:

Page 1 of 3

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

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(i) Serve as a central agency for collecting and distributing current information regarding institutions licensed by the commission. The commission shall annually collect, and all institutions licensed by the commission shall annually report, student-level data from the prior year for each student who receives state funds, in a format prescribed by the Department of Education. At a minimum, data from the prior year must include retention rates, transfer rates, completion rates, graduation rates, employment and placement rates, and earnings of graduates. By October 1 of each year ~~December 31, 2013~~, the commission shall report the data for the ~~2012-2013~~ academic year to the Department of Education. ~~By October 1 of each year thereafter, the commission shall report the data to the department.~~

Section 3. Subsection (3) of section 1012.796, Florida Statutes, is amended to read:

1012.796 Complaints against teachers and administrators; procedure; penalties.—

(3) The department staff shall advise the commissioner concerning the findings of the investigation. The department general counsel or members of that staff shall review the investigation and advise the commissioner concerning probable cause or lack thereof. The determination of probable cause shall be made by the commissioner. The commissioner shall provide an opportunity for a conference, if requested, prior to determining probable cause. The commissioner may enter into deferred prosecution agreements in lieu of finding probable cause if, in his or her judgment, such agreements are in the best interests of the department, the certificateholder, and the public. Such

Page 2 of 3

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

17-00964A-15

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59 deferred prosecution agreements shall become effective when
60 filed with the clerk of the Education Practices Commission.
61 However, a deferred prosecution agreement ~~may shall~~ not be
62 entered into if there is probable cause to believe that a felony
63 or an act of moral turpitude, as defined by rule of the State
64 Board of Education, has occurred. Upon finding no probable
65 cause, the commissioner shall dismiss the complaint. In lieu of
66 a finding of probable cause, the commissioner may also issue a
67 letter of guidance to the educator.
68 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)

4/20/15

Meeting Date

1262

Bill Number (if applicable)

534278

Amendment Barcode (if applicable)

Topic Housing - State colleges

Name John Wayne Smith

Job Title Lobbyist

Address 301 S. Bronough St. Suite 500

Street

Tallahassee

City

FL

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32301

Zip

Phone 850-570-7242

Email john@peebles-smith.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Keeps Community College Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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:

Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG

17th District

Legg.John.web@FLSenate.gov

March 5, 2015

The Honorable Anitere Flores
Committee on Fiscal Policy Chair
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

RE: SB 1262 - Education

Dear Chair Flores:

SB 1262 - Education has been referred to your committee. I respectfully request that it be placed on the Committee on Fiscal Policy Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg", with a long horizontal stroke extending to the right.

John Legg
State Senator, District 17

cc: Jennifer Hrdlicka, Staff Director

JL/jb

REPLY TO:

- ☐ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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 1486

INTRODUCER: Community Affairs Committee and Senator Brandes

SUBJECT: Residential Master Building Permit Programs

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Fav/CS
2.	Kraemer	Imhof	RI	Favorable
3.	White	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1486 provides for the creation of local residential master building permit programs to assist builders who construct certain dwellings and townhomes on a repetitive basis. The bill directs each local government to create a residential master building permit program within 6 months of a written request made by a licensed contractor to a licensed local building official. Under the program, a builder obtains a master building permit by submitting certain documents, such as a general construction plan, to the local building department. Within 120 days after receiving a complete application, the local building department must review the general construction plan to determine compliance with the building code and approve or deny the master building permit application.

If the local building department approves the general building plan and all documents provided with the master building permit application are verified, the builder receives a master building permit and permit number. After approving a master building permit application, the bill provides that the local building department may only require the builder to submit the limited documents for a site-specific building permit for a single-family or two-family dwelling.

The bill has an indeterminate fiscal impact to local governments.

II. Present Situation:

Florida Building Code and Local Amendments

Chapter 553, F.S., titled the “Florida Building Codes Act,” provides a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code. The Florida Building Commission (FBC) updates the Florida Building Code (code) every 3 years by selecting the most current versions of model codes to serve as the basis for the new edition of Florida’s code. During the triennial code adoption process, FBC staff integrates provisions that have been previously adopted by the commission in prior code editions that are related to state agency regulation, wind-resistance design of buildings in the high velocity hurricane zone, and other provisions required for consistency with statute.¹

While the Legislature has stated its intent that the code be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction,² flexibility is provided so that local governments may adopt amendments to the administrative provisions³ and technical provisions of the code.⁴ These local amendments, which apply solely within the jurisdiction of the local government, are:

- Required to be more stringent than the minimum standards of the code;
- Not allowed to be made more than once every 6 months;
- Not allowed to make additional requirements that are discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- Not allowed to make additional requirements introducing a new subject not addressed in the code;⁵ and
- Not applicable to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved pursuant to s. 553.77(3), F.S.⁶

Section 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 which 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.

Local Government Permitting

The Legislature has specified that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public’s health, safety, and

¹ See s. 553.73(7)(g), F.S.

² Section 553.72, F.S.

³ Section 553.73(4)(a), F.S.

⁴ Section 553.73(4)(b), F.S.

⁵ Section 553.73(4)(b)3., F.S.

⁶ Section 553.73(4)(c), F.S.

welfare.⁷ Section 553.79(1), F.S., provides that it is unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building without first obtaining a permit from the appropriate enforcing agency or from such persons delegated the authority to issue permits, upon the payment of fees adopted by the enforcing agency. Typically, the appropriate enforcing agency is the local building department in the county or municipality in which the property is located. The builder is required to obtain a site-specific building permit for each individual site-specific building intended to be constructed, even if the builder expects to build multiple identical structures on a repetitive basis.

A builder is required to provide building plans and specifications at the time of application for a site-specific building permit, along with a structural inspection plan and additional supporting documents sufficient for the building code administrator or inspector to determine whether the building will be built according to the code.⁸ The specific documents required to be submitted with the site-specific building permit application can vary depending upon the county or municipality reviewing the documents. The City of Tallahassee requests the following documents with the application for site-specific building permit:

- Completed permit application, signed by the contractor;
- Affidavit of the owner, designating contractor as the agent;
- Disclosure statement if the owner is acting as his or her own contractor;
- Affidavit of occupancy;
- Florida Lien Law form if the owner is acting as his or her own contractor;
- Certified copy of recorded Notice of Commencement;
- Two sets of construction plans, including floor plan, elevations, foundation plan or floor framing plan, wall sections, roof plan, two gas diagrams, manufacturer's truss layout, and fire resistance framing plan;
- Two engineered wind analyses, if the structure is over 400 square feet, has openings within three feet of a corner, or is two stories; the engineer must have the subdivision name, lot, and block or complete address;
- Environmental information, including a site plan, information regarding whether the property is located in a FIRM flood zone, street name, lot dimensions, setback dimensions, north arrow, easements and restrictions, location and size of all protected trees, limits of clearing and location for placement of sediment and erosion control measures, clearly labeled existing and proposed structures, existing and proposed two-foot contour lines labeled accordingly; all grading or other methods of storm-water conveyance; and finished floor elevation;
- 2010 Florida Building Code, Energy Conservation Form 402 or 405;
- EPL Display card signed by the builder with the date and address of the home;
- Manual J form with the HVAC load sizing summary for residential buildings signed by the preparer;
- Soil test, signed by an engineer with subdivision name, lot, and block or complete address; and
- Completed driveway connection application.⁹

⁷ Section 553.72(2), F.S.

⁸ Section 553.79(2) and (6), F.S.

⁹ City of Tallahassee Applications and Forms, *Combination Residential Building, Environmental & Driveway Permit Application*, BI FORM AP-RESIDENTIAL BUILDING (Oct. 17, 2012), available at

Along with the application and listed documents, the builder submits a fee to cover both the review of the submitted documents and any inspection costs. The fees are based on a schedule adopted by the local government pursuant to s. 553.80(7), F.S., which provides that:

- The fees, and any fines or investment earnings related to the fees, may only be used to carry out the local government's responsibilities in enforcing the code;
- When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities;
- At the discretion of the local government, any unexpended balances are carried forward to future years for allowable activities or are refunded;
- The basis for a fee structure for allowable activities must relate to the level of service provided by the local government and must include consideration for refunding fees due to reduced services; and
- Fees charged must be consistently applied.

The FBC sets 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 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.

III. Effect of Proposed Changes:

Section 1 creates s. 553.794, F.S., to establish the parameters for local government residential master building permit programs. Upon receipt of a written request made by a licensed general, building, or residential contractor, a local government has 6 months to create a residential master building permit program. The program is designed to achieve standardization and reduce the time spent by local building departments during the site-specific building permit application process.

In order to obtain a master building permit, builders must submit the following to the local building department:

- A completed master building permit application;
- A general construction plan that complies with specified requirements;

- All general construction plan pages, documents, and drawings, including structural calculations if required by the local building department, signed and sealed by the licensed architect or engineer;
- Written acknowledgement from the licensed architect or engineer that the plan pages, documents, and drawings contained within the application will be used for future site-specific building permit applications;
- Truss specifications signed and sealed by the engineer; and
- An energy performance calculation for all building orientations that considers the worst-case scenarios for the relevant climate zone and includes component and cladding product approvals for windows, pedestrian and garage doors, glazed opening impact protection devices, truss anchors, roof underlayments, and roof coverings.

The bill provides that the general construction plan may be submitted in electronic or paper format, as required by the local building department, and must include:

- Left-hand and right-hand building orientations including floor plans;
- A model design, with up to four exterior elevations, that must:
 - Include a foundation plan;
 - Contain a truss layout sheet for each exterior elevation compatible with the roof plan;
 - Not contain more than three alternate garage layouts, with each garage limited to accommodating no more than three cars;
- A showing of typical wall sections from the foundation to the roof;
- A complete set of applicable electrical, plumbing, fuel gas, and mechanical plans;
- Window, door, and glaze opening impact protection device schedules, if applicable; and
- Any other local building department requirements.

The local building department must review the general construction plan to determine compliance with the building code, and approve or deny the master building permit application within 120 days after receiving a completed application, unless waived by the applicant. If the local building department approves the general building plan and all documents provided with the master building permit application are verified, the builder receives a master building permit and permit number.

In order to build one of the buildings approved under the master building permit, the builder must apply for a site-specific building permit and include the master building permit number with the application. The bill provides that the local building department may only require the builder to submit the following documents for a site-specific building permit for a single-family or two-family dwelling or townhome after approving a master building permit application:

- A complete site-specific building permit application with the master building permit number, identifying the model design to be built, including elevation and garage style;
- Three signed and sealed copies of the lot or parcel survey or site plan, indicating the Federal Emergency Management Agency flood zone, based flood elevation, and minimum finish floor elevation. The survey or site plan must conform to local zoning regulations and lot or parcel drainage indicators must be shown with site elevations;
- An affidavit by the licensed engineer of record affirming the master building permit is a true and correct copy of the master building permit on file with the local building department,

referencing the master building permit number and affirming that the master building permit will conform to soil conditions on the specific site;

- Complete mechanical drawings of the model design, including HVAC heating and cooling load calculations and equipment specifications; and
- Specific information not included in the master building permit application addressing the HVAC system design, including duct design and heating and cooling load calculations.

The builder may submit the master building permit number an unlimited number of times with the site-specific building permit applications, so long as the builder uses the model design contained in the master building permit and the permit is valid. Approved master building permits are valid until the code is updated as provided in s. 553.73, F.S.

Once a local building department has approved a master building permit, the local building department may:

- Not allow structural revisions to the building;
- Allow limited nonstructural revisions to the building so long as any revised floor plan is submitted to and approved by the local building department; and
- Accept limited field revisions, as determined by the local building department.

The bill provides that the governing bodies of local governments set fees pursuant to s. 553.80(7), F.S.

The bill provides that a builder or design professional who willfully violates provisions of the bill will be fined \$10,000 for each dwelling or townhome built under the master building permit that does not conform to the master building permit on file with the local building department.

Section 2 provides an effective date of 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. The mandates provision may apply because the bill requires county or municipal governments to create a residential master building permit within 6 months of receipt of a written request made by a licensed general, building, or residential contractor.

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.

Under Art. VII, s. 18(d) of the Florida Constitution, bills having insignificant fiscal impact are exempt from the mandates provisions. If the bill's requirements implicate the

mandates provision, the exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

The fiscal impact of this bill is indeterminate. If the exemption does not apply, and if the bill becomes law, cities and counties will not be bound by the law unless the Legislature determines that the bill fulfills an important state interest and approves the bill by a two-thirds vote of the membership of each House.

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 reducing the time spent by local building departments during the site-specific building permit process, builders will experience faster permit review times, possibly encouraging development and increasing private economic activity.

C. Government Sector Impact:

Costs to local governments to develop the program and review master building permit applications could be offset by the reduced requirements for reviewing site-specific building permit applications.

Because local governments have control over fee schedules, any revenue impact will be determined by the local government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 553.794 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 Community Affairs on April 7, 2015:

Provides that a local government whose licensed local building official receives a written request from a licensed general, building, or residential contractor has 6 months to create a master building permit program, and clarifies that local governments set fees for the master building permit program pursuant to existing provisions in s. 553.80(7), F.S.

- B. **Amendments:**

None.

By the Committee on Community Affairs; and Senator Brandes

578-03626-15

20151486c1

A bill to be entitled

An act relating to residential master building permit programs; creating s. 553.794, F.S.; requiring local governments to create master building permit programs if requested by a licensed general, building, or residential contractor to assist builders who construct certain dwellings and townhomes on a repetitive basis; defining terms; providing requirements for submitting a master building permit application, a general construction plan, or a site-specific building permit application; specifying documents that must be provided with the applications and plan; requiring master building permits to be approved or denied within a time certain; providing duration of validity of approved master building permits; authorizing a builder to use a master building permit for individual dwellings or townhomes under certain conditions; limiting revisions to approved master building permits; authorizing governing bodies of local governments to set specified fees; providing for penalties under certain circumstances; authorizing local governments to adopt procedures to carry out master building permit programs; providing an effective date.

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

Section 1. Section 553.794, Florida Statutes, is created to read:

Page 1 of 7

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

578-03626-15

20151486c1

553.794 Local government residential master building permit program.—

(1) MASTER BUILDING PERMIT PROGRAM CREATION.—If a local building official licensed pursuant to part XII of chapter 468 receives a written request from a general, building, or residential contractor licensed pursuant to chapter 489 requesting the creation of a master building permit program, the local government that employs the recipient building official shall create a residential master building permit program within 6 months after receipt of the written request. A master building permit program is intended for use by builders who expect to construct identical single-family or two-family dwellings or townhomes on a repetitive basis. The master building permit program must be designed to achieve standardization and consistency during the permitting process and to reduce the time spent by local building departments during the site-specific building permit application process.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Building orientation" means the placement of a building with respect to weathering elements such as sun, wind, and rain and environmental factors like topography.

(b) "Elevation" means a construction drawing that is drawn to scale and depicts the external face of the dwelling or townhome to be constructed.

(3) MASTER BUILDING PERMIT APPLICATION.—To obtain a master building permit, a builder must submit the following information to the local building department:

(a) A completed master building permit application.

(b) A general construction plan that complies with

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

578-03626-15

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subsection (4).

(c) All general construction plan pages, documents, and drawings, including structural calculations if required by the local building department, signed and sealed by the design professional of record, along with a written acknowledgement from the design professional that the plan pages, documents, and drawings contained within the master building permit application will be used for future site-specific building permit applications. The design professional of record must be a licensed engineer or architect.

(d) Truss specifications, signed and sealed by the truss design engineer. The design professional of record must stamp and sign the truss layout sheet as reviewed and approved for each model design.

(e) Energy performance calculations for all building orientations. The calculations must consider worst-case scenarios for the relevant climate zone and must include component and cladding product approvals for all windows, pedestrian doors, garage doors, glazed opening impact protection devices, truss anchors, roof underlayments, and roof coverings. The design professional of record must stamp and sign all product approvals as reviewed and approved for use with each model design.

(4) GENERAL CONSTRUCTION PLAN.—The general construction plan submitted as part of a master building permit application:

(a) May be submitted in electronic or paper format, as required by the local building department. A plan submitted in paper format must be a minimum of 36 inches by 48 inches or must comply with requirements of the local building department.

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20151486c1

(b) Shall include left-hand and right-hand building orientations, including floor plans.

(c) Shall include a model design that may include up to four alternate exterior elevations, each containing the same living space footprint. The model design:

1. May not contain more than three alternate garage layouts, with each garage layout limited to accommodating no more than three cars.

2. Must include a foundation plan.

3. Must contain a truss layout sheet for each exterior elevation that is compatible with the roof plan.

(d) Must show typical wall sections from the foundation to the roof.

(e) Must contain a complete set of applicable electrical, plumbing, fuel gas, and mechanical plans.

(f) Must contain window, door, and glazed opening impact protection device schedules, if applicable.

(5) MASTER BUILDING PERMIT APPROVAL PROCESS.—

(a) A builder may submit to the local building department a master building permit application that contains the information identified in subsection (3). Once a master building permit application is approved as provided in this subsection, the local building department may only require the builder to submit the documents identified in subsection (7) for each site-specific building permit application for a single-family or two-family dwelling or townhome.

(b) The local building department shall review the general construction plan submitted as part of the master building permit application to determine compliance with existing

578-03626-15 20151486c1

building code requirements. If the general construction plan is approved and all documents provided pursuant to subsections (3) and (4) are verified, the builder shall receive a master building permit and permit number.

(c) The local building department must approve or deny a master building permit application within 120 days after the local building department receives a completed application, unless the applicant agrees to a longer period.

(d) A builder may use the master building permit number for each dwelling or townhome as long as the builder uses the model design contained in the master building permit.

(e) An approved master building permit will remain valid until the Florida Building Code is updated as provided in s. 553.73.

(6) REVISIONS TO MASTER BUILDING PERMIT.—Once a master building permit has been approved, a local building department:

(a) May not allow structural revisions to the master building.

(b) May allow limited nonstructural revisions to the master building so long as any revised floor plan is submitted to and approved by the local building department.

(c) May accept limited field revisions, as determined by the local building department.

(7) SITE-SPECIFIC BUILDING PERMIT APPLICATIONS.—Once a builder has an approved master building permit, the builder is only required to submit the following information for each site-specific building permit application for a single-family or two-family dwelling or townhome:

(a) A completed site-specific building permit application

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that includes the master building permit number and identifies the model design to be built, including elevation and garage style.

(b) Three signed and sealed copies of the lot or parcel survey or site plan, as applicable. The survey or site plan must indicate the Federal Emergency Management Agency flood zone, base flood elevation, and minimum finished floor elevation. Lot or parcel drainage indicators must be shown along with site elevations.

(c) An affidavit by the licensed engineer of record affirming that the master building permit is a true and correct copy of the master building permit on file with the local building department. The affidavit must reference the master building permit number. The licensed engineer of record must affirm that the master building permit will conform to soil conditions on the specific site.

(d) Complete mechanical drawings of the model design, including HVAC heating and cooling load calculations and equipment specifications.

(e) Specific information that was not included in the master building permit application addressing the HVAC system design, including duct design and heating and cooling load calculations.

(8) FEES.—The governing bodies of local governments may set fees pursuant to s. 553.80(7).

(9) PENALTIES.—In addition to any other penalty provided by law, a builder or design professional who willfully violates this section shall be fined \$10,000 for each dwelling or townhome that is built under the master building permit that

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175 does not conform to the master building permit on file with the
176 local building department.

177 (10) PROGRAM GUIDELINES.—Each local government may adopt
178 procedures to provide master building permit program guidelines
179 and requirements for the submission and approval of materials
180 and applications.

181 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)

4/20/2015

Meeting Date

Topic _____

Bill Number 1486
(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

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 15, 2015

I respectfully request that **Senate Bill #1486**, relating to **Residential Master Building Permit Programs**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 22

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 572

INTRODUCER: Senator Montford

SUBJECT: School Support Organizations

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bailey	Klebacha	ED	Favorable
2. Babin	Diez-Arguelles	FT	Favorable
3. Hrdlicka	Hrdlicka	FP	Favorable

I. Summary:

SB 572 grants a partial exemption from the sales tax for sales of food and drink by a school support organization. The bill defines the term “school support organization” as an entity organized to raise funds to support extracurricular activities at public, parochial, or nonprofit schools teaching grades K-12.

The Revenue Estimating Conference has determined that this bill will reduce General Revenue receipts by \$1.5 million in Fiscal Year 2015-2016, with a recurring negative impact of \$1.5 million. The bill will reduce local government revenues by \$200,000 in Fiscal Year 2015-2016, with a recurring negative impact of \$200,000.

II. Present Situation:

Florida sales tax applies to retail sales of taxable items sold by schools and school-related organizations.¹ Without an exception, current statutes would require schools and school-related organizations to register as sales tax dealers, thereby requiring them to file returns, remit taxes and maintain necessary records.

Current law, however, exempts schools having grades K-12, parent-teacher organizations, and parent-teacher associations from typical dealer requirements by authorizing them to sell certain taxable items without collecting tax; however, they must pay sales tax to their suppliers on taxable purchases.² This treatment is authorized for school materials and supplies purchased, rented, or leased for resale or rental to students; items sold for fundraising purposes; and items sold through vending machines, including food or beverages sold through vending machines located in student lunchrooms or school dining rooms.

¹ See generally ch. 212, F.S.

² Section 212.08(7)(l)2., F.S.

III. Effect of Proposed Changes:

Section 1 authorizes school support organizations to sell food and drinks, and supplies necessary to serve such food and drink, without collecting tax; however, they are required to pay tax on the cost price of these items when purchased from the supplier.

The bill defines a “school support organization” as an entity organized to raise funds to support extracurricular activities at public, parochial, or nonprofit schools that teach grades K-12.

Section 2 provides an effective date of July 1, 2015.

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

The mandates provisions of Art. VII, Section 18, of the Florida Constitution are implicated because this bill reduces the authority of municipalities and counties to raise revenue; however, the amount of the reduction is estimated to be insignificant. Therefore, the bill is exempt from the mandates provisions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The Revenue Estimating Conference has determined that the bill will reduce General Revenue receipts by \$1.5 million in Fiscal Year 2015-2016, with a recurring negative impact of \$1.5 million. The bill will reduce local government revenues by \$200,000 in Fiscal Year 2015-2016, with a recurring negative impact of \$200,000.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.08 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 Montford

3-00208-15

2015572__

A bill to be entitled

An act relating to school support organizations; amending s. 212.08, F.S.; defining the term "school support organization"; authorizing such organizations to pay tax on specified items purchased for resale in lieu of collecting the tax upon resale; providing an effective date.

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

Section 1. Paragraph (11) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as

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required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(11) *Parent-teacher organizations* and, ~~parent-teacher~~ associations, ~~school support organizations~~, and schools having grades K through 12.—

1. Sales or leases to parent-teacher organizations and associations the purpose of which is to raise funds for schools that teach grades K through 12 and that are associated with schools having grades K through 12 are exempt from the tax imposed by this chapter.

2. Parent-teacher organizations and associations described in subparagraph 1. and schools that teach ~~having~~ grades K through 12, may pay tax to their suppliers on the cost price of school materials and supplies purchased, rented, or leased for resale or rental to students in grades K through 12, of items sold for fundraising purposes, and of items sold through vending machines located on the school premises, in lieu of collecting the tax imposed by this chapter from the purchaser. This ~~subparagraph~~ paragraph also applies to food or beverages sold through vending machines located in the student lunchroom or dining room of a school that teaches grades K ~~having~~ kindergarten through grade 12.

3. School support organizations may pay tax, as applicable under this chapter, to their suppliers on the cost price of

Page 2 of 3

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3-00208-15

2015572__

59 food, drink, and supplies necessary to serve such food and
60 drink, if the items are purchased for resale, in lieu of
61 collecting the tax from the purchaser. For purposes of this
62 subparagraph, the term "school support organization" means an
63 entity organized solely to raise funds to support
64 extracurricular activities at public, parochial, or nonprofit
65 schools that teach grades K through 12.

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



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

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 20, 2015

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

Dear Senator Flores:

I respectfully request that my Legislative Assistant Melissa Durham be entered in the committee record as having my permission to present my bill SB 572 at today's committee meeting.

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



207316

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (8) is added to section 1001.41,
Florida Statutes, to read:

1001.41 General powers of district school board.—The
district school board, after considering recommendations
submitted by the district school superintendent, shall exercise
the following general powers:

(8) Adopt a strategic plan consistent with the school



207316

board's mission and long-term goals.

Section 2. Subsection (6) and paragraphs (a) and (b) of subsection (18) of section 1001.42, Florida Statutes, are amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(6) STANDARDS OF ETHICAL CONDUCT FOR INSTRUCTIONAL PERSONNEL, ADMINISTRATIVE PERSONNEL, AND SCHOOL OFFICERS ~~ADMINISTRATORS~~.—Adopt policies establishing standards of ethical conduct for instructional personnel, administrative personnel, and school officers ~~administrators~~. The policies must require all instructional personnel, administrative personnel, and school officers ~~administrators~~, as defined in s. 1012.01, to complete training on the standards; establish the duty of instructional personnel, administrative personnel, and school officers ~~administrators~~ to report, and procedures for reporting, alleged misconduct by other instructional or administrative personnel and school officers ~~school administrators~~ which affects the health, safety, or welfare of a student; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A district school board, or any of its employees, may not enter into a confidentiality agreement regarding terminated or dismissed instructional or administrative personnel or school officers ~~administrators~~, or instructional or administrative personnel or school officers ~~administrators~~ who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide instructional or



207316

41 administrative personnel or school officers ~~administrators~~ with
42 employment references or discuss the instructional or
43 administrative personnel's or school officers' ~~administrators'~~
44 performance with prospective employers in another educational
45 setting, without disclosing the instructional or administrative
46 personnel's or school officers' ~~administrators'~~ misconduct. Any
47 part of an agreement or contract that has the purpose or effect
48 of concealing misconduct by instructional or administrative
49 personnel or school officers ~~administrators~~ which affects the
50 health, safety, or welfare of a student is void, is contrary to
51 public policy, and may not be enforced.

52 (18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—
53 Maintain a system of school improvement and education
54 accountability as provided by statute and State Board of
55 Education rule. This system of school improvement and education
56 accountability shall be consistent with, and implemented
57 through, the district's continuing system of planning and
58 budgeting required by this section and ss. 1008.385, 1010.01,
59 and 1011.01. This system of school improvement and education
60 accountability shall comply with the provisions of ss. 1008.33,
61 1008.34, 1008.345, and 1008.385 and include the following:

62 (a) *School improvement plans.*—

63 1. The district school board shall annually approve and
64 require implementation of a new, amended, or continuation school
65 improvement plan for each school in the district. If a school
66 has a significant gap in achievement on statewide, standardized
67 assessments administered pursuant to s. 1008.22 by one or more
68 student subgroups, as defined in the federal Elementary and
69 Secondary Education Act (ESEA), 20 U.S.C. s.



207316

6311(b)(2)(C)(v)(II); has not significantly increased the percentage of students passing statewide, standardized assessments; has not significantly increased the percentage of students demonstrating Learning Gains, as defined in s. 1008.34 and as calculated under s. 1008.34(3)(b), who passed statewide, standardized assessments; or has significantly lower graduation rates for a subgroup when compared to the state's graduation rate, that school's improvement plan shall include strategies for improving these results. The state board shall adopt rules establishing thresholds and for determining compliance with this subparagraph.

2. A school that includes any of grades 6, 7, or 8 shall include annually in its school improvement plan information and data on the school's early warning system required under paragraph (b), including a list of the early warning indicators used in the system, the number of students identified by the system as exhibiting two or more early warning indicators, the number of students by grade level that exhibit each early warning indicator, and a description of all intervention strategies employed by the school to improve the academic performance of students identified by the early warning system. In addition, a school that includes any of grades 6, 7, or 8 shall describe in its school improvement plan the strategies used by the school to implement and evaluate the instructional practices for middle grades emphasized by the district's professional development system pursuant to s. 1012.98(4)(b)9.

(b) *Early warning system.*—

1. A school that includes any of grades 6, 7, or 8 shall implement an early warning system to identify students in grades



207316

6, 7, and 8 who need additional support to improve academic performance and stay engaged in school. The early warning system must include the following early warning indicators:

a. Attendance below 90 percent, regardless of whether absence is excused or a result of out-of-school suspension.

b. One or more suspensions, whether in school or out of school.

c. Course failure in English Language Arts or mathematics.

d. A Level 1 score on the statewide, standardized assessments in English Language Arts or mathematics.

A school district may identify additional early warning indicators for use in a school's early warning system.

2. A school-based team responsible for implementing the requirements of this paragraph shall monitor the data from the early warning system in subparagraph (a)2. When a student exhibits two or more early warning indicators, the team must ~~the school's child study team under s. 1003.02 or a school-based team formed for the purpose of implementing the requirements of this paragraph shall~~ convene to determine appropriate intervention strategies for the student unless the student is already being served by an intervention program. The school shall provide at least 10 days' written notice of the meeting to the student's parent, indicating the meeting's purpose, time, and location, and provide the parent the opportunity to participate. Data and information relating to the indicators must be used to inform any intervention strategies provided to a student identified under this paragraph.

Section 3. Subsections (4) through (9) of section 1006.147,



207316

Florida Statutes, are amended to read:

1006.147 Bullying and harassment prohibited.—

(4) Each school district shall adopt, review, and revise at least every 3 years a policy prohibiting bullying and harassment of a student or employee of a public K-12 educational institution. Each school district's policy shall be in substantial conformity with the Department of Education's model policy. The school district bullying and harassment policy shall afford all students the same protection regardless of their status under the law. The school district may establish separate discrimination policies that include categories of students. The school district shall involve students, parents, teachers, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of adopting, reviewing, and revising the policy. The school district policy must be implemented by each school principal in a manner that is ongoing throughout the school year and integrated with the a school's curriculum, bullying prevention and intervention program, ~~a school's~~ discipline policies, and other violence prevention efforts. The school district policy must contain, at a minimum, the following components:

(a) A statement prohibiting bullying and harassment.

(b) A definition of bullying and a definition of harassment that include the definitions listed in this section.

(c) A description of the type of behavior expected from each student and employee of a public K-12 educational institution.

(d) The consequences for a student or employee of a public



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K-12 educational institution who commits an act of bullying or harassment.

(e) The consequences for a student or employee of a public K-12 educational institution who is found to have wrongfully and intentionally accused another of an act of bullying or harassment.

(f) A procedure for receiving mandatory reports of ~~reporting~~ an alleged act of bullying or harassment, including provisions that permit a person to anonymously report such an act. However, this paragraph does not permit formal disciplinary action to be based solely on an anonymous report.

(g) A procedure for the prompt investigation of a report of bullying or harassment and the persons responsible for the investigation. The investigation of a reported act of bullying or harassment is deemed to be a school-related activity and begins with a report of such an act. Incidents that require a reasonable investigation when reported to appropriate school authorities shall include alleged incidents of bullying or harassment allegedly committed against a child while the child is en route to school aboard a school bus or at a school bus stop.

(h) A process to investigate whether a reported act of bullying or harassment is within the scope of the district school system and, if not, a process for referral of such an act to the appropriate jurisdiction. Computers without web-filtering software or computers with web-filtering software that is disabled shall be used when complaints of cyberbullying are investigated.

(i) A procedure for providing immediate notification to the



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parents of a victim of bullying or harassment and the parents of the perpetrator of an act of bullying or harassment, as well as notification to all local agencies where criminal charges may be pursued against the perpetrator.

(j) A procedure to refer victims and perpetrators of bullying or harassment for counseling.

(k) A procedure for including incidents of bullying or harassment in the school's report of data concerning school safety and discipline required under s. 1006.09(6). The report must include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report must include in a separate section each alleged ~~reported~~ incident of bullying or harassment that does not meet the criteria of a prohibited act under this section with recommendations regarding such incidents. The Department of Education shall aggregate information contained in the reports.

(l) A list of programs authorized by the school district ~~that provide procedure for providing~~ instruction to students, parents, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment, including instruction on recognizing behaviors that lead to bullying and harassment and taking appropriate preventive action based on those observations.

(m) A procedure for regularly reporting to a victim's parents the actions taken to protect the victim.

(n) A procedure for publicizing the policy, which must include its publication in the code of student conduct required under s. 1006.07(2) and in all employee handbooks.

(o) A procedure for investigating anonymous reports of



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bullying or harassment made by parents through the school district's online portal maintained pursuant to subsection (5).

(5) Each school district shall maintain an online portal accessible by a student's parent for the purpose of anonymously reporting alleged incidents of bullying or harassment. The parent is not required to leave his or her name and contact information, but may do so if he or she chooses. The student's school shall investigate the reported incident and, if the parent's name and contact information are included, notify the parent regarding the progress of the investigation.

(6)~~(5)~~ A school employee, school volunteer, student, or parent who promptly reports in good faith an act of bullying or harassment to the appropriate school official designated in the school district's policy and who makes this report in compliance with the procedures set forth in the policy is immune from a cause of action for damages arising out of the reporting itself or any failure to remedy the reported incident.

(7)~~(6)~~ (a) The physical location or time of access of a computer-related incident cannot be raised as a defense in any disciplinary action initiated under this section.

(b) This section does not apply to any person who uses data or computer software that is accessed through a computer, computer system, or computer network when acting within the scope of his or her lawful employment or investigating a violation of this section in accordance with school district policy.

~~(7) Distribution of safe schools funds provided to a school district shall be contingent upon and payable to the school district upon the school district's compliance with all~~



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~~reporting procedures contained in this section.~~

~~(8) On or before January 1 of each year, the Commissioner of Education shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the implementation of this section. The report shall include data collected pursuant to paragraph (4) (k).~~

(8)~~(9)~~ Nothing in this section shall be construed to abridge the rights of students or school employees that are protected by the First Amendment to the Constitution of the United States.

Section 4. Paragraph (b) of subsection (2) of section 1006.283, Florida Statutes, is amended to read:

1006.283 District school board instructional materials review process.—

(2)

(b) District school board rules must also:

1. Identify, by subject area, a review cycle for instructional materials.

2. Specify the qualifications for an instructional materials reviewer and the process for selecting reviewers; list a reviewer's duties and responsibilities, including compliance with the requirements of s. 1006.31; and provide that all instructional materials recommended by a reviewer be accompanied by the reviewer's statement that the materials align with the state standards pursuant to s. 1003.41 and the requirements of s. 1006.31.

3. State the requirements for an affidavit to be made by each district instructional materials reviewer which substantially meet the requirements of s. 1006.30.



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4. Comply with s. 1006.32, relating to prohibited acts.

5. Establish a process that certifies the accuracy of instructional materials.

6. Incorporate applicable requirements of s. 1006.31, which relates to the duties of instructional materials reviewers.

7. Incorporate applicable requirements of s. 1006.38, relating to the duties, responsibilities, and requirements of publishers of instructional materials.

8. Establish the process by which instructional materials are adopted by the district school board, which must include:

- a. A process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the school board hearing and public meeting as specified in this subparagraph. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption.
- b. An open, noticed school board hearing to receive public comment on the recommended instructional materials.
- c. An open, noticed public meeting to approve an annual instructional materials plan to identify any instructional materials that will be purchased through the district school board instructional materials review process pursuant to this section. This public meeting must be held on a different date than the school board hearing.
- d. Notice requirements for the school board hearing and the public meeting that must specifically state which instructional materials are being reviewed and the manner in which the instructional materials can be accessed for public review.



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9. Establish the process by which the district school board shall receive public comment on, and review, the recommended instructional materials.

10. Establish the process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements.

11. Establish the process by which the school district will notify parents of their ability to access their children's instructional materials and homework assignments through the district's local instructional improvement system and by which the school district will encourage parents to access the system. This notification must be displayed prominently on the school district's website and provided annually in written format to all parents of enrolled students.

Section 5. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to school district policy; amending s. 1001.41, F.S.; requiring district school boards to adopt a strategic plan; amending s. 1001.42, F.S.; revising provisions relating to standards of ethical conduct to apply to administrative personnel and school officers; requiring a school to monitor and evaluate its instructional practices and intervention strategies relating to the early warning system;



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amending s. 1006.147, F.S.; requiring school districts to review and revise their bullying and harassment policies at specified intervals; specifying that a school district policy require a school to implement the policy in a certain manner and integrate it with the school's bullying prevention and intervention program; requiring such a policy to include mandatory reporting procedures and a list of authorized programs that provide bullying and harassment identification, prevention, and response instruction; requiring each school district to maintain an online portal accessible by a student's parent to anonymously report incidents of bullying or harassment; deleting provisions relating to safe schools funds and data reporting requirements; amending s. 1006.283, F.S.; requiring school districts to notify parents of their ability to access homework assignments through a local instructional improvement system; 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: CS/SB 530

INTRODUCER: Fiscal Policy Committee and Senator Ring

SUBJECT: Bullying and Harassment Policies in Schools

DATE: April 22, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Scott	Klebacha	ED	Favorable
2.	Sikes	Elwell	AED	Recommend: Favorable
3.	Pace	Hrdlicka	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 530, makes several revisions to school district policy. Specifically, the bill:

- Requires each district school board to adopt a strategic plan;
- Requires administrative personnel to comply with ethical conduct standards;
- Requires a school to monitor and evaluate its instructional practices and intervention strategies related to the early warning system;
- Requires periodic review and revision of a school district's anti-bullying and harassment policy;
- Modifies the information that must be contained in a school district's bullying and harassment policy;
- Requires school principals to implement the policy;
- Requires each school district to establish an online portal for anonymous reporting of alleged bullying or harassment;
- Requires schools to investigate alleged incidents of bullying or harassment; and
- Requires school districts to notify parents of their ability to access homework assignments through a local instructional improvement system.

The bill has an indeterminate fiscal impact (see Section V.).

II. Present Situation:

Bullying and Harassment

In 2008,¹ the Florida Legislature enacted s. 1006.147, F.S., which prohibits the bullying and harassment of any student or employee of a public K-12 educational institution. Bullying is prohibited during a public K-12 education program or activity, school-sponsored event, or on a public school bus.² Bullying and harassment are also prohibited through the use of data or computer software accessed through a computer within the scope of a public K-12 educational institution or accessed at a non-school related event, if the bullying substantially interferes with or limits the victim's ability to participate in or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school.³

Bullying means systemically and chronically inflicting physical hurt or psychological distress on one or more students, including cyberbullying,⁴ and may involve:

- Teasing;
- Social exclusion;
- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.⁵

Harassment means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal, or physical conduct directed against a student or school employee that:

- Places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property;
- Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
- Has the effect of substantially disrupting the orderly operation of a school.⁶

The law further specifies that bullying and harassment include:

- Retaliating against a student or school employee for reporting bullying or harassment;

¹ Chapter 2008-123, L.O.F., also known as the "Jeffrey Johnston Stand Up for All Students" Act.

² Section 1006.147(2), F.S.

³ Section 1006.147(2)(c) and (d), F.S. The law does not require a school to staff or monitor any non-school related activity, function, or program in its efforts to prevent bullying and harassment. s. 1006.147(2)(d), F.S.

⁴ "Cyberbullying" is a form of bullying through the use of technology or other means of electronic communication, including, but not limited to, creating webpages or blogs and distributing or posting materials that perpetuate the conduct. See s. 1006.147(3)(b), F.S.

⁵ Section 1006.147(3)(a), F.S.

⁶ Section 1006.147(3)(c), F.S.

- Reporting bullying or harassment in bad faith;
- Perpetuating bullying or harassment with the intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by:
 - Incitement or coercion;
 - Accessing or providing access to a school district's computer, computer system, or computer network; or
 - Engaging in conduct substantially similar in effect to bullying or harassment.⁷

Policy and Reporting Requirements

Each school district is required to adopt a policy prohibiting the bullying and harassment of a student or employee.⁸ The policy must be in substantial compliance with the Department of Education's model policy. The school district must involve students, parents, teachers, administrators, school volunteers, community representatives, and local law enforcement agencies in the process of adopting the policy.⁹ The policy must, at a minimum:¹⁰

- Prohibit and define bullying and harassment;
- Describe the type of behavior expected from each student and employee;
- Identify the consequences for a student or employee who commits an act of bullying or harassment;
- Establish procedures for:
 - Reporting and investigating acts of bullying and harassment;
 - Immediately notifying a victim's parents, the parents of the perpetrator, and all local agencies where criminal charges may be pursued;
 - Referring victims and perpetrators to counseling;
 - Including incidents of bullying or harassment in each school's safety and discipline report submitted to the Department of Education;¹¹
 - Providing instruction to students, parents, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment, including instruction on recognizing behaviors that lead to bullying and harassment and taking appropriate preventative action based on those observations;
 - Regularly reporting to a victim's parents the actions taken to protect the victim; and
 - Publicizing the policy, including publication in the code of student conduct and all employee handbooks.

The policy must be implemented in a manner that is ongoing throughout the school year and integrated with a school's curriculum, a school's discipline policies, and other violence prevention efforts.¹²

⁷ Section 1006.147(3)(f), F.S.

⁸ Section 1006.147(4), F.S.

⁹ *Id.*

¹⁰ 1006.147(4), F.S.

¹¹ Section 1006.09(6), F.S. The School Environmental Safety Incident Reporting (SESIR) System is used by the Office for Safe Schools within the Department of Education to compile data on incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events. Such data is contained in the *Statewide Report on School Safety and Discipline Data*, available at <http://www.fldoe.org/safeschools/sesir.asp> (last visited March 12, 2015).

¹² Section 1006.147(4), F.S.

Distribution of safe schools funds to a school district is contingent upon the school district's compliance with implementing the reporting procedures required as part of its bullying and harassment policy.¹³ By January 1 of each year, the Commissioner of Education must submit a report on the statewide implementation of bullying and harassment policies, including data regarding incidents of bullying and harassment and resulting consequences, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.¹⁴

School Improvement Plans¹⁵

District school boards must annually approve and require implementation of a school improvement plan for each school in the district. If a school has a significant gap in achievement on statewide, standardized assessments by one or more student subgroups; has not significantly increased the percentage of students passing statewide, standardized assessments; has not significantly increased the percentage of students demonstrating Learning Gains, who passed statewide, standardized assessments; or has significantly lower graduation rates for a subgroup when compared to the state's graduation rate, that school's improvement plan must include strategies for improving these results.

A school that includes any of grades 6, 7, or 8 must include in its school improvement plan information and data on the school's early warning system, including:

- A list of the early warning indicators used in the system;
- The number of students identified by the system as exhibiting two or more early warning indicators;
- The number of students by grade level that exhibit each early warning indicator; and
- A description of all intervention strategies employed by the school to improve the academic performance of students identified by the early warning system.

In addition, the school improvement plan must describe the strategies used by the school to implement the instructional practices for middle grades emphasized by the district's professional development system.

A school that includes any of grades 6, 7, or 8 must also implement an early warning system to identify students who need additional support to improve academic performance and stay engaged in school. The early warning system must include the following early warning indicators:

- Attendance below 90 percent, regardless of whether absence is excused or a result of out-of-school suspension;
- One or more suspensions, whether in school or out of school;
- Course failure in English Language Arts or mathematics; and
- A Level 1 score on the statewide, standardized assessments in English Language Arts or mathematics.

¹³ Section 1006.147(7), F.S.

¹⁴ Section 1006.147(8), F.S.

¹⁵ Section 1001.42(18), F.S.

When a student exhibits two or more early warning indicators, the school's child study team or a school-based team must convene to determine appropriate intervention strategies for the student. The school shall provide at least 10 days' written notice of the meeting to the student's parent, indicating the meeting's purpose, time, and location, and provide the parent the opportunity to participate.

III. Effect of Proposed Changes:

Bullying and Harassment

Policy and Reporting Requirements

Section 3 requires each school district to review and revise its anti-bullying and harassment policy at least every 3 years. School principals are specifically required to implement the school district's policy in a manner that is ongoing throughout the school year and integrated with the school's curriculum, bullying prevention and intervention program, discipline policies, and other violence prevention efforts. The policy must include the following components:

- A procedure for receiving mandatory reports of an alleged act of bullying or harassment;
- A list of programs authorized by the school district that provide instruction on identifying, preventing, and responding to bullying or harassment; and
- A procedure for investigating anonymous reports of bullying or harassment made by parents through the school district's online portal.

Each school district is required to establish an online portal for parents to anonymously report alleged incidents of bullying or harassment. School districts are required to investigate each reported incident. If a parent provides contact information, the school district is required to notify the parent regarding the process of the investigation.

The bill repeals the requirement that a school districts distribution of safe school funds is contingent upon compliance with bullying and harassment reporting procedures. The bill also repeals the requirement that the Commissioner of Education annually report incidents of bullying or harassment to the Governor and the Legislature.

School Improvement Plans

Section 2 requires school improvement plans to include strategies used to *evaluate* the instructional practices for middle grades emphasized by the district's professional development system. Currently, school improvement plans must only include strategies used to *implement* the instructional practices for middle grades emphasized by the district's professional development system.¹⁶

The bill requires school-based teams responsible for implementing school improvement plans to monitor the data from the early warning system. The bill also requires the team to convene to determine appropriate intervention strategies for students that exhibit two or more early warning indicators, unless the student is already being served by an intervention program. Data and information relating to the indicators must be used to inform intervention strategies provided to a

¹⁶ Section 1001.42(18)(a)2., F.S.

student. The student's child-study team is no longer required to convene to determine appropriate intervention strategies.

Miscellaneous Provisions

Section 2 also revises provisions related to standards of ethical conduct to include school officers and administrative personnel. Currently, standards of ethical conduct are applicable to instructional personnel and school administrators.¹⁷

Section 4 requires each school district to establish a process to notify parents of their ability to access their children's instructional materials and *homework assignments* through the district's local instructional improvement system. Currently, each school district is required to establish a process to notify parents of their ability to access their children's *instructional materials*.¹⁸

Section 1 requires a district school board to adopt a strategic plan consistent with the school board's mission and long-term goals. Currently, district school boards are not required to adopt a strategic plan.¹⁹

Section 5 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.

¹⁷ Section 1001.42(6), F.S.

¹⁸ Section 1006.283(2)(b)11., F.S.

¹⁹ Section 1001.41, F.S.

C. Government Sector Impact:

The impact of the bill on district school boards is indeterminate. The bill requires each school district to establish an online portal to report incidents of bullying and harassment. Additionally, each local instructional improvement system must be modified to also notify parents of children's homework assignments.

The DOE will no longer be required to compile an annual report on bullying and harassment.

A school's distribution of safe school funds will no longer be dependent upon compliance with statutory bullying and harassment reporting procedures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 1001.41, 1001.42, 1006.147, and 1006.283 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 Fiscal Policy on April 20, 2015:**

The committee substitute:

- Requires each district school board to adopt a strategic plan;
- Requires administrative personnel to comply with ethical conduct standards;
- Requires a school to monitor and evaluate its instructional practices and intervention strategies related to the early warning system;
- Requires periodic review and revision of a school district's anti-bullying and harassment policy;
- Modifies the information that must be contained in a school district's bullying and harassment policy;
- Requires school principals to implement the policy;
- Requires each school district to establish an online portal for anonymous reporting of alleged bullying or harassment;
- Requires school's to investigate alleged incidents of bullying or harassment; and
- Requires school districts to notify parents of their ability to access homework assignments through a local instructional improvement system.

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 Ring

29-00561A-15

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A bill to be entitled

An act relating to bullying and harassment policies in schools; amending s. 1006.147, F.S.; requiring school districts to revise their bullying and harassment policies at specified intervals; specifying that a school district policy require a school to implement the policy in a certain manner and integrate it with the school's bullying prevention and intervention program; requiring such a policy to include mandatory reporting procedures and a list of authorized programs that provide bullying and harassment identification, prevention, and response instruction; providing an effective date.

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

Section 1. Subsection (4) of section 1006.147, Florida Statutes, is amended to read:

1006.147 Bullying and harassment prohibited.—

(4) Each school district shall adopt and revise every 3 years a policy prohibiting bullying and harassment of a student or employee of a public K-12 educational institution. Each school district's policy shall be in substantial conformity with the Department of Education's model policy. The school district bullying and harassment policy shall afford all students the same protection regardless of their status under the law. The school district may establish separate discrimination policies that include categories of students. The school district shall involve students, parents, teachers, administrators, school

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

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staff, school volunteers, community representatives, and local law enforcement agencies in the process of adopting and revising the policy. The school district policy must require a school to implement the policy ~~be implemented~~ in a manner that is ongoing throughout the school year and integrated with a school's curriculum, a school's bullying prevention and intervention program, a school's discipline policies, and other violence prevention efforts. The school district policy must contain, at a minimum, the following components:

(a) A statement prohibiting bullying and harassment.

(b) A definition of bullying and a definition of harassment that include the definitions listed in this section.

(c) A description of the type of behavior expected from each student and employee of a public K-12 educational institution.

(d) The consequences for a student or employee of a public K-12 educational institution who commits an act of bullying or harassment.

(e) The consequences for a student or employee of a public K-12 educational institution who is found to have wrongfully and intentionally accused another of an act of bullying or harassment.

(f) A procedure for the mandatory reporting of an act of bullying or harassment, including provisions that permit a person to anonymously report such an act. However, this paragraph does not permit formal disciplinary action to be based solely on an anonymous report.

(g) A procedure for the prompt investigation of a report of bullying or harassment and the persons responsible for the

Page 2 of 4

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

29-00561A-15

2015530

investigation. The investigation of a reported act of bullying or harassment is deemed to be a school-related activity and begins with a report of such an act. Incidents that require a reasonable investigation when reported to appropriate school authorities shall include alleged incidents of bullying or harassment allegedly committed against a child while the child is en route to school aboard a school bus or at a school bus stop.

(h) A process to investigate whether a reported act of bullying or harassment is within the scope of the district school system and, if not, a process for referral of such an act to the appropriate jurisdiction. Computers without web-filtering software or computers with web-filtering software that is disabled shall be used when complaints of cyberbullying are investigated.

(i) A procedure for providing immediate notification to the parents of a victim of bullying or harassment and the parents of the perpetrator of an act of bullying or harassment, as well as notification to all local agencies where criminal charges may be pursued against the perpetrator.

(j) A procedure to refer victims and perpetrators of bullying or harassment for counseling.

(k) A procedure for including incidents of bullying or harassment in the school's report of data concerning school safety and discipline required under s. 1006.09(6). The report must include each incident of bullying or harassment and the resulting consequences, including discipline and referrals. The report must include in a separate section each reported incident of bullying or harassment that does not meet the criteria of a

29-00561A-15

2015530

prohibited act under this section with recommendations regarding such incidents. The Department of Education shall aggregate information contained in the reports.

(l) A list of programs authorized by the school district ~~that provide procedure for providing~~ instruction to students, parents, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment, including instruction on recognizing behaviors that lead to bullying and harassment and taking appropriate preventive action based on those observations.

(m) A procedure for regularly reporting to a victim's parents the actions taken to protect the victim.

(n) A procedure for publicizing the policy, which must include its publication in the code of student conduct required under s. 1006.07(2) and in all employee handbooks.

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



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 3, 2015

I respectfully request that **Senate Bill #530**, relating to Harassment Policies in Schools, be placed on the:

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

A handwritten signature in cursive script that reads "Jeremy Ring".

Senator Jeremy Ring
Florida Senate, District 29



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING
29th District

April 20, 2015

The Honorable Anitere Flores, Chair
Committee on Fiscal Policy
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores,

I appreciate you including my legislation, SB 530, SB 726, SB 748, and SB 1212 on the Committee on Fiscal Policy agenda for the meeting scheduled at 1:00pm today. Unfortunately, my American Airlines flight out of Miami is currently delayed and may not arrive in Tallahassee in time to present my bills. In my absence, please allow my legislative assistant, Joel Ramos to present my bills on agenda. I apologize for any inconvenience this may have caused you or the committee.

Please do not hesitate to contact me if you or your staff have any questions.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- ☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



567610

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Before line 31

insert:

Section 1. This act may be cited as "Terry's Law."

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

And the title is amended as follows:

Delete line 2

and insert:



567610

11 An act relating to consumer protection; providing a
12 short title; amending s.

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 726

INTRODUCER: Fiscal Policy Committee; Commerce and Tourism Committee; and Senator Ring

SUBJECT: Consumer Protection

DATE: April 21, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay	CM	Fav/CS
2. Blizzard	DeLoach	AGG	Recommend: Favorable
3. Jones	Hrdlicka	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 726 requires retail stores to allow certain consumers to return purchases of \$1,000 or more for a full refund within 3 business days of their purchase if the consumer:

- Has been adjudicated incapacitated;
- Is subject to a guardianship, and the guardian has the authority to determine the consumer's right to manage property; or
- Has a doctor's note that indicates that he has been diagnosed with a medical condition that causes him to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his person or property, and has a power of attorney in effect.

The bill also authorizes the Department of Agriculture and Consumer Services to administer a fine of up to two times the value of the goods purchased.

The bill has an insignificant, indeterminate fiscal impact on state funds.

II. Present Situation:

Consumer Protections

The Department of Agriculture and Consumer Services (DACS) is charged with protecting consumers from deceptive business practices. The Division of Consumer Services (division) serves as a clearinghouse for consumer complaints and is responsible for overseeing and

regulating a range of businesses practices related to refunds, returns, and exchanges at retail stores that are provided in s. 501.142, F.S. The enforcement of s. 501.142, F.S., is based on complaints made directly to the DACS. The DACS has issued only one administrative fine for a violation of s. 501.142, F.S. Retail stores generally comply with the law upon request by the DACS.¹

Currently, s. 501.142, F.S., requires retail stores to clearly post a “no refunds” sign at the point of sale in order to enforce this policy. If the retail store does not have a posted “no refunds” policy, then it must present a written version of its refund policy upon a consumer’s request or adhere to the default refund policy described in s. 501.142, F.S. This provision requires a full refund to any customer who presents to the retail store within 7 days of the original purchase their proof of purchase and the unused and originally-packaged item. A retail store’s refund policy may allow for a longer return period.²

The division may impose a \$100 administrative fine per violation of s. 501.142(1), F.S., or issue a directive to cease and desist from the violation. Additionally, a local government may apply penalties as outlined in s. 501.142(6), F.S.

These refund policy requirements do not apply to perishable or custom goods, items that are custom altered at the customer’s request, or goods that may not legally be resold by the retail store.³

Incapacity

Older Americans are at a greater risk of victimization of financial crimes than the general population due to cognitive impairment or incapacity. It is estimated that older Americans lost at least \$2.9 billion to financial exploitation by a broad spectrum of perpetrators in 2010.⁴ Protections exist for individuals with cognitive impairment or incapacity and range from issue or authority-specific grants of power (powers of attorney), to a determination of partial- or total-incapacity by a court.⁵

A power of attorney or a durable power of attorney⁶ is a legally binding document that delegates specific authority to an agent to act on a person’s behalf. Powers of attorney are often used by elderly persons to designate someone to handle their financial matters in anticipation of becoming incapacitated. The authority granted by a power or attorney or durable power of attorney can be limited to specific acts, such as caring for a particular property, or may be

¹ Department of Agriculture and Consumer Services, *SB 726 Agency Analysis* (Feb. 24, 2015) (on file with the Senate Committee on Commerce and Tourism).

² Section 501.142(1), F.S.

³ Section 501.142(2), F.S.

⁴ Consumer Financial Protection Bureau, *Protecting Residents from Financial Exploitation, A Manual for Assisted Living and Nursing Facilities*, p. 7-8 (May 2014), available at http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf (last visited April 13, 2015).

⁵ Section 744.331(6)(a), F.S. The court shall make a finding of “the exact nature and scope of the person’s incapacities;...and the specific rights that the person is incapable of exercising.”

⁶ See ch. 709, F.S.

broadly drawn to cover all legal acts that the principal could otherwise do.⁷ While a power of attorney terminates when a person becomes incapacitated, a durable power of attorney does not.⁸ A power of attorney is an efficient and low-cost alternative to guardianship.

Alternatively, a court may appoint a guardian, who “has the legal authority and duty to care for another’s person or property, especially because of the other’s infancy, incapacity, or disability.”⁹ Any adult may petition a court to initiate a petition to determine another’s incapacity.¹⁰ An “incapacitated person” is a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.¹¹ In cases where incapacity has been determined by a court, the court may appoint a guardian, but must pursue lesser restrictive means if possible.¹² Guardians are governed exclusively by the Florida Statutes,¹³ and may exercise for their ward only the enumerated rights that the court removed from the incapacitated person.¹⁴ A guardianship is more actively supervised by the court than a power of attorney, which results in more costs to the individual adjudicated incapacitated.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as “Terry’s Law.”

Section 2 amends s. 501.142, F.S., to require all retail stores to grant a full refund to a consumer who purchased goods valued at \$1,000 or more and complies, either personally or through his or her representative, with the provisions below:

- Within 3 business days of the purchase, presents to the store both proof of purchase and the purchased goods in their unused and original condition including the original carton, if any; and
- Provides documentation establishing that:
 - The consumer has been adjudicated incapacitated pursuant to ch. 744, F.S., or similar law;
 - The consumer is subject to a guardianship pursuant to ch. 744, F.S., or similar law, and the guardian has authority to determine the consumer’s right to manage property; or
 - The consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, and has a power of attorney or durable power of attorney, pursuant to ch. 709, F.S., or similar law in effect.

The bill also provides the DACS additional authority to impose an administrative fine of twice the value of the goods purchased.

⁷ The Florida Bar, *Florida Power of Attorney Pamphlet*, available at <http://www.floridabar.org/tfb/TFBConsum.nsf/840090c16eedaf0085256b61000928dc/ab36277c4562e98885256b2f006c5ad6> (last visited April 13, 2015).

⁸ Sections 709.2102(4), 709.2104, and 709.2109(1)(b) F.S.

⁹ BLACK’S LAW DICTIONARY (10th ed. 2014).

¹⁰ Section 744.3201(1), F.S.

¹¹ Section 744.102(12), F.S.

¹² Section 744.331(6)(b), F.S.

¹³ *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla. 2d DCA 1966).

¹⁴ Section 744.361, F.S., provides the standard powers and duties of a guardian.

Section 3 corrects cross-references in s. 501.95, F.S.

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:

Private businesses will be subject to fines as penalties for violations of the bill.

C. Government Sector Impact:

The DACS estimates there will be an insignificant, indeterminate fiscal impact as enforcement is based on consumer complaints. Historically, the DACS has only issued one administrative fine for an establishment found to be noncompliant¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

An individual may be adjudicated incapacitated, but retain his or her right to manage his or her property because this right must be specifically delegated to a guardian by a court.¹⁶ Therefore, proposed s. 501.142(2)(c)1., may be broader than necessary.

¹⁵ Department of Agriculture and Consumer Services, *SB 726 Agency Analysis* (Feb. 24, 2015) (on file with the Senate Committee on Commerce and Tourism).

¹⁶ Section 744.3215, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.142 and 501.95.

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 20, 2015:

The committee substitute provides that the act may be cited as “Terry’s Law.”

CS by Commerce and Tourism on March 10, 2015:

- Clarifies the department’s enforcement of the bill by removing restitution as an available remedy.
- Expressly states that local governments may enforce this law in addition to the department.
- Expands the bill’s protections to cover consumers subject to a guardianship, and consumers who lack capacity to make or communicate reasonable decisions regarding his person or property and are in a valid power of attorney or durable power of attorney relationship.
- Clarifies that certain consumers have three business days rather than calendar days to return the item.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Ring

577-02093A-15

2015726c1

A bill to be entitled

An act relating to consumer protection; amending s. 501.142, F.S.; requiring retail sales establishments that sell goods to the public to grant a refund within a specified period of time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements; making technical changes; amending s. 501.95, F.S.; conforming a cross-reference; providing an effective date.

WHEREAS, the Legislature finds that persons who are incapacitated, are subject to certain types of guardianships, or have been diagnosed with a medical condition causing a lack of capacity to make reasonable decisions need additional protections in consumer transactions involving costly purchases, and

WHEREAS, it is in the public interest to protect the welfare of this state's most vulnerable residents and their family members, and

WHEREAS, it is the intent of the Legislature to safeguard such residents' financial interests by providing them with the ability to return certain goods within a reasonable period of time, NOW, THEREFORE,

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

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

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Section 1. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.-

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary, provided that a local government may enforce the provisions of this section as specified in subsection (8).

(2) Notwithstanding the Uniform Commercial Code, each ~~every~~ retail sales establishment offering goods for sale to the general public must grant a cash refund or credit refund to a consumer for goods returned within 3 business days after the date of purchase if all of the following conditions are met:

(a) The purchase exceeds \$1,000, excluding tax.

(b) The goods are unused and in the original carton, if a carton was furnished.

(c) The consumer, or a representative of the consumer, provides the retailer with proof of purchase and documentation establishing that:

1. The consumer has been adjudicated incapacitated pursuant to chapter 744 or under similar law in another state;

2. The consumer is subject to a guardianship pursuant to chapter 744 or similar law in another state, and the guardian has the authority to determine the consumer's right to manage property; or

3. A power of attorney or a durable power of attorney pursuant to chapter 709 or similar law in another state is

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

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currently exercisable by the consumer's agent, and the consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, which is evidenced by a written statement signed by a physician licensed pursuant to chapter 458 or chapter 459 or licensed to practice medicine under the laws of another state.

(3) (a) Except as provided in subsection (2), a retail sales establishment offering goods for sale to the general public may refuse to offer a that offers no cash refund, credit refund, or exchange for the purchase if the retailer posts of merchandise ~~must post~~ a sign at the point of sale ~~so~~ stating that refunds or exchanges are not allowed at the point of sale. Failure of a retail sales establishment to exhibit a "no refund or exchange" sign at the point of sale under such circumstances at the point of sale shall mean that a refund or exchange policy exists, and the policy must ~~shall~~ be presented in writing to the consumer upon request.

(b) A ~~Any~~ retail sales establishment that violates this subsection must failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund for the purchase on the merchandise, within 7 days after of the date of purchase, if provided the goods are ~~merchandise is~~ unused and in the original carton, if one was furnished. This section does not ~~Nothing herein shall~~ prohibit a retail sales establishment from having a refund policy that which exceeds 7 the number of days and specified herein. ~~However, this subsection does not prohibit a local government from enforcing the provisions established by this section.~~

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~~(4)(2)~~ The ~~provisions of~~ This section does ~~shall~~ not apply to the sale of food, perishable goods, goods that which are custom made, goods that which are custom altered at the request of the customer, or goods that which cannot be resold by the merchant because of any law, rule, or regulation adopted by a governmental body.

~~(5)(3)~~ If the department finds that a person has violated or is operating in violation of:

(a) Subsection (2), the department shall enter an order that imposes an administrative fine in the amount of twice the value of the goods, excluding tax, which the person refused to refund.

(b) Subsection (3) or an order issued under this section, the department may enter an order that imposes ~~doing~~ one or more of the following if the department finds that a person has violated or is operating in violation of any of the provisions of this section or the orders issued under this section:

1.(a) ~~Impose~~ An administrative fine not to exceed \$100 for each violation.

2.(b) ~~A directive to Direct~~ the person to cease and desist specified activities.

~~(6)(4)~~ An The administrative proceeding ~~proceedings~~ that may ~~could~~ result in the entry of an order imposing any of the penalties specified in subsection (5) is ~~(3)~~ ~~are~~ governed by chapter 120.

~~(7)(5)~~ ~~Any~~ Moneys recovered by the department ~~of Agriculture and Consumer Services~~ as a penalty under this section shall be deposited in the General Inspection Trust Fund.

~~(8)(6)~~ Upon the first violation of this section, a local

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government may issue a written warning. Upon a second or ~~and any~~
subsequent violation, a local government may impose a fine of up
to \$50 per violation. ~~Any~~ Moneys recovered by the local
government as a penalty under this section shall be deposited in
the appropriate local account.

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

501.95 Gift certificates and credit memos.—

(2)

(c) Enforcement of this section shall be as provided in s.
501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for
violations of this section.

Section 3. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 3, 2015

I respectfully request that **Senate Bill #726**, relating to Consumer Protection, be placed on the:

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

A handwritten signature in cursive script that reads "Jeremy Ring".

Senator Jeremy Ring
Florida Senate, District 29



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING

29th District

April 20, 2015

The Honorable Anitere Flores, Chair
Committee on Fiscal Policy
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores,

I appreciate you including my legislation, SB 530, SB 726, SB 748, and SB 1212 on the Committee on Fiscal Policy agenda for the meeting scheduled at 1:00pm today. Unfortunately, my American Airlines flight out of Miami is currently delayed and may not arrive in Tallahassee in time to present my bills. In my absence, please allow my legislative assistant, Joel Ramos to present my bills on agenda. I apologize for any inconvenience this may have caused you or the committee.

Please do not hesitate to contact me if you or your staff have any questions.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- ☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 617.0721, Florida
Statutes, is amended to read:

617.0721 Voting by members.—

(2) A member who is entitled to vote may vote in person or,
unless the articles of incorporation or the bylaws otherwise
provide, may vote by proxy executed in writing by the member or



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by his or her duly authorized attorney in fact. Notwithstanding any provision to the contrary in the articles of incorporation or bylaws, any copy, facsimile transmission, or other reliable reproduction of the original proxy may be substituted or used in lieu of the original proxy for any purpose for which the original proxy could be used if the copy, facsimile transmission, or other reproduction is a complete reproduction of the entire proxy. An appointment of a proxy is not valid after 11 months following the date of its execution unless otherwise provided in the proxy.

(a) If directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(b) A corporation may reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubting the validity of the signature on it or the signatory's authority to sign for the member.

Section 2. Paragraph (j) of subsection (11) and paragraph (a) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for



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associations described in this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement, as determined by the maintenance provisions of the declaration or bylaws. All property insurance deductibles, ~~uninsured losses~~, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for



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which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings



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of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with subparagraph (c)5. However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is



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personally subject to a civil penalty pursuant to s.
718.501(1)(d). The accounting records must include, but are not
limited to:

a. Accurate, itemized, and detailed records of all receipts
and expenditures.

b. A current account and a monthly, bimonthly, or quarterly
statement of the account for each unit designating the name of
the unit owner, the due date and amount of each assessment, the
amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and
financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to
be performed are also considered official records and must be
maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other
papers relating to voting by unit owners, which must be
maintained for 1 year from the date of the election, vote, or
meeting to which the document relates, notwithstanding paragraph
(b).

13. All rental records if the association is acting as
agent for the rental of condominium units.

14. A copy of the current question and answer sheet as
described in s. 718.504.

15. All other written records of the association not
specifically included in the foregoing which are related to the
operation of the association.

16. A copy of the inspection report as described in s.
718.301(4)(p).

Section 3. Paragraph (f) of subsection (2) of section



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718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any if applicable, ~~but not limited to,~~ those expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and ~~for~~ any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved must be computed using a



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formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before ~~However, prior to~~ turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves, and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce



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the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before ~~Prior to~~ turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may ~~shall~~ not vote to use reserves for purposes other than those ~~that~~ for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must ~~shall~~ contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 4. Subsection (3) and paragraph (b) of subsection (5) of section 718.116, Florida Statutes, are amended to read:



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718.116 Assessments; liability; lien and priority;
interest; collection.—

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of \$25 or 5 percent of each delinquent installment for which the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney ~~attorney's~~ fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 718.303(4).

(5)

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during



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which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, administrative late fees, and all reasonable costs and attorney ~~attorney's~~ fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

Section 5. Section 718.128, Florida Statutes, is created to read:

718.128 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, in writing, to online voting and if the following requirements are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

(2) The association uses an online voting system that can:

(a) Authenticate the unit owner's identity.

(b) Authenticate the validity of each electronic vote to



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ensure that the vote is not altered in transit.

(c) Transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) Permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner. This paragraph only applies to elections of the board of administration.

(e) Store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote when a quorum is established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association



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property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to subsection (4).

(6) Except for timeshare condominium associations, this section may apply to any matter that requires a vote of the unit owners.

Section 6. Subsections (3), (4), and (5) of section 718.303, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

718.303 Obligations of owners and occupants; remedies.—

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association



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bylaws, or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board association first provides at least 14 days' written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not agree, the fine or suspension may not be imposed.

(4) If a unit owner is more than 90 days delinquent in paying a fee, fine, or other monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit



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or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association shall be subtracted from ~~may not be counted towards~~ the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests may not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(7) The suspensions permitted by paragraph (3)(a) and subsections (4) and (5) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from fewer than all of the multiple units owned by a member.

Section 7. Section 718.707, Florida Statutes, is amended to read:

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be



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classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2018 ~~2016~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 8. Paragraph (a) of subsection (2) of section 719.104, Florida Statutes, is amended to read:

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

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than 7 years.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and the numbers designated by



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unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.



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d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

Section 9. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the



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association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any ~~authorized~~ administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT

TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

The following amounts are currently due on your account to



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...(name of association)..., and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)... \$.....

Late fee, if applicable \$.....

Interest through ...(dates)...* \$.....

Certified mail charges \$.....

Other costs \$.....

TOTAL OUTSTANDING \$.....

*Interest accrues at the rate of percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the



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association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...:
You are notified that the undersigned contests the claim of lien filed by you on, ...(year)...., and recorded in Official Records Book at Page, of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this day of, ...(year)....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of



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the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of \$...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through, ... (year) ..., recorded in the Official Records Book at Page, of the public records of County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. OF ... (NAME OF COOPERATIVE) ..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

... (Signature of Authorized Agent) (Signature of Witness) ...

... (Print Name) (Print Name) ...



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information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner. This paragraph only applies to elections of the board of administration.

(e) Store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote when a quorum is established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.



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(5) A unit owner's consent to online voting is valid until the unit owner opts out of online voting pursuant to the procedures established by the board of administration pursuant to subsection (4).

(6) Except for timeshare condominium associations, this section may apply to any matter that requires a vote of the unit owners.

Section 11. Subsection (3) of section 719.303, Florida Statutes, is amended to read:

719.303 Obligations of owners.—

(3) The association may levy reasonable fines for failure of the unit owner or the unit's occupant, licensee, or invitee to comply with any provision of the cooperative documents or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the cooperative documents or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of



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administration may not be imposed unless the board first
provides at least 14 days' written ~~except after giving~~
~~reasonable~~ notice and an opportunity for a hearing to the unit
owner and, if applicable, its occupant, ~~the unit's~~ licensee, or
invitee. The hearing must be held before a committee of other
unit owners who are neither board members nor persons residing
in a board member's household. The role of the committee is
limited to determining whether to confirm or reject the fine or
suspension levied by the board. If the committee does not agree
with the fine or suspension, it may not be imposed.

Section 12. Subsection (8) of section 720.301, Florida
Statutes, is amended to read:

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

(8) "Governing documents" means:

(a) The recorded declaration of covenants for a community,
and all duly adopted and recorded amendments, supplements, and
recorded exhibits thereto; ~~and~~

(b) The articles of incorporation and bylaws of the
homeowners' association, and any duly adopted amendments
thereto; and

(c) Rules and regulations adopted under the authority of
the recorded declaration, articles of incorporation, or bylaws
and duly adopted amendments thereto.

Section 13. Section 720.3015, Florida Statutes, is created
to read:

720.3015 Short title.—This chapter may be cited as the
"Homeowners' Association Act."

Section 14. Section 720.305, Florida Statutes, is amended
to read:



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720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney ~~attorney's~~ fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) The association may levy reasonable fines. A fine may not exceed ~~of up to~~ \$100 per violation against any member or any



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member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit ~~impair the right of~~ an owner or tenant of a parcel from having ~~to have~~ vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension may not be imposed by the board of administration without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the



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association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the board of directors ~~association~~ imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) If a member is more than 90 days delinquent in paying any fee, fine, or other ~~a~~ monetary obligation due to the association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may ~~does not prohibit~~ ~~impair the right of~~ an owner or tenant of a parcel from having ~~to have~~ vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection.

(4) An association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association that is more than 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association shall be subtracted from ~~may not be counted towards~~ the total



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number of voting interests in the association, which shall be
reduced by the number of suspended voting interests when
calculating the total percentage or number of all voting
interests available to take or approve any action, and the
suspended voting interests may not be considered for any
purpose, including, but not limited to, the percentage or number
of voting interests necessary to constitute a quorum, the
percentage or number of voting interests required to conduct an
election, or the percentage or number of voting interests
required to approve an action under this chapter or pursuant to
the governing documents. The notice and hearing requirements
under subsection (2) do not apply to a suspension imposed under
this subsection. The suspension ends upon full payment of all
obligations currently due or overdue to the association.

(5) All suspensions imposed pursuant to subsection (3) or
subsection (4) must be approved at a properly noticed board
meeting. Upon approval, the association must notify the parcel
owner and, if applicable, the parcel's occupant, licensee, or
invitee by mail or hand delivery.

(6) The suspensions permitted by paragraph (2)(a) and
subsections (3) and (4) apply to a member and, when appropriate,
the member's tenants, guests, or invitees, even if the
delinquency or failure that resulted in the suspension arose
from less than all of the multiple parcels owned by a member.

Section 15. Paragraph (b) of subsection (1) and subsection
(9) of section 720.306, Florida Statutes, are amended to read:

720.306 Meetings of members; voting and election
procedures; amendments.—

(1) QUORUM; AMENDMENTS.—



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(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association. The copies and notice described in this paragraph may be provided electronically to those owners who previously consented to receive notice electronically. The failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

(9) ELECTIONS AND BOARD VACANCIES.—

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. Except as provided in paragraph (b), all members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the



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association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

(b) A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name shall not be listed on the ballot. A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the association shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law. For purposes of this paragraph, the term "any fee, fine, or other monetary obligation" means any delinquency to the association with respect to any parcel ~~for more than 90 days is not eligible for board membership.~~ A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, may not seek election to the board and is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a person was ineligible



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to seek election to the board or that a member of the board is ineligible for board membership.

(c) Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

Section 16. Section 720.317, Florida Statutes, is created to read:

720.317 Electronic voting.—The association may conduct elections and other membership votes through an Internet-based online voting system if a member consents, in writing, to online voting and if the following requirements are met:

(1) The association provides each member with:

(a) A method to authenticate the member's identity to the online voting system.

(b) A method to confirm, at least 14 days before the voting deadline, that the member's electronic device can successfully



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939 communicate with the online voting system.

940 (c) A method that is consistent with the election and
941 voting procedures in the association's bylaws.

942 (2) The association uses an online voting system that can:

943 (a) Authenticate the member's identity.

944 (b) Authenticate the validity of each electronic vote to
945 ensure that the vote is not altered in transit.

946 (c) Transmit a receipt from the online voting system to
947 each member who casts an electronic vote.

948 (d) Permanently separate any authentication or identifying
949 information from the electronic election ballot, rendering it
950 impossible to tie an election ballot to a specific member. This
951 paragraph only applies if the association's bylaws provide for
952 secret ballots for the election of directors.

953 (e) Store and keep electronic ballots accessible to
954 election officials for recount, inspection, and review purposes.

955 (3) A member voting electronically pursuant to this section
956 shall be counted as being in attendance at the meeting for
957 purposes of determining a quorum. A substantive vote of the
958 membership may not be taken on any issue other than the issues
959 specifically identified in the electronic vote when a quorum is
960 established based on members voting electronically pursuant to
961 this section.

962 (4) This section applies to an association that provides
963 for and authorizes an online voting system pursuant to this
964 section by a board resolution. The board resolution must provide
965 that members receive notice of the opportunity to vote through
966 an online voting system, must establish reasonable procedures
967 and deadlines for members to consent, in writing, to online



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voting, and must establish reasonable procedures and deadlines
for members to opt out of online voting after giving consent.
Written notice of a meeting at which the board resolution
regarding online voting will be considered must be mailed,
delivered, or electronically transmitted to the unit owners and
posted conspicuously on the condominium property or association
property at least 14 days before the meeting. Evidence of
compliance with the 14-day notice requirement must be made by an
affidavit executed by the person providing the notice and filed
with the official records of the association.

(5) A member's consent to online voting is valid until the
member opts out of online voting pursuant to the procedures
established by the board of administration pursuant to
subsection (4).

(6) This section may apply to any matter that requires a
vote of the members.

Section 17. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to residential properties; amending s.
617.0721, F.S.; authorizing the use of a copy,
facsimile transmission, or other reliable reproduction
of an original proxy vote for certain purposes;
amending s. 718.111, F.S.; revising liability of unit
owners under certain conditions; revising what



842882

997 constitutes official records of an association;
998 amending s. 718.112, F.S.; revising provisions
999 relating to the voting process for providing reserves;
1000 amending s. 718.116, F.S.; revising applicability;
1001 revising effect of a claim of lien; creating s.
1002 718.128, F.S.; authorizing condominium associations to
1003 conduct votes of the membership by online voting under
1004 certain conditions; providing requirements for online
1005 voting; providing that a member voting electronically
1006 is counted toward the determination of a quorum;
1007 providing applicability; amending s. 718.303, F.S.;
1008 providing that a fine may be levied by the board under
1009 certain conditions; revising requirements for levying
1010 a fine or suspension; amending s. 718.707, F.S.;
1011 extending the time period for classification as bulk
1012 assignee or bulk buyer; amending s. 719.104, F.S.;
1013 revising what constitutes the official records of an
1014 association; amending s. 719.108, F.S.; revising
1015 applicability; revising effect of a claim of lien;
1016 creating s. 719.129, F.S.; authorizing cooperative
1017 associations to conduct votes of the membership by
1018 online voting under certain conditions; providing
1019 requirements for online voting; providing that a
1020 member voting electronically is counted toward the
1021 determination of a quorum; providing applicability;
1022 amending s. 719.303, F.S.; providing that a fine may
1023 be levied by the board under certain conditions;
1024 revising requirements for levying a fine or
1025 suspension; amending s. 720.301, F.S.; revising the



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1026 definition of the term "governing documents"; creating
1027 s. 720.3015, F.S.; providing a short title; amending
1028 s. 720.305, F.S.; revising requirements for levying a
1029 fine or suspension; revising application of certain
1030 provisions; amending s. 720.306, F.S.; revising
1031 requirements for the adoption of amendments to the
1032 governing documents; revising requirements for the
1033 election of directors; creating s. 720.317, F.S.;
1034 authorizing homeowners' associations to conduct votes
1035 of the membership by online voting under certain
1036 conditions; providing requirements for online voting;
1037 providing that a member voting electronically is
1038 counted toward the determination of a quorum;
1039 providing applicability; providing an effective date.



330410

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (842882)

Delete line 682
and insert:
(6) Except for timeshare cooperative associations, this

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 748

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; Regulated Industries Committee and Senator Ring

SUBJECT: Residential Properties

DATE: April 21, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Oxamendi/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 748 relates to the governance of condominium, cooperative, and homeowners' associations (community associations).

The bill permits corporations not for profit to use a copy, facsimile, or other reliable reproduction of the original proxy for any purpose for which the original proxy could be used if it is a complete reproduction of the entire proxy. In current law, community associations may be corporations for profit or corporations not for profit.

For condominium associations, the bill:

- Provides that, in cases where damage to condominium property is not the result of an insurable event, the maintenance provisions of the declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement;
- Provides that, for the period before turnover of control, the developer's vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units; and
- Extends from July 1, 2016, from July 1, 2018, the date before which condominium parcels must be purchased to qualify as a bulk assignee or bulk buyer.

For cooperative associations, the bill provides that neither the board members nor the persons residing in a board member's household may sit on the committee charged with determining whether to confirm or reject the fine or suspension levied by the board.

For condominium and homeowners' associations, the bill provides that, when voting rights are suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number required to take or approve any action, and that the suspended voting interests may not be used for any purpose.

For condominium, cooperative, and homeowners' associations, the bill:

- Creates a mechanism for Internet-based online voting in condominium, cooperative, and homeowners' associations;
- Permits associations to file a lien on unpaid administrative late fees; and
- Clarifies that it is the board of the association that levies any fines and that the role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.

Regarding homeowners' association, the bill provides that:

- The board may not levy a fine exceeding \$100, unless otherwise provided in the association's governing documents;
- Members that fail to pay a fine may be suspended from the board of directors or barred from running for a seat on the board;
- Chapter 720, F.S., may be cited as the "Homeowners' Association Act;" and
- The association's failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

The bill has no fiscal impact on state or local government.

II. Present Situation:

Community Associations, Chapters 718, 719, and 720, F.S.

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation. Homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide many comparable requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,¹ official records, including which records are accessible to the members of the association,² and financial reporting.³ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

¹ See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

² See ss. 718.111(12), 719.104(2), and 720.303(4), F.S.

³ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S.

Condominium, cooperative, and homeowners associations (collectively, community associations) may be a Florida corporation for profit or a Florida corporation not for profit. If the association is a corporation for profit, the provision of ch. 607, F.S., the Florida Business Corporation Act, apply. If the association is a corporation not for profit, the provisions of ch. 617, F.S., the Florida Not for Profit Corporation Act, apply.⁴

Fines and Penalties

Community associations may levy fines against members of the association who violate the association's rules or other governing documents.⁵ A fine may only be levied after the association has provided the member with notice and a hearing. The hearing must be held before a committee of other members who are not board members or persons residing in the board member's household.⁶

A fine may not exceed \$100 per violation, or \$1,000 in the aggregate.⁷ If a member is more than 90 days delinquent on a monetary obligation, the association may suspend his or her right to use common elements, facilities, or areas and may suspend his or her voting rights. If the association member fails to pay a monetary obligation, he or she is barred from being nominated for a seat on the board.⁸ If the board member or officer of a condominium association is more than 90 days delinquent on a monetary obligation, the board member or officer is deemed to have abandoned his or her seat on the board.⁹

Section 719.303(5), F.S., provides that when a cooperative association member's voting rights have been suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. Chapter 718, F.S., and ch. 720, F.S., do not provide a comparable provision for condominium and homeowners' associations, respectively.

Condominiums

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."¹⁰ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.¹¹ A declaration is like a constitution in that it:

⁴ See ss. 718.111(1)(a), 719.1035, and 720.303(1), F.S.

⁵ Sections 718.303(3), 719.303(3), and 720.305(1), F.S.

⁶ *Id.*

⁷ Sections 718.303(3), 719.303(3), and 720.305(2), F.S.

⁸ Sections 718.303(4), 719.303(4), and 720.305(3), F.S.

⁹ Section 718.112(2)(n), F.S.

¹⁰ Section 718.103(11), F.S.

¹¹ Section 718.104(2), F.S.

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.¹²

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”¹³ A declaration of condominium may be amended as provided in the declaration.¹⁴ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not fewer than the owners of two-thirds of the units.¹⁵ Condominiums are administered by a board of directors referred to as a “board of administration.”¹⁶

Section 718.103(3), F.S., defines the term “association property” to mean that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(13), F.S., defines the term “condominium property” to mean the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one “who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . .” There are two classes of developers: those who create the condominium by executing and recording the condominium documents, and those who offer condominium units for sale or lease in the ordinary course of business. Current law excludes a bulk assignee and a bulk buyer from the definition of developer.¹⁷

Voting

A condominium association is required to have an annual meeting at which directors are elected.¹⁸ Votes must be cast by written ballot or voting machine.¹⁹ Proxies may not be used in the election.²⁰ The division’s rules for condominium associations also provide voting and

¹² *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹³ Section 718.104(5), F.S.

¹⁴ See s. 718.110(1)(a), F.S.

¹⁵ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

¹⁶ Section 718.103(4), F.S.

¹⁷ See *Distressed Condominium Relief Act* discussion below.

¹⁸ Section 718.112(2)(d)1., F.S.; see Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 40-57 (14th. ed.).

¹⁹ Section 718.112(2)(d)4., F.S.

²⁰ *Id.*

election procedures, such as requiring that paper ballots be mailed in double envelopes.²¹ Similar requirements apply to cooperative associations.²²

Insurance

Any portion of the condominium property that is damaged by an insurable event must be repaired or replaced by the association as a common expense. If the damage is not the result of an insurable event, the association or the unit owner is responsible for the repair or replacement, as determined by the declaration or bylaws. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except for those losses that are the responsibility of the insured.²³

Assessments and Foreclosures

Section 718.103(1), F.S., defines the term “assessment” to mean “a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.”

“Special assessment” is defined to mean “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”²⁴

A unit 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.²⁵ This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.²⁶

If a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee’s liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or 1 percent of the original mortgage debt, whichever is less.²⁷ However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.²⁸ This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.²⁹ The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.³⁰

²¹ Rule 61B-23.0021, F.A.C.

²² Section 719.106(1)(d), F.S., and rule 61B-75.005, F.A.C.

²³ See s. 718.111(11)(j)1.-4., F.S.

²⁴ Section 718.103(24), F.S.

²⁵ Section 718.116(1)(a), F.S.

²⁶ *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 (2d pocket ed. 2001).

²⁷ Section 718.116(1)(b), F.S.

²⁸ *Id.*

²⁹ Section 718.116(1)(e), F.S.

³⁰ Section 718.116(1)(g), F.S.

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.³¹ If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The association may also charge an administrative late fee of up to the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any reasonable attorney fees incurred in collection, and then to the delinquent assessment.

Section 718.111(4), F.S., permits condominium associations to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property. The association may not charge a use fee against a unit owner for the use of common elements or association property. However, the association may charge a fee against the unit owners for use of common elements or association property if:

- The fee is provided for in the declaration of condominium;
- The fee is authorized by a majority vote of the association; and
- The charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

Annual Budget

Section 718.112(2)(f)1., F.S., requires the bylaws of condominium association to include a proposed annual budget of estimated revenues and expenses that must show the amounts budgeted by accounts and expense classification, including, if applicable, but not limited to, those expenses listed in s. 718.504(21), F.S.³²

Distressed Condominium Relief Act

The “Distressed Condominium Relief Act”³³ in Part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties. Enacted in 2010,³⁴ the act was intended to relieve developers, lenders, unit owners, and condominium associations from specified provisions of ch. 718, F.S., including warranty provisions, in order to enable economic opportunities for successor purchasers of distressed condominiums.³⁵

Section 718.703(1), F.S., defines the term “bulk assignee” to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed, as a separate instrument recorded in the public records in the county where the

³¹ Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

³² Expenses can include management fees, maintenance, insurance, security provisions. See s. 718.504(21)(c), F.S., for a more detailed list.

³³ Sections 718.701 and 718.708, F.S.

³⁴ Chapter 2010-174, L.O.F.

³⁵ See s. 718.702, F.S.

condominium is located, or pursuant to a final judgment or certificate of title at a foreclosure sale.

Section 718.703(2), F.S., defines the term “bulk buyer” as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels are acquired prior to July 1, 2016. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean that form of ownership of real property where legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.³⁶

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.³⁷

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”³⁸ Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.³⁹

³⁶ See ss. 719.106(1)(g) and 719.107, F.S.

³⁷ See s. 720.302(1), F.S.

³⁸ Section 720.301(9), F.S.

³⁹ Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.⁴⁰ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.⁴¹ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁴²

Homeowners associations are required to hold board of director elections at the annual meeting or as provided in its governing documents.⁴³ Elections are conducted in accordance with the procedures set forth in the governing documents of the association.⁴⁴ Additionally, proxies may be used in the election unless otherwise provided in the governing documents.⁴⁵

Amendments to Governing Documents

Section 720.306(1)(b), F.S., provides that a homeowners' association may amend its governing documents. The process for amendment, and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. Generally, a homeowners' association must furnish each member with a copy of an amendment within 30 days after recording; however, in lieu of providing a copy of the recorded amendment, the association may provide notice to members that the amendment was adopted and identify the book and page number or instrument number of the recorded amendment.

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.⁴⁶ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turn over control to the association, pursuant to ss. 718.301, F.S., and 719.301, F.S., respectively.⁴⁷ After control of the condominium or cooperative is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.⁴⁸

As part of the division's authority to investigate complaints, ss. 718.501(1), F.S., and 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

⁴⁰ See ss. 720.303 and 720.307, F.S.

⁴¹ See ss. 720.301 and 720.303, F.S.

⁴² Section 720.303(1), F.S.

⁴³ Section 720.306(2), F.S.

⁴⁴ Section 720.306(9)(a), F.S.

⁴⁵ Section 720.306(8), F.S.

⁴⁶ Section 718.501(1), F.S., s. 719.501(1), F.S.

⁴⁷ *Id.*

⁴⁸ *Id.*, See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

III. Effect of Proposed Changes:

Proxy Voting (Section 1)

The bill amends s. 617.0721(2), F.S., to permit, notwithstanding any provision to the contrary in the articles of incorporation or bylaws, corporations not for profit to use a copy, facsimile, or other reliable reproduction of the original proxy for any purpose for which the original proxy could be used if it is a complete reproduction of the entire proxy.

Condominiums – Insurance (Section 2)

The bill amends s. 718.111(11)(j), F.S., to provide that, in cases where damage to condominium property is not the result of an insurable event, the maintenance provisions of the declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement.

The bill also amends s. 718.111(11)(j), F.S., to delete “uninsured losses” from the list of items that are deemed a common expense of the condominium. It is not clear whether the effect of this provision is that uninsured losses are “damages in excess of property insurance coverage” and thus deemed a common expense of the condominium as provided in this section.

Condominiums – Annual Budget and Developers (Section 3)

The bill amends s. 718.112(2)(f)2.b., F.S., to clarify that, for the period before turnover of control, the developer’s vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units.

The bill also amends s. 718.112(2)(f)1., F.S., to require proposed annual budgets to include, at a minimum, applicable expenses.

Community Associations – Official Records (Sections 2 and 8)

The bill amends ss. 718.111(12)(a)15. and 719.104(2)(a)13., F.S., to provide that the official records of a condominium and cooperative association, respectively, include all other written records including the list of official records specified in these sections that are related to the operation of the association. Current law does not provide that these records have to be written to be an official record. The provisions in the bill are comparable to the provisions provided in current law for the official records of a homeowners’ association in s. 720.303(4)(l), F.S.

Community Associations – Assessments and Foreclosures (Sections 4 and 9)

The bill amends ss. 718.116(3) and 719.108(3), F.S., to provide that the priority for application of payments in this subsection applies notwithstanding s. 673.3111, F.S.,⁴⁹ or any purported accord and satisfaction. This statement of application is intended to clarify existing law.

The bill amends s. 718.116(5)(b), F.S., to permit the condominium association to file a lien on unpaid administrative late fees.

Community Associations – Electronic Voting (Sections 5, 10, and 16)

The bill creates ss. 718.128, 719.129, and 720.317, F.S., to provide that condominium, cooperative, and homeowners' associations, respectively, may elect to conduct elections through an Internet-based online voting system in the manner provided in these provisions. Each unit owner must consent, in writing, to online voting.

The association must provide each unit owner with a method to:

- Authenticate the unit owner's identity to the online voting system;
- For elections of the board, to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot; and
- Confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

In addition, an online voting system must be able to:

- Authenticate the unit owner's identity;
- Authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit;
- Transmit a receipt from the online voting system to each unit owner who casts an electronic ballot;
- Permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific unit owner; and
- Store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

Unit owners who vote electronically must be counted as being in attendance at the meeting for purposes of determining a quorum.

Substantive votes are limited to only the issues specifically identified in the electronic vote when a quorum is established based on unit owners voting electronically.

These provisions apply to an association that provides for and authorizes an online voting system by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and

⁴⁹ Section 673.3111, F.S., relates to accord and satisfaction by negotiable instrument, which provides the method for resolving a dispute on a debt with a statement on the negotiable instrument to the effect that the instrument was tendered as full satisfaction of the claim.

deadlines for unit owners to consent in writing to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. A unit owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration. Except for timeshare condominium and cooperative associations, these electronic voting provision may apply to any matter that requires a vote of the membership.

Community Associations – Fines and Penalties (Sections 6, 11, 14, and 15)

The bill amends ss. 718.303(3), 719.303(3), and 720.305(2)(b), F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations, respectively. The bill provides that it is the board of the association that levies any fines and that the role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.

The bill amends s. 719.303(3)(b), F.S., to provide that neither board members of the cooperative association nor persons residing in the board member's household may sit on the committee that is responsible for confirming or rejecting a fine or suspension levied by the board.

The bill also amends s. 718.303(5) and 720.305(4), F.S., to provide that, when an owner or member's voting rights have been suspended in a condominium or homeowners' association, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. The suspended voting interests may not be used for any purpose, including determining the number necessary to establish a quorum. This provision is comparable to the current restriction in s. 719.303(5), F.S., for members of a cooperative association.

For condominium and homeowners' associations, the bill provides that any suspensions imposed apply even if the suspensions arose from less than all of the units or parcels owned by the member. There is no comparable provision for cooperative associations.

The bill also amends s. 720.306(9)(b), F.S., to provide that an association member's failure to pay a fee, fine, or other monetary obligation bars him or her from being nominated for the board, and, if he or she is currently a board member, failure to pay after 90 days results in abandonment of his or her seat on the board. This provision is comparable to the current restriction in s. 718.112(2)(n), F.S., for members of a condominium board.

The bill amends s. 720.305(2), F.S. to provide that a homeowners association may not levy a fine in excess of \$100 unless otherwise provided for in the governing documents.

Distressed Condominium Relief Act (Section 7)

The bill amends s. 718.707, F.S., to extend the date before which condominium parcels must be purchased to qualify as a bulk assignee or bulk buyer to July 1, 2018 from July 1, 2016.

Homeowners' Associations – Governing Documents (Section 12)

The bill amends s. 720.301(8), F.S., to revise the definition of the term “governing documents,” to include the rules and regulations adopted under the authority of the associations’ declaration, articles of incorporation, or bylaws.

Homeowners' Association Act (Section 13)

The bill creates s. 720.3015, F.S., to provide that ch. 720, F.S., may be cited as the “Homeowners’ Association Act.”

Homeowners' Associations - Amendments to Governing Documents (Section 15)

The bill amends s. 720.306(1)(b), F.S., to provide that the association’s failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

Effective Date (Section 17)

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.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill permits community associations to file a lien on unpaid administrative late fees.

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: 617.0721, 718.111, 718.112, 718.116, 718.303, 718.707, 719.104, 719.108, 719.303, 720.301, 720.3015, 720.305, and 720.306.

This bill creates the following sections of the Florida Statutes: 718.128, 719.129, and 720.317.

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 20, 2015:

The committee substitute:

- Does not create s. 718.103(12), F.S., to define the term “condominium documents;”
- Does not amend s. 718.103(16), F.S., to revise the definition of the term “developer;”
- Does not amend s. 718.111(4), F.S., to provide that the association may charge a fee against the unit owners for use of common elements or association property if the fee is authorized by a majority vote of the voting interests present, in person or by proxy, at a meeting of the association in which a quorum has been established;
- Does not amend ss. 718.112(2)(c) and (d), 719.106(1)(c) and (d), and 720.306(10), F.S., to provide that association members may not post tape or video recordings of meetings of the board or of the membership on any website or other media that can be readily viewed by persons who are not members of the association;
- Does not amend s. 718.112(2)(d), F.S., to permit condominium associations to post meeting notices on association property in addition to condominium property;
- Does not amend ss. 718.112(2)(d)8., 719.106(1), 720.303, F.S., to delete the requirement that the community association bylaws must provide for electronic notice to the owners in order to use such notice;
- Does not amend s. 718.113(7), F.S., to replace the term “governing documents” with the term “condominium documents;”
- Does not amend ss. 718.116(1)(a) and (b), F.S., to provide that a condominium unit owner is liable for any special assessments or installments on special assessments coming due during his or her period of ownership, regardless of when it was levied, and to set forth the liability of the unit owner and the previous unit owner for all

- interest, late fees, costs, and reasonable attorney fees incurred by the association in collecting unpaid assessments up to the time of transfer of title;
- Does not amend ss. 718.116(3), 719.108, and 720.3085, F.S., to permit community associations to recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent, incurred in connection with collecting a delinquent assessment;
 - Does not create ss. 718.116(5)(b), 719.108(4), 720.3085, F.S., to permit the condominium association to file a lien on unpaid reasonable costs for collection services contracted by the associations;
 - Does not provide in ss. 718.128, 719.129, and 720.317, F.S., that the requirement that the electronic voting system must be able to permanently separate any authentication or identifying information from the electronic ballot is limited to elections of the board of administration;
 - Does not amend s. 718.301(1), F.S., to include additional events that trigger transfer of control from the developer to the non-developer unit owners;
 - Does not amend s. 718.301(4), F.S., to apply the post-turnover requirements in this section to bulk-unit purchasers, including requirements for the relinquishment of specified records;
 - Does not amend s. 718.302(2), F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract made by the association while the association is under control of that lender-unit purchaser, and to provide for the voting rights of a lender-unit purchaser or a bulk-unit purchaser as they relate to the voting rights of the developer in various ownership situations;
 - Does not amend ss. 718.303(3) and 719.303(3), F.S., to provide that neither the board's authorized designee nor persons residing in the home of the board's designee may sit on the impartial committee responsible for confirming or rejecting a fine or suspension levied by the board;
 - Amends s. 718.707, F.S., to extend the date before which condominium parcels purchased to qualify as a bulk assignee or bulk buyer to July 1, 2018 from July 1, 2016;
 - Does not amend s. 718.501, F.S., to provide that the Department of Business and Professional Regulation has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers;
 - Does not create s. 718.709, F.S., to provide that ss. 718.701-718.108, F.S., the Distressed Condominium Relief Act, apply to title to units acquired on or after July 1, 2010, but before July 1, 2016; and
 - Does not create part VIII of ch. 718, F.S., consisting of ss. 718.801-718.813, F.S., entitled "Bulk-Unit Purchasers and Lender-Unit Purchasers," to provide for the regulation of bulk-unit purchasers and lender-unit purchasers of condominium units;

CS/CS by Judiciary on April 7, 2015:

- Removes a section from the bill which related to the ad valorem tax applicable to a unit or parcel that is transferred to a community association in lieu of foreclosure;
- Deletes the requirement that the charges for costs incurred in connection with collecting a delinquent assessment be in a liquidated and non-contingent amount;

- Deletes a requirement that the condominium, cooperative, or homeowners' association bylaws provide for electronic notice to the owners in order to use such notice;
- Deletes the requirement that the bylaws must provide for online voting, and replaces it with a requirement that the Board adopt a resolution to allow online voting; and
- Requires that owners consent to online voting for it to be used.

CS by Regulated Industries on March 18, 2015:

The committee substitute (CS) amends s. 201.02(9), F.S., to provide that a document that transfers property to a condominium, cooperative, or homeowners' associations, or vacation and timeshare management or owners' association in lieu of foreclosure of an assessment lien is subject to documentary stamp tax based solely on the amount of unpaid assessments on the date of the transfer.

The CS creates s. 718.103(12), F.S., to define the term "condominium documents." It also amends s. 718.103(16), F.S., to exclude from the definition of the term "developer" bulk-unit purchasers and lender-unit purchasers. It also excludes from the definition persons who own seven or fewer units operated by an association consisting of 40 or fewer units or who own less than 20 percent of the units operated by an association consisting of more than 40 units, and the trustee and any related trust association of a timeshare trust.

The CS amends s. 718.111(11)(j), F.S., to provide that in cases where the damage is not the result of an insurable event, the maintenance provisions of declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement. It also amends this section to delete uninsured losses from the list of items that are deemed a common expense of the condominium.

The CS amends s. 718.112(2)(f)2.b., F.S., to clarify that, for the period before turnover of control, the developer's vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units.

The CS amends s. 718.113(7), F.S., to replace the term "governing documents" with the term "condominium documents."

The CS amends s. 718.116(3), F.S., to include s. 673.3111, F.S., or any purported accord and satisfaction in the list of matters that this order for applying payments is notwithstanding.

The CS creates ss. 718.128, 719.129, and s. 720.317, F.S., to provide that a condominium, cooperative, and homeowners' association, respectively, may elect to conduct elections by electronic voting in the manner provided.

The CS amends s. 718.301(1), F.S., to include three additional events that trigger transfer of control from the developer to the non-developer unit owners, and to apply the post-turnover requirement to bulk-unit purchasers.

The CS amends s. 718.302, F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract, grant, reservation made by the association while the association is under control of that lender-unit purchaser. It also amends s. 718.302, F.S., relating to the rights of the developer unit owner to vote on making and cancelling agreements, to include the voting interests of the lender-unit purchasers and the bulk-unit purchasers juxtaposed to the voting rights of the developer.

The CS amends ss. 718.303, 719.303, 720.305, and 720.306, F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations.

The CS amends s. 718.501, F.S., to provide that the department has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers.

The bill creates s. 718.709, F.S., to provide that ss. 718.701-718.108, F.S., apply to title to units acquired on or after July 1, 2010, but before July 1, 2016.

The CS creates part VIII of ch. 718, F.S., consisting of ss. 718.801-718.812, F.S., entitled "Bulk-Unit Purchasers and Lender-Unit Purchasers."

The CS amends s. 720.301, F.S., to revise the definition of the term "governing documents," to include the rules and regulations adopted under the authority of the association's declaration, articles of incorporation, or bylaws.

The CS creates s. 720.3015, F.S., to provide that ch. 720, F.S., may be cited as the "Homeowners' Association Act."

B. Amendments:

None.

By the Committees on Judiciary; and Regulated Industries; and
Senator Ring

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1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 617.0721, F.S.; authorizing the use of a copy,
4 facsimile transmission, or other reliable reproduction
5 of an original proxy vote for certain purposes;
6 amending s. 718.103, F.S.; revising and providing
7 definitions; amending s. 718.111, F.S.; providing that
8 the vote necessary to charge use fees for the use of
9 the common elements or association property may be
10 approved by a majority of the voting interests
11 present, in person or by proxy, at a meeting of the
12 association if a quorum has been established; revising
13 the liability of unit owners under certain conditions;
14 revising what constitutes official records of an
15 association; amending s. 718.112, F.S.; revising the
16 requirements for board of administration and unit
17 owner meetings; clarifying the voting process for
18 providing reserves; amending s. 718.113, F.S.;
19 revising the term governing documents to condominium
20 documents; amending s. 718.116, F.S.; revising the
21 provisions relating to the liability of condominium
22 unit owners and mortgagees; revising applicability;
23 revising effect of a claim of lien; creating s.
24 718.128, F.S.; authorizing condominium associations to
25 conduct elections by electronic voting under certain
26 conditions; providing that a member voting
27 electronically is counted toward a quorum; providing
28 applicability; providing that a unit owner's consent
29 to online voting is valid until the unit owner opts

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30 out according to specified procedures; amending s.
31 718.301, F.S.; adding conditions under which certain
32 unit owners are entitled to elect at least a majority
33 of the members of the board of administration of an
34 association; requiring a bulk-unit purchaser to
35 relinquish control of the association under certain
36 circumstances; requiring a bulk-unit purchaser to
37 deliver certain items, at the bulk-unit purchaser's
38 expense, during the transfer of association control
39 from the bulk-unit purchaser; amending s. 718.302,
40 F.S.; revising the conditions under which certain
41 grants, reservations, or contracts made by an
42 association may be cancelled; prohibiting a lender-
43 unit purchaser from voting on cancellation of certain
44 grants, reservations, or contracts while the
45 association is under control of that lender-unit
46 purchaser; amending s. 718.303, F.S.; providing that a
47 fine may be levied by the board or its authorized
48 designee under certain conditions; revising the
49 requirements for levying a fine or suspension;
50 amending s. 718.501, F.S.; conforming provisions of
51 ch. 718, F.S., relating to the enforcement powers of
52 the Division of Florida Condominiums, Timeshares, and
53 Mobile Homes; creating s. 718.709, F.S.; providing
54 applicability of the provisions relating to the
55 Distressed Condominium Relief Act; creating part VIII
56 of ch. 718, F.S.; providing legislative intent;
57 providing definitions; authorizing a bulk-unit
58 purchaser to exercise certain developer rights;

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59 requiring a bulk-unit purchaser to pay a working
 60 capital contribution under certain circumstances;
 61 providing applicability; authorizing a lender-unit
 62 purchaser to exercise any developer rights he or she
 63 acquires; requiring a bulk-unit purchaser and a
 64 lender-unit purchaser to comply with specified
 65 provisions under ch. 718, F.S.; limiting the rights of
 66 bulk-unit purchasers and lender-unit purchasers to
 67 vote on reserves or funding of reserves; prohibiting
 68 the transfer of such voting rights; providing
 69 assessment liability for bulk-unit purchasers and
 70 lender-unit purchasers; providing for suspension of a
 71 director who has been elected or appointed by a bulk-
 72 unit purchaser in certain circumstances; specifying
 73 amendments and alterations for which a majority
 74 approval of unit owners is required; requiring consent
 75 of a bulk-unit purchaser, lender-unit purchaser, or
 76 developer to certain amendments; requiring certain
 77 warranties and disclosures; requiring an architect or
 78 engineer to disclose specified information in a
 79 condition report under certain circumstances;
 80 subjecting multiple bulk-unit purchasers to joint and
 81 several liability; prohibiting a board of
 82 administration, a majority of which is elected by a
 83 bulk-unit purchaser, from resolving certain
 84 construction disputes unless other conditions are
 85 satisfied; providing that a bulk-unit purchaser or
 86 lender-unit purchaser who does not comply with ch.
 87 718, F.S., forfeits all protections or exemptions

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88 under ch. 718, F.S.; clarifying conditions under which
 89 a bulk-unit purchaser must deliver certain items
 90 during the transfer of association control from the
 91 bulk-unit purchaser; providing conditions by which a
 92 person may become a bulk-unit purchaser following
 93 acquisition of title to timeshare interests that are
 94 or ultimately will be included in a timeshare plan;
 95 requiring disclosure to purchasers by certain bulk-
 96 unit purchasers of timeshare interests; amending s.
 97 719.104, F.S.; revising what constitutes the official
 98 records of an association; amending s. 719.106, F.S.;
 99 revising the requirements for board of administration
 100 and shareholder meetings; amending s. 719.108, F.S.;
 101 revising applicability; revising the effect of a claim
 102 of lien; creating s. 719.129, F.S.; authorizing
 103 cooperative associations to conduct elections by
 104 electronic voting under certain conditions; providing
 105 that a member voting electronically is counted toward
 106 a quorum; providing applicability; providing that a
 107 unit owner's consent to online voting is valid until
 108 the unit owner opts out according to specified
 109 procedures; amending s. 719.303, F.S.; providing that
 110 a fine may be levied by the board or its authorized
 111 designee under certain conditions; revising the
 112 requirements for levying a fine or suspension;
 113 amending s. 720.301, F.S.; revising the definition of
 114 the term "governing documents"; creating s. 720.3015,
 115 F.S.; providing a short title; amending s. 720.303,
 116 F.S.; authorizing a homeowners' association to provide

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117 notice by electronic transmission in certain
 118 circumstances; amending s. 720.305, F.S.; revising the
 119 requirements for levying a fine or suspension;
 120 revising the application of certain provisions;
 121 amending s. 720.306, F.S.; revising the requirements
 122 for the adoption of amendments to the governing
 123 documents; revising the requirements for the election
 124 of directors; revising the requirements for board of
 125 director and member meetings; amending s. 720.3085,
 126 F.S.; providing that the association may recover from
 127 the parcel owner a reasonable charge imposed by a
 128 management or bookkeeping company or a collection
 129 agent which are incurred in connection with a
 130 delinquent assessment; providing that such charges
 131 must be liquidated, noncontingent, and based upon
 132 actual time expended; providing that fees for
 133 collection are not recoverable in a certain
 134 circumstance; specifying the hierarchy for the
 135 application of payments received for collection
 136 services contracted for by the association; creating
 137 s. 720.317, F.S.; authorizing homeowners' associations
 138 to conduct elections by electronic voting under
 139 certain conditions; providing that a member voting
 140 electronically is counted toward a quorum; providing
 141 applicability; providing that a member's consent to
 142 online voting is valid until the member opts out
 143 according to specified procedures; providing an
 144 effective date.
 145

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

147
 148 Section 1. Subsection (2) of section 617.0721, Florida
 149 Statutes, is amended to read:

150 617.0721 Voting by members.—

151 (2) A member who is entitled to vote may vote in person or,
 152 unless the articles of incorporation or the bylaws otherwise
 153 provide, may vote by proxy executed in writing by the member or
 154 by his or her duly authorized attorney in fact. Notwithstanding
 155 any provision to the contrary in the articles of incorporation
 156 or bylaws, any copy, facsimile transmission, or other reliable
 157 reproduction of the original proxy may be substituted or used in
 158 lieu of the original proxy for any purpose for which the
 159 original proxy could be used if the copy, facsimile
 160 transmission, or other reproduction is a complete reproduction
 161 of the entire proxy. An appointment of a proxy is not valid
 162 after 11 months following the date of its execution unless
 163 otherwise provided in the proxy.

164 (a) If directors or officers are to be elected by members,
 165 the bylaws may provide that such elections may be conducted by
 166 mail.

167 (b) A corporation may reject a vote, consent, waiver, or
 168 proxy appointment if the secretary or other officer or agent
 169 authorized to tabulate votes, acting in good faith, has a
 170 reasonable basis for doubting the validity of the signature on
 171 it or the signatory's authority to sign for the member.

172 Section 2. Present subsections (12) through (30) of section
 173 718.103, Florida Statutes, are redesignated as subsections (13)
 174 through (31), respectively, a new subsection (12) is added to

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that section, and present subsection (16) of that section is amended, to read:

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

(12) "Condominium documents" means:

(a) The recorded declaration of condominium for a community and all duly adopted and recorded amendments, supplements, and exhibits of the declaration;

(b) The recorded articles of incorporation and bylaws of the condominium association and any duly adopted and recorded amendments of the declaration; and

(c) Rules and regulations adopted under the authority of the recorded declaration of condominium, articles of incorporation or bylaws, and duly adopted amendments of the declaration.

(17)(16) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy;

(b) A cooperative association that creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners are the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion;

(c) A bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer as defined in s. 718.802 ~~718.703~~;

(d) A person who acquires title to 7 or fewer units

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operated by the same association consisting of 40 or fewer units or who acquires title to less than 20 percent of the units operated by the same association consisting of more than 40 units, regardless of whether that person offers any of those units for sale;

(e) The trustee and any related trust association of a timeshare trust, interests in which are qualified as timeshare estates pursuant to s. 721.08 or s. 721.53; or

(f)(d) A state, county, or municipal entity acting as a lessor and not otherwise named as a developer in the declaration of condominium.

Section 3. Subsection (4), paragraph (j) of subsection (11) and paragraph (a) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.—The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements or the association property; however, the association may not charge a use fee against a unit owner for the use of common elements or association property unless otherwise provided for in the declaration of condominium or by a majority of the voting interests present, in person or by proxy, at a meeting of the association if a quorum has been established ~~vote of the association~~ or unless the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure

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consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement, as determined by the maintenance provisions of the declaration or bylaws. All property insurance deductibles, ~~uninsured losses~~, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium

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property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

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291 4. A certified copy of the articles of incorporation of the
 292 association, or other documents creating the association, and
 293 each amendment thereto.

294 5. A copy of the current rules of the association.

295 6. A book or books that contain the minutes of all meetings
 296 of the association, the board of administration, and the unit
 297 owners, which minutes must be retained for at least 7 years.

298 7. A current roster of all unit owners and their mailing
 299 addresses, unit identifications, voting certifications, and, if
 300 known, telephone numbers. The association shall also maintain
 301 the electronic mailing addresses and facsimile numbers of unit
 302 owners consenting to receive notice by electronic transmission.
 303 The electronic mailing addresses and facsimile numbers are not
 304 accessible to unit owners if consent to receive notice by
 305 electronic transmission is not provided in accordance with
 306 subparagraph (c)5. However, the association is not liable for an
 307 inadvertent disclosure of the electronic mail address or
 308 facsimile number for receiving electronic transmission of
 309 notices.

310 8. All current insurance policies of the association and
 311 condominiums operated by the association.

312 9. A current copy of any management agreement, lease, or
 313 other contract to which the association is a party or under
 314 which the association or the unit owners have an obligation or
 315 responsibility.

316 10. Bills of sale or transfer for all property owned by the
 317 association.

318 11. Accounting records for the association and separate
 319 accounting records for each condominium that the association

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320 operates. All accounting records must be maintained for at least
 321 7 years. Any person who knowingly or intentionally defaces or
 322 destroys such records, or who knowingly or intentionally fails
 323 to create or maintain such records, with the intent of causing
 324 harm to the association or one or more of its members, is
 325 personally subject to a civil penalty pursuant to s.
 326 718.501(1)(d). The accounting records must include, but are not
 327 limited to:

328 a. Accurate, itemized, and detailed records of all receipts
 329 and expenditures.

330 b. A current account and a monthly, bimonthly, or quarterly
 331 statement of the account for each unit designating the name of
 332 the unit owner, the due date and amount of each assessment, the
 333 amount paid on the account, and the balance due.

334 c. All audits, reviews, accounting statements, and
 335 financial reports of the association or condominium.

336 d. All contracts for work to be performed. Bids for work to
 337 be performed are also considered official records and must be
 338 maintained by the association.

339 12. Ballots, sign-in sheets, voting proxies, and all other
 340 papers relating to voting by unit owners, which must be
 341 maintained for 1 year from the date of the election, vote, or
 342 meeting to which the document relates, notwithstanding paragraph
 343 (b).

344 13. All rental records if the association is acting as
 345 agent for the rental of condominium units.

346 14. A copy of the current question and answer sheet as
 347 described in s. 718.504.

348 15. All other written records of the association not

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specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

Section 4. Paragraphs (c), (d), and (f) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings; however, a unit owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property or association property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition

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the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. However, written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property or association property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium

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property or association property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) *Unit owner meetings.*—

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1. An annual meeting of the unit owners shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. If the bylaws or articles of incorporation permit terms of no more than 2 years, the association board members may serve 2-year terms. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less

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465 than a quorum or there is only one director. In a residential
 466 condominium association of more than 10 units or in a
 467 residential condominium association that does not include
 468 timeshare units or timeshare interests, coowners of a unit may
 469 not serve as members of the board of directors at the same time
 470 unless they own more than one unit or unless there are not
 471 enough eligible candidates to fill the vacancies on the board at
 472 the time of the vacancy. A unit owner in a residential
 473 condominium desiring to be a candidate for board membership must
 474 comply with sub-subparagraph 4.a. and must be eligible to be a
 475 candidate to serve on the board of directors at the time of the
 476 deadline for submitting a notice of intent to run in order to
 477 have his or her name listed as a proper candidate on the ballot
 478 or to serve on the board. A person who has been suspended or
 479 removed by the division under this chapter, or who is delinquent
 480 in the payment of any monetary obligation due to the
 481 association, is not eligible to be a candidate for board
 482 membership and may not be listed on the ballot. A person who has
 483 been convicted of any felony in this state or in a United States
 484 District or Territorial Court, or who has been convicted of any
 485 offense in another jurisdiction which would be considered a
 486 felony if committed in this state, is not eligible for board
 487 membership unless such felon's civil rights have been restored
 488 for at least 5 years as of the date such person seeks election
 489 to the board. The validity of an action by the board is not
 490 affected if it is later determined that a board member is
 491 ineligible for board membership due to having been convicted of
 492 a felony. This subparagraph does not limit the term of a member
 493 of the board of a nonresidential condominium.

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494 3. The bylaws must provide the method of calling meetings
 495 of unit owners, including annual meetings. Written notice must
 496 include an agenda, must be mailed, hand delivered, or
 497 electronically transmitted to each unit owner at least 14 days
 498 before the annual meeting, and must be posted in a conspicuous
 499 place on the condominium property or association property at
 500 least 14 continuous days before the annual meeting. Upon notice
 501 to the unit owners, the board shall, by duly adopted rule,
 502 designate a specific location on the condominium property or
 503 association property where all notices of unit owner meetings
 504 shall be posted. This requirement does not apply if there is no
 505 condominium property or association property for posting
 506 notices. In lieu of, or in addition to, the physical posting of
 507 meeting notices, the association may, by reasonable rule, adopt
 508 a procedure for conspicuously posting and repeatedly
 509 broadcasting the notice and the agenda on a closed-circuit cable
 510 television system serving the condominium association. However,
 511 if broadcast notice is used in lieu of a notice posted
 512 physically on the condominium property or association property,
 513 the notice and agenda must be broadcast at least four times
 514 every broadcast hour of each day that a posted notice is
 515 otherwise required under this section. If broadcast notice is
 516 provided, the notice and agenda must be broadcast in a manner
 517 and for a sufficient continuous length of time so as to allow an
 518 average reader to observe the notice and read and comprehend the
 519 entire content of the notice and the agenda. Unless a unit owner
 520 waives in writing the right to receive notice of the annual
 521 meeting, such notice must be hand delivered, mailed, or
 522 electronically transmitted to each unit owner. Notice for

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meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must

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give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting.

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581 Notwithstanding this sub-subparagraph, an election is not
 582 required unless more candidates file notices of intent to run or
 583 are nominated than board vacancies exist.

584 b. Within 90 days after being elected or appointed to the
 585 board of an association of a residential condominium, each newly
 586 elected or appointed director shall certify in writing to the
 587 secretary of the association that he or she has read the
 588 association's declaration of condominium, articles of
 589 incorporation, bylaws, and current written policies; that he or
 590 she will work to uphold such documents and policies to the best
 591 of his or her ability; and that he or she will faithfully
 592 discharge his or her fiduciary responsibility to the
 593 association's members. In lieu of this written certification,
 594 within 90 days after being elected or appointed to the board,
 595 the newly elected or appointed director may submit a certificate
 596 of having satisfactorily completed the educational curriculum
 597 administered by a division-approved condominium education
 598 provider within 1 year before or 90 days after the date of
 599 election or appointment. The written certification or
 600 educational certificate is valid and does not have to be
 601 resubmitted as long as the director serves on the board without
 602 interruption. A director of an association of a residential
 603 condominium who fails to timely file the written certification
 604 or educational certificate is suspended from service on the
 605 board until he or she complies with this sub-subparagraph. The
 606 board may temporarily fill the vacancy during the period of
 607 suspension. The secretary shall cause the association to retain
 608 a director's written certification or educational certificate
 609 for inspection by the members for 5 years after a director's

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610 election or the duration of the director's uninterrupted tenure,
 611 whichever is longer. Failure to have such written certification
 612 or educational certificate on file does not affect the validity
 613 of any board action.

614 c. Any challenge to the election process must be commenced
 615 within 60 days after the election results are announced.

616 5. Any approval by unit owners called for by this chapter
 617 or the applicable declaration or bylaws, including, but not
 618 limited to, the approval requirement in s. 718.111(8), must be
 619 made at a duly noticed meeting of unit owners and is subject to
 620 all requirements of this chapter or the applicable condominium
 621 documents relating to unit owner decisionmaking, except that
 622 unit owners may take action by written agreement, without
 623 meetings, on matters for which action by written agreement
 624 without meetings is expressly allowed by the applicable bylaws
 625 or declaration or any law that provides for such action.

626 6. Unit owners may waive notice of specific meetings if
 627 allowed by the applicable bylaws or declaration or any law. ~~If~~
 628 ~~authorized by the bylaws,~~ Notice of meetings of the board of
 629 administration, unit owner meetings, except unit owner meetings
 630 called to recall board members under paragraph (j), and
 631 committee meetings may be given by electronic transmission to
 632 unit owners who consent to receive notice by electronic
 633 transmission.

634 7. Unit owners have the right to participate in meetings of
 635 unit owners with reference to all designated agenda items.
 636 However, the association may adopt reasonable rules governing
 637 the frequency, duration, and manner of unit owner participation.

638 8. A unit owner may tape record or videotape a meeting of

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the unit owners subject to reasonable rules adopted by the division; however, a unit owner may not post the recording on any website or other media that can readily be viewed by persons who are not members of the association.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a

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proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, ~~any if applicable, but not limited to,~~ those expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and ~~for~~ any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated

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697 replacement cost or deferred maintenance expense of each reserve
 698 item. The association may adjust replacement reserve assessments
 699 annually to take into account any changes in estimates or
 700 extension of the useful life of a reserve item caused by
 701 deferred maintenance. This subsection does not apply to an
 702 adopted budget in which the members of an association have
 703 determined, by a majority vote at a duly called meeting of the
 704 association, to provide no reserves or less reserves than
 705 required by this subsection.

706 b. Before ~~However, prior to~~ turnover of control of an
 707 association by a developer to unit owners other than a developer
 708 pursuant to s. 718.301, the developer may vote the voting
 709 interests allocated to its units to waive the reserves or reduce
 710 the funding of reserves through the period expiring at the end
 711 of the second fiscal year after the fiscal year in which the
 712 certificate of a surveyor and mapper is recorded pursuant to s.
 713 718.104(4) (e) or an instrument that transfers title to a unit in
 714 the condominium which is not accompanied by a recorded
 715 assignment of developer rights in favor of the grantee of such
 716 unit is recorded, whichever occurs first, after which time
 717 reserves may be waived or reduced only upon the vote of a
 718 majority of all nondeveloper voting interests voting in person
 719 or by limited proxy at a duly called meeting of the association.
 720 If a meeting of the unit owners has been called to determine
 721 whether to waive or reduce the funding of reserves, and no such
 722 result is achieved or a quorum is not attained, the reserves
 723 included in the budget shall go into effect. After the turnover,
 724 the developer may vote its voting interest to waive or reduce
 725 the funding of reserves.

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726 3. Reserve funds and any interest accruing thereon shall
 727 remain in the reserve account or accounts, and may be used only
 728 for authorized reserve expenditures unless their use for other
 729 purposes is approved in advance by a majority vote at a duly
 730 called meeting of the association. ~~Before~~ ~~Prior to~~ turnover of
 731 control of an association by a developer to unit owners other
 732 than the developer pursuant to s. 718.301, the developer-
 733 controlled association ~~may shall~~ not vote to use reserves for
 734 purposes other than those ~~that~~ for which they were intended
 735 without the approval of a majority of all nondeveloper voting
 736 interests, voting in person or by limited proxy at a duly called
 737 meeting of the association.

738 4. The only voting interests that are eligible to vote on
 739 questions that involve waiving or reducing the funding of
 740 reserves, or using existing reserve funds for purposes other
 741 than purposes for which the reserves were intended, are the
 742 voting interests of the units subject to assessment to fund the
 743 reserves in question. Proxy questions relating to waiving or
 744 reducing the funding of reserves or using existing reserve funds
 745 for purposes other than purposes for which the reserves were
 746 intended ~~must shall~~ contain the following statement in
 747 capitalized, bold letters in a font size larger than any other
 748 used on the face of the proxy ballot: WAIVING OF RESERVES, IN
 749 WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING
 750 RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF
 751 UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

752 Section 5. Subsection (7) of section 718.113, Florida
 753 Statutes, is amended to read:

754 718.113 Maintenance; limitation upon improvement; display

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of flag; hurricane shutters and protection; display of religious decorations.-

(7) Notwithstanding the provisions of this section or the condominium governing documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

Section 6. Paragraphs (a) and (b) of subsection (1), subsection (3), and paragraph (b) of subsection (5) of section 718.116, Florida Statutes, are amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.-

(1) (a) A unit owner, regardless of how the unit owner has acquired his or her title has been acquired, including, but not limited to, by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments that which come due while he or she is the unit owner, including any special assessments or installments on special assessments coming due during the period of ownership, regardless of when the special assessment was levied. Additionally, a unit owner is jointly and severally liable with the previous unit owner for all unpaid monthly and special assessments, interest and late fees on both unpaid assessments and unpaid special assessments, and costs and reasonable attorney fees incurred by the association in an attempt to collect all such amounts that came due up to the time of transfer of title. This joint and several liability of a subsequent unit owner does not apply to an owner who acquires

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title through purchase of a tax deed and is without prejudice to any right the present unit owner may have to recover from the previous unit owner the amounts paid by the present unit owner. For the purposes of this section paragraph, the term "previous unit owner" does not include an association that acquires title to a unit delinquent property through foreclosure or by deed in lieu of foreclosure. A present unit owner's liability for unpaid assessments, interest, late fees, and costs and reasonable attorney fees is limited to any unpaid assessments, interest, late fees, and costs and reasonable attorney fees that accrued before the association acquired title to the unit delinquent property through foreclosure or by deed in lieu of foreclosure.

(b)1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments, interest, late fees, costs and reasonable attorney fees, and any other fee, cost, or expense incurred by or on behalf of the association in the collection process which that became due before the mortgagee's acquisition of title is limited to the lesser of:

a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

b. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not

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maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of \$25 or 5 percent of each delinquent installment for which the payment is late. The association may also recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be based on the actual time expended performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association's legal counsel. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee,

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then to any costs and reasonable attorney attorney's fees incurred in collection, then to any reasonable costs for collection services contracted by the association, and then to the delinquent assessment. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 718.303(4).

(5)

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, authorized administrative late fees, and all reasonable costs and attorney attorney's fees incurred by the association incident to the collection process, including, but not limited to, any reasonable costs for collection services contracted for by the association. Upon payment in full, the

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871 person making the payment is entitled to a satisfaction of the
872 lien.

873 Section 7. Section 718.128, Florida Statutes, is created to
874 read:

875 718.128 Electronic voting.—The association may conduct
876 elections and other unit owner votes through an Internet-based
877 online voting system if a unit owner consents in writing to
878 online voting and if the following requirements are met:

879 (1) The association provides each unit owner with:

880 (a) A method to authenticate the unit owner's identity to
881 the online voting system.

882 (b) For elections of the board, a method to transmit an
883 electronic ballot to the online voting system that ensures the
884 secrecy and integrity of each ballot.

885 (c) A method to confirm, at least 14 days before the voting
886 deadline, that the unit owner's electronic device can
887 successfully communicate with the online voting system.

888 (2) The association uses an online voting system that is:

889 (a) Able to authenticate the unit owner's identity.

890 (b) Able to authenticate the validity of each electronic
891 vote to ensure that the vote is not altered in transit.

892 (c) Able to transmit a receipt from the online voting
893 system to each unit owner who casts an electronic vote.

894 (d) For elections of the board of administration, able to
895 permanently separate any authentication or identifying
896 information from the electronic election ballot, rendering it
897 impossible to tie an election ballot to a specific unit owner.

898 (e) Able to store and keep electronic votes accessible to
899 election officials for recount, inspection, and review purposes.

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900 (3) A unit owner voting electronically pursuant to this
901 section shall be counted as being in attendance at the meeting
902 for purposes of determining a quorum. A substantive vote of the
903 unit owners may not be taken on any issue other than the issues
904 specifically identified in the electronic vote when a quorum is
905 established based on unit owners voting electronically pursuant
906 to this section.

907 (4) This section applies to an association that provides
908 for and authorizes an online voting system pursuant to this
909 section by a board resolution. The board resolution must provide
910 that unit owners receive notice of the opportunity to vote
911 through an online voting system, must establish reasonable
912 procedures and deadlines for unit owners to consent in writing
913 to online voting, and must establish reasonable procedures and
914 deadlines for unit owners to opt out of online voting after
915 giving consent. Written notice of a meeting at which the
916 resolution will be considered must be mailed, delivered, or
917 electronically transmitted to the unit owners and posted
918 conspicuously on the condominium property or association
919 property at least 14 days before the meeting. Evidence of
920 compliance with the 14-day notice requirement must be made by an
921 affidavit executed by the person providing the notice and filed
922 with the official records of the association.

923 (5) A unit owner's consent to online voting is valid until
924 the unit owner opts out of online voting according to the
925 procedures established by the board of administration pursuant
926 to paragraph (4).

927 (6) This section may apply to any matter that requires a
928 vote of the unit owners.

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929 Section 8. Subsections (1) and (4) of section 718.301,
 930 Florida Statutes, are amended to read:
 931 718.301 Transfer of association control; claims of defect
 932 by association.-

933 (1) If unit owners other than the developer own 15 percent
 934 or more of the units ~~in a condominium~~ that ultimately will be
 935 operated ~~ultimately~~ by an association, as provided in the
 936 declaration, articles of incorporation, or bylaws as originally
 937 recorded, the unit owners other than the developer are entitled
 938 to elect at least one-third of the members of the board of
 939 administration of the association. Unit owners other than the
 940 developer are entitled to elect at least a majority of the
 941 members of the board of administration of an association; upon
 942 the first ~~to occur of any~~ of the following events that occur:

943 (a) Three years after 50 percent of the units that
 944 ultimately will be operated ~~ultimately~~ by the association, as
 945 provided in the declaration, articles of incorporation, or
 946 bylaws as originally recorded, have been conveyed to
 947 purchasers.†

948 (b) Three months after 90 percent of the units that
 949 ultimately will be operated ~~ultimately~~ by the association, as
 950 provided in the declaration, articles of incorporation, or
 951 bylaws as originally recorded, have been conveyed to
 952 purchasers.†

953 (c) When all the units that ultimately will be operated
 954 ~~ultimately~~ by the association, as provided in the declaration,
 955 articles of incorporation, or bylaws as originally recorded,
 956 have been completed, some of them have been conveyed to
 957 purchasers, and none of the others is ~~are~~ being offered for sale

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958 by the developer in the ordinary course of business.†

959 (d) When some of the units have been conveyed to purchasers
 960 and none of the others is ~~are~~ being constructed or offered for
 961 sale by the developer in the ordinary course of business.†

962 (e) When the developer files a petition seeking protection
 963 in bankruptcy.†

964 (f) When a bulk-unit purchaser who owns a majority of the
 965 units that ultimately will be operated by the association, as
 966 provided in the declaration, articles of incorporation, or
 967 bylaws as originally recorded, files a petition seeking
 968 protection in bankruptcy.

969 (g)†(f) When a receiver for the developer is appointed by a
 970 circuit court and is not discharged within 30 days after such
 971 appointment, unless the court determines within 30 days after
 972 appointment of the receiver that transfer of control would be
 973 detrimental to the association or its members.†-†

974 (h) When a receiver for a bulk-unit purchaser who owns a
 975 majority of the units that ultimately will be operated by the
 976 association, as provided in the declaration, articles of
 977 incorporation, or bylaws as originally recorded, is appointed by
 978 a circuit court and is not discharged within 30 days after such
 979 appointment, unless the court determines within 30 days after
 980 appointment of the receiver that transfer of control would be
 981 detrimental to the association or its members.

982 (i) Five years after the date of recording of the first
 983 conveyance to a bulk-unit purchaser who owns a majority of the
 984 units that ultimately will be operated by the association, as
 985 provided in the declaration, articles of incorporation, or
 986 bylaws as originally recorded. Notwithstanding that unit owners

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other than the developer are entitled to elect a majority of the members of the board of administration and notwithstanding s. 718.112(2)(f)2., 5 years after the date of recording of the first conveyance of a unit to a bulk-unit purchaser who owns a majority of the units, the bulk-unit purchaser may exercise the right to vote for each unit owned by the bulk-unit purchaser in the same manner as any other unit owner except for the purposes of reacquiring control of the association or electing or appointing a majority of the members of the board of administration.

~~(j)(g)~~ Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; or, in the case of an association that ~~may~~ ultimately may operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in

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favor of the grantee of such unit, whichever occurs first.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting a ~~the~~ majority of the members of the board of administration.

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer or bulk-unit purchaser shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer or bulk-unit purchaser shall deliver to the association, at the developer's or bulk-unit purchaser's expense, all property of the unit owners and of the association which is held or controlled by the developer or bulk-unit purchaser, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(a)1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it must be certified by affidavit of the developer, a bulk-unit purchaser, or an officer or agent of the

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1045 developer or bulk-unit purchaser as being a complete copy of the
1046 actual recorded declaration.

1047 2. A certified copy of the articles of incorporation of the
1048 association or, if the association was created ~~before~~ prior to
1049 the effective date of this act and it is not incorporated,
1050 copies of the documents creating the association.

1051 3. A copy of the bylaws.

1052 4. The minute books, including all minutes, and other books
1053 and records of the association, if any.

1054 5. Any house rules and regulations that have been adopted
1055 ~~promulgated~~.

1056 (b) Resignations of officers and members of the board of
1057 administration who are required to resign because the developer
1058 or bulk-unit purchaser is required to relinquish control of the
1059 association.

1060 (c) The financial records, including financial statements
1061 of the association, and source documents from the incorporation
1062 of the association through the date of turnover. The records
1063 must be audited for the period from the incorporation of the
1064 association or from the period covered by the last audit, if an
1065 audit has been performed for each fiscal year since
1066 incorporation, by an independent certified public accountant.
1067 All financial statements must be prepared in accordance with
1068 generally accepted accounting principles and must be audited in
1069 accordance with generally accepted auditing standards, as
1070 prescribed by the Florida Board of Accountancy, pursuant to
1071 chapter 473. The accountant performing the audit shall examine
1072 to the extent necessary supporting documents and records,
1073 including the cash disbursements and related paid invoices, to

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1074 determine ~~whether~~ if expenditures were for association purposes
1075 and the billings, cash receipts, and related records to
1076 determine ~~whether~~ that the developer or bulk-unit purchaser was
1077 charged and paid the proper amounts of assessments.

1078 (d) Association funds or control thereof.

1079 (e) All tangible personal property that is property of the
1080 association, which is represented by the developer or bulk-unit
1081 purchaser to be part of the common elements or which is
1082 ostensibly part of the common elements, and an inventory of that
1083 property.

1084 (f) A copy of the plans and specifications used ~~utilized~~ in
1085 the construction or remodeling of improvements and the supplying
1086 of equipment to the condominium and in the construction and
1087 installation of all mechanical components serving the
1088 improvements and the site with a certificate in affidavit form
1089 of the developer, the bulk-unit purchaser, or the developer's or
1090 bulk-unit purchaser's agent or an architect or engineer
1091 authorized to practice in this state that such plans and
1092 specifications represent, to the best of his or her knowledge
1093 and belief, the actual plans and specifications used ~~utilized~~ in
1094 the construction and improvement of the condominium property and
1095 for the construction and installation of the mechanical
1096 components serving the improvements. If the condominium property
1097 has been declared a condominium more than 3 years after the
1098 completion of construction or remodeling of the improvements,
1099 ~~the requirements of this paragraph~~ does ~~do~~ not apply.

1100 (g) A list of the names and addresses of all contractors,
1101 subcontractors, and suppliers used ~~utilized~~ in the construction
1102 or remodeling of the improvements and in the landscaping of the

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1103 condominium or association property which the developer or bulk-
 1104 unit purchaser had knowledge of at any time in the development
 1105 of the condominium.

1106 (h) Insurance policies.

1107 (i) Copies of any certificates of occupancy that may have
 1108 been issued for the condominium property.

1109 (j) Any other permits applicable to the condominium
 1110 property which have been issued by governmental bodies and are
 1111 in force or were issued within 1 year before ~~prior to~~ the date
 1112 the unit owners other than the developer or bulk-unit purchaser
 1113 took control of the association.

1114 (k) All written warranties of the contractor,
 1115 subcontractors, suppliers, and manufacturers, if any, that are
 1116 still effective.

1117 (l) A roster of unit owners and their addresses and
 1118 telephone numbers, if known, as shown on the developer's or
 1119 bulk-unit purchaser's records.

1120 (m) Leases of the common elements and other leases to which
 1121 the association is a party.

1122 (n) Employment contracts or service contracts in which the
 1123 association is one of the contracting parties or service
 1124 contracts in which the association or the unit owners have an
 1125 obligation or responsibility, directly or indirectly, to pay
 1126 some or all of the fee or charge of the person or persons
 1127 performing the service.

1128 (o) All other contracts to which the association is a
 1129 party.

1130 (p) A report included in the official records, under seal
 1131 of an architect or engineer authorized to practice in this

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1132 state, attesting to required maintenance, useful life, and
 1133 replacement costs of the following applicable common elements
 1134 comprising a turnover inspection report:

- 1135 1. Roof.
- 1136 2. Structure.
- 1137 3. Fireproofing and fire protection systems.
- 1138 4. Elevators.
- 1139 5. Heating and cooling systems.
- 1140 6. Plumbing.
- 1141 7. Electrical systems.
- 1142 8. Swimming pool or spa and equipment.
- 1143 9. Seawalls.
- 1144 10. Pavement and parking areas.
- 1145 11. Drainage systems.
- 1146 12. Painting.
- 1147 13. Irrigation systems.

1148 (q) A copy of the certificate of a surveyor and mapper
 1149 recorded pursuant to s. 718.104(4)(e) or the recorded instrument
 1150 that transfers title to a unit in the condominium which is not
 1151 accompanied by a recorded assignment of developer or bulk-unit
 1152 purchaser rights in favor of the grantee of such unit, whichever
 1153 occurred first.

1154 Section 9. Subsections (1) through (4) of section 718.302,
 1155 Florida Statutes, are amended to read:

1156 718.302 Agreements entered into by the association.—

1157 (1) A ~~Any~~ grant or reservation made by a declaration,
 1158 lease, or other document, and a ~~any~~ contract made by an
 1159 association before ~~prior to~~ assumption of control of the
 1160 association by unit owners other than the developer, a bulk-unit

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1161 purchaser, or a lender-unit purchaser, which ~~that~~ provides for
 1162 operation, maintenance, or management of a condominium
 1163 association or property serving the unit owners of a condominium
 1164 ~~must shall~~ be fair and reasonable, and such grant, reservation,
 1165 or contract may be canceled by unit owners other than the
 1166 developer or a bulk-unit purchaser. A lender-unit purchaser may
 1167 not vote on cancellation of a grant, reservation, or contract
 1168 made by the association while the association is under control
 1169 of that lender-unit purchaser.+

1170 (a) If the association operates only one condominium and
 1171 the unit owners other than the developer, a bulk-unit purchaser,
 1172 or a lender-unit purchaser have assumed control of the
 1173 association, or if the unit owners other than the developer, a
 1174 bulk-unit purchaser, or a lender-unit purchaser own at least ~~not~~
 1175 ~~less than~~ 75 percent of the voting interests in the condominium,
 1176 the cancellation shall be by concurrence of the owners of at
 1177 least ~~not less than~~ 75 percent of the voting interests other
 1178 than the voting interests owned by the developer, a bulk-unit
 1179 purchaser, or a lender-unit purchaser. If a grant, reservation,
 1180 or contract is so canceled and the unit owners other than the
 1181 developer or a bulk-unit purchaser have not assumed control of
 1182 the association, the association shall make a new contract or
 1183 otherwise provide for maintenance, management, or operation in
 1184 lieu of the canceled obligation, at the direction of the owners
 1185 of ~~not less than~~ a majority of the voting interests in the
 1186 condominium other than the voting interests owned by the
 1187 developer, a bulk-unit purchaser, or a lender-unit purchaser.

1188 (b) If the association operates more than one condominium
 1189 and the unit owners other than the developer, a bulk-unit

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1190 purchaser, or a lender-unit purchaser have not assumed control
 1191 of the association, and if the unit owners other than the
 1192 developer or a bulk-unit purchaser own at least 75 percent of
 1193 the voting interests in a condominium operated by the
 1194 association, any grant, reservation, or contract for
 1195 maintenance, management, or operation of buildings containing
 1196 the units in that condominium or of improvements used only by
 1197 the unit owners of that condominium may be canceled by
 1198 concurrence of the owners of at least 75 percent of the voting
 1199 interests in the condominium other than the voting interests
 1200 owned by the developer or a bulk-unit purchaser. A ~~No~~ grant,
 1201 reservation, or contract for maintenance, management, or
 1202 operation of recreational areas or any other property serving
 1203 more than one condominium, and operated by more than one
 1204 association, may not be canceled except pursuant to paragraph
 1205 (d).

1206 (c) If the association operates more than one condominium
 1207 and the unit owners other than the developer, a bulk-unit
 1208 purchaser, or a lender-unit purchaser have assumed control of
 1209 the association, the cancellation shall be by concurrence of the
 1210 owners of at least ~~not less than~~ 75 percent of the total number
 1211 of voting interests in all condominiums operated by the
 1212 association other than the voting interests owned by the
 1213 developer or a bulk-unit purchaser.

1214 (d) If the owners of units in a condominium have the right
 1215 to use property in common with owners of units in other
 1216 condominiums and those condominiums are operated by more than
 1217 one association, a ~~no~~ grant, reservation, or contract for
 1218 maintenance, management, or operation of the property serving

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1219 more than one condominium may not be canceled until the unit
 1220 owners other than the developer, a bulk-unit purchaser, or a
 1221 lender-unit purchaser have assumed control of all of the
 1222 associations operating the condominiums that are to be served by
 1223 the recreational area or other property, after which
 1224 cancellation may be effected by concurrence of the owners of at
 1225 least ~~not less than~~ 75 percent of the total number of voting
 1226 interests in those condominiums other than voting interests
 1227 owned by the developer, a bulk-unit purchaser, or a lender-unit
 1228 purchaser.

1229 (2) A ~~Any~~ grant or reservation made by a declaration,
 1230 lease, or other document, or a ~~any~~ contract made by the
 1231 developer or association before ~~prior to the time when~~ unit
 1232 owners other than the developer or a bulk-unit purchaser elect a
 1233 majority of the board of administration, which grant,
 1234 reservation, or contract requires the association to purchase
 1235 condominium property or to lease condominium property to another
 1236 party, shall be deemed ratified unless rejected by a majority of
 1237 the voting interests of the unit owners other than the developer
 1238 or a bulk-unit purchaser within 18 months after the unit owners
 1239 other than the developer or a bulk-unit purchaser elect a
 1240 majority of the board of administration. A lender-unit purchaser
 1241 may not vote on cancellation of a grant, reservation, or
 1242 contract made by the association while the association is under
 1243 control of that lender-unit purchaser. This subsection does not
 1244 apply to a ~~any~~ grant or reservation made by a declaration under
 1245 which ~~whereby~~ persons other than the developer or the
 1246 developer's or bulk-unit purchaser's heirs, assigns, affiliates,
 1247 directors, officers, or employees are granted the right to use

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1248 the condominium property, if ~~so long as~~ such persons are
 1249 obligated to pay at least, ~~at a minimum~~, a proportionate share
 1250 of the cost associated with such property.

1251 (3) A ~~Any~~ grant or reservation made by a declaration,
 1252 lease, or other document, and a ~~any~~ contract made by an
 1253 association, whether before or after assumption of control of
 1254 the association by unit owners other than the developer, a bulk-
 1255 unit purchaser, or a lender-unit purchaser, which ~~that~~ provides
 1256 for operation, maintenance, or management of a condominium
 1257 association or property serving the unit owners of a condominium
 1258 may ~~shall~~ not be in conflict with the powers and duties of the
 1259 association or the rights of the unit owners as provided in this
 1260 chapter. This subsection is intended only as a clarification of
 1261 existing law.

1262 (4) A ~~Any~~ grant or reservation made by a declaration,
 1263 lease, or other document, and a ~~any~~ contract made by an
 1264 association before ~~prior to~~ assumption of control of the
 1265 association by unit owners other than the developer, a bulk-unit
 1266 purchaser, or a lender-unit purchaser, must ~~shall~~ be fair and
 1267 reasonable.

1268 Section 10. Subsections (3), (4), and (5) of section
 1269 718.303, Florida Statutes, are amended, and subsection (7) is
 1270 added to that section, to read:

1271 718.303 Obligations of owners and occupants; remedies.—

1272 (3) The association may levy reasonable fines for the
 1273 failure of the owner of the unit or its occupant, licensee, or
 1274 invitee to comply with any provision of the declaration, the
 1275 association bylaws, or reasonable rules of the association. A
 1276 fine may not become a lien against a unit. A fine may be levied

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by the board or its authorized designee on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before an impartial committee as provided in paragraph (b). However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration or its authorized designee may not be imposed unless the ~~board association~~ first provides at least 14 days' written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before an impartial a committee of other unit owners who are neither board members, ~~nor~~ persons residing in a board member's household, the board's authorized designee, nor persons residing in the household of the board's authorized designee. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the impartial committee does not agree, the fine or suspension may not be imposed.

(4) If a unit owner is more than 90 days delinquent in

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paying a fee, fine, or other monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association shall be subtracted from ~~may not be counted towards~~ the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests may not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the

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association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(7) The suspensions permitted by paragraph (3) (a) and subsections (4) and (5) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple units owned by the member.

Section 11. Subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with ~~the provisions of~~ this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under the control of the developer, the control of a bulk-unit purchaser or lender-unit purchaser, or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk-unit purchasers, lender-unit purchasers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate only complaints related ~~only~~ to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(a)1. The division may make necessary public or private

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investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter that ~~which~~ is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure of ~~by~~ a person to obey a subpoena or to answer questions propounded by the investigating

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officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of ~~any provision of~~ this chapter or a related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or his or her ~~its~~ assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding under which ~~whereby~~ orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, or his or her ~~developer-designated assignees or agents, the bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents,~~ community association manager, or the community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division to carry out the purposes of this chapter. If the division finds that a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer,

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association, officer, or member of the board of administration, or his or her ~~its~~ assignees or agents, is violating or is about to violate ~~any provision of~~ this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and the violation presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer, fails to pay any restitution determined by the division to be owed and, plus any accrued interest charged at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division shall ~~must~~ bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer, bulk-unit purchaser, or lender-unit purchaser, to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator who, ~~if appointed, the receiver or conservator~~ may take action to implement the court order to

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ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution under which ~~whereby~~ the defendant in an action brought pursuant to subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed pursuant to subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer, or association, or its assignee or agent, for a ~~any~~ violation of this chapter or a related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates a ~~provision of~~ this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or

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her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with ~~the requirements of~~ this chapter, a rule adopted under this chapter, or a final order of the division. ~~The division,~~ Before initiating formal agency action under chapter 120, the division must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed \$5,000. ~~By January 1, 1998,~~ The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. ~~For example,~~ The division may consider whether the violations were committed by a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those that ~~which~~ endanger the health, safety, or welfare of ~~the~~ condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely

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penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena

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requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least \$500 but no more than \$5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney attorney's fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce ~~the provisions of~~ this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer during the period in which the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal

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opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, ~~at~~ ~~in~~ the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers, ~~and~~ shall maintain a current list of approved programs and providers, and shall make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. Upon request, the division shall provide, ~~upon request~~, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of individuals ~~persons~~ who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. In order to continue to be

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certified, an individual ~~Any person~~ initially certified as a paid mediator by the division must, ~~in order to continue to be certified~~, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division ~~shall~~ ~~must~~ conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant as to whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk-unit purchasers, lender-unit purchasers, bulk assignees, bulk buyers, and community association managers; and community association management firms

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have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division shall refer to local law enforcement authorities any person ~~who~~ whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or
2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners; ~~the~~

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number of complaints received, ~~by type;~~ the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m) ~~;~~ and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

Section 12. Section 718.709, Florida Statutes, is created to read:

718.709 Applicability.—Sections 718.701-718.708, relating to the Distressed Condominium Relief Act, apply to title to units acquired on or after July 1, 2010, but before July 1, 2016.

Section 13. Part VIII of chapter 718, Florida Statutes, consisting of sections 718.801-718.813, is created to read:

PART VIII

BULK-UNIT PURCHASERS AND LENDER-UNIT PURCHASERS

718.801 Legislative intent.—The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to bulk-unit purchasers or lender-unit purchasers of condominium units and that there is a need to balance such interests by limiting the applicability of the Distressed Condominium Relief Act. Notwithstanding the limitation, the Distressed Condominium Relief Act applies to title acquired on or after July 1, 2010, but before July 1, 2016.

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1683 718.802 Definitions.—As used in this part, the term:
 1684 (1) "Bulk assignee" means a person who is not a bulk buyer
 1685 and who:
 1686 (a) Acquires more than seven condominium parcels in a
 1687 single condominium;
 1688 (b) Receives an assignment of any of the developer rights,
 1689 other than or in addition to those rights described in
 1690 subsection (3), as set forth in the declaration of condominium
 1691 or this chapter:
 1692 1. By a written instrument recorded as part of or as an
 1693 exhibit of the deed;
 1694 2. By a separate instrument recorded in the public records
 1695 of the county in which the condominium is located; or
 1696 3. Pursuant to a final judgment or certificate of title
 1697 issued in favor of a purchaser at a foreclosure sale; and
 1698 (c) Acquired condominium parcels on or after July 1, 2010,
 1699 but before July 1, 2016. The date of such acquisition shall be
 1700 determined by the date of recording a deed or other instrument
 1701 of conveyance for such parcels in the public records of the
 1702 county in which the condominium is located, or by the date of
 1703 issuing a certificate of title in a foreclosure proceeding with
 1704 respect to such condominium parcels.
 1705
 1706 A mortgagee or its assignee may not be deemed a bulk assignee or
 1707 developer by reason of the acquisition of condominium units and
 1708 receipt of an assignment of some or all of a developer's rights
 1709 unless the mortgage or its assignee exercises any of the
 1710 developer rights other than those described in subsection (3).
 1711 (2) "Bulk-unit purchaser" means a person who acquires title

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1712 to the greater of at least eight units or 20 percent of the
 1713 units that ultimately will be operated by the same association,
 1714 as provided in the declaration, articles of incorporation, or
 1715 bylaws as originally recorded. Multiple bulk-unit purchasers may
 1716 be members of an association simultaneously or successively.
 1717 There may be one or more bulk-unit purchasers while the
 1718 developer still owns units operated by the association. A person
 1719 who acquires title to units or timeshare interests in a
 1720 condominium, which units or timeshare interests are or
 1721 ultimately will be included in a timeshare plan governed by
 1722 chapter 721, may elect to be a bulk-unit purchaser pursuant to
 1723 s. 718.813. The term does not include a lender-unit purchaser.
 1724 Further, the term does not include an acquirer of units if any
 1725 transfer of title to the acquirer is made:
 1726 (a) With intent to defraud or materially harm a purchaser,
 1727 a unit owner, or the association;
 1728 (b) Where the acquirer is a person or limited liability
 1729 company that would be an insider, as defined in s. 726.102, of
 1730 the bulk-unit purchaser or of the developer; or
 1731 (c) As a fraudulent transfer under chapter 726.
 1732 (3) "Bulk buyer" means a person who acquired condominium
 1733 parcels on or after July 1, 2010, but before July 1, 2016, and
 1734 the date of acquisition shall be determined in the same manner
 1735 as in subsection (1). Further, the term means a person who
 1736 acquires more than seven condominium parcels in a single
 1737 condominium but who does not receive an assignment of any
 1738 developer rights or receives only some or all of the following
 1739 rights:
 1740 (a) The right to conduct sales, leasing, and marketing

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activities within the condominium.

(b) The right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer's acquisition of the units.

(c) The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third-party purchaser concerning one or more units.

(4) "Lender-unit purchaser" means a person, or the person's successors, assigns, or wholly owned subsidiaries, who holds a mortgage from a developer or from a bulk-unit purchaser on the greater of at least eight units or 20 percent of the units that, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, ultimately will be operated by the same association; who subsequently obtains title to such units through foreclosure or deed in lieu of foreclosure; and who makes the election to become a lender-unit purchaser pursuant to 718.808(4). However, a mortgagee or its wholly owned subsidiary that acquires and sells units to one or more bulk-unit purchasers is not a developer or a lender-unit purchaser with respect to the sale.

718.803 Exercise of rights.—

(1) A bulk-unit purchaser may exercise only the following developer rights, provided such rights are contained in the declaration:

(a) The right to conduct sales, leasing, and marketing activities within the condominium, including the use of the

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sales and leasing office.

(b) The right to assign limited common elements and use rights to common elements and association property which were not assigned before the bulk-unit purchaser acquired title to the units. Such rights may include, without limitation, the rights to garages, parking spaces, storage areas, and cabanas. If there is more than one bulk-unit purchaser, this right must be established in a written assignment from the developer which specifies the bulk-unit purchaser who has such a right as to specified limited common elements, common elements, and association property.

(c) For a phase condominium, the right to add phases.

(2) If the initial purchaser of a unit from the developer is required to make a working capital contribution to the association, a bulk-unit purchaser shall pay a working capital contribution to the association, which must be calculated in the same manner for each unit acquired, upon the earlier of:

(a) Sale of a unit by the bulk-unit purchaser to a third party other than the bulk-unit purchaser; or

(b) Five years from the date of acquisition of title to a unit by the bulk-unit purchaser.

(3) If a bulk-unit purchaser exercises developer rights other than those specified in subsection (1), he or she is no longer deemed to be a bulk-unit purchaser, and this part does not apply to such person.

(4) Except as set forth in this part, a lender-unit purchaser may exercise any developer rights that the lender-unit purchaser acquires.

718.804 Compliance.—A bulk-unit purchaser and a lender-unit

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1799 purchaser shall comply with all applicable requirements of s.
 1800 718.202 and part V of this chapter in connection with any units
 1801 that they own or sell.
 1802 718.805 Voting rights.—
 1803 (1) For the first 2 fiscal years following the first
 1804 conveyance of a unit to a bulk-unit purchaser or lender-unit
 1805 purchaser, the bulk-unit purchaser or lender-unit purchaser may
 1806 vote the voting interests allocated to his or her units to waive
 1807 reserves or reduce the funding of reserves. After these 2 fiscal
 1808 years, the bulk-unit purchaser or lender-unit purchaser may not
 1809 vote his or her voting interests to waive reserves or reduce the
 1810 funding of reserves until the bulk-unit purchaser or lender-unit
 1811 purchaser holds less than a majority of the voting interests in
 1812 the association.
 1813 (2) A bulk-unit purchaser or lender-unit purchaser may not
 1814 transfer his or her right to vote to waive reserves or reduce
 1815 the funding of reserves to other bulk-unit purchasers or lender-
 1816 unit purchasers to extend the time period in subsection (1).
 1817 718.806 Assessment liability; election of directors.—
 1818 (1) BULK-UNIT PURCHASER ASSESSMENT LIABILITY.—A bulk-unit
 1819 purchaser is liable for all assessments on his or her units
 1820 which become due while the bulk-unit purchaser holds title to
 1821 such units. Additionally, the bulk-unit purchaser is jointly and
 1822 severally liable with the previous owner for all unpaid regular
 1823 periodic assessments and special assessments that became due
 1824 before the acquisition of title, for all other monetary
 1825 obligations accrued which are secured by the association's lien,
 1826 and for all costs advanced by the association for the
 1827 maintenance and repair of the units acquired by the bulk-unit

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1828 purchaser.
 1829 (2) LENDER-UNIT PURCHASER ASSESSMENT LIABILITY.—The
 1830 liability of a lender-unit purchaser or his or her successors or
 1831 assignees for the units that the lender-unit purchaser owns is
 1832 limited to the lesser of:
 1833 (a) The units' unpaid common expenses and the regular
 1834 periodic assessments that accrued or became due during the 12
 1835 months immediately preceding the lender-unit purchaser's
 1836 acquisition of title and for which payment in full has not been
 1837 received by the association; or
 1838 (b) One percent of the original mortgage debt.
 1839
 1840 The lender-unit purchaser acquiring title must comply with s.
 1841 718.116(1)(c).
 1842 (3) DIRECTOR ELECTED BY BULK-UNIT PURCHASER.—A director who
 1843 has been elected or appointed by a bulk-unit purchaser is
 1844 automatically suspended from board service for 30 days following
 1845 the failure of the bulk-unit purchaser to timely pay monetary
 1846 obligations on a unit the bulk-unit purchaser owns. The
 1847 remaining directors may temporarily fill the vacancy created by
 1848 the suspension. Once the bulk-unit purchaser has cured all
 1849 outstanding delinquencies on the unit, the suspended director
 1850 shall replace the temporary appointee and resume service on the
 1851 board for the unexpired term.
 1852 718.807 Amendments and material alterations.—
 1853 (1) The following amendments or alterations may not go into
 1854 effect unless approved by a majority vote of unit owners other
 1855 than the developer, a bulk-unit purchaser, or a lender-unit
 1856 purchaser:

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1857 (a) An amendment described in s. 718.110(4) or (8).
 1858 (b) An amendment creating, changing, or terminating leasing
 1859 restrictions.
 1860 (c) An amendment of the declaration pertaining to the
 1861 condominium's status as housing for older persons.
 1862 (d) An amendment pursuant to s. 718.110(14) or an amendment
 1863 that otherwise reclassifies a portion of the common elements as
 1864 a limited common element or that authorizes the association to
 1865 change the limited common elements assigned to any unit.
 1866 (e) Material alterations or substantial additions to the
 1867 common elements or association property any time one of the
 1868 following owns a percentage of voting interests equal to or
 1869 greater than the percentage required to approve the amendment:
 1870 1. A bulk-unit purchaser;
 1871 2. A lender-unit purchaser;
 1872 3. The developer and a bulk-unit purchaser;
 1873 4. The developer and a lender-unit purchaser; or
 1874 5. A bulk-unit purchaser and a lender-unit purchaser.
 1875 (2) Notwithstanding subsection (1), consent of the
 1876 developer, a bulk-unit purchaser, or a lender-unit purchaser is
 1877 required for an amendment that would otherwise require the
 1878 approval of such voting interests based upon the requirements of
 1879 the declaration, articles of incorporation, or bylaws or s.
 1880 718.110 or s. 718.113.
 1881 718.808 Warranties and disclosures.—
 1882 (1) As the seller, a bulk-unit purchaser or lender-unit
 1883 purchaser is deemed to have granted an implied warranty of
 1884 fitness and merchantability to a purchaser of each unit sold for
 1885 a period of 3 years, which begins on the date of the completion

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1886 of repairs or improvements that the bulk-unit purchaser or
 1887 lender-unit purchaser makes to the unit, common elements, or
 1888 limited common elements. The bulk-unit purchaser or lender-unit
 1889 purchaser is not deemed to have granted a warranty on
 1890 improvements, repairs, or alterations to the condominium which
 1891 he or she did not undertake.
 1892 (2) The statute of limitations in s. 718.203 is tolled
 1893 while the bulk-unit purchaser begins the process of appointing
 1894 or electing a majority of the board of administration.
 1895 (3) As the seller, the bulk-unit purchaser shall include
 1896 the following disclosure to purchasers in conspicuous type on
 1897 the first page of the sales contract:
 1898
 1899 SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
 1900 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
 1901 UNDER THE CONDOMINIUM ACT.
 1902
 1903 (4) A mortgagee who acquires units may elect to become a
 1904 lender-unit purchaser by providing written notice of the
 1905 election to the association addressed to the registered agent at
 1906 the address specified in the records of the Department of State.
 1907 The notice shall be delivered within the time period ending upon
 1908 the earliest of:
 1909 (a) The date on which the mortgagee exercises any developer
 1910 rights other than the developer rights described in s.
 1911 718.803(1)(a);
 1912 (b) Before the sale of a unit by the mortgagee; or
 1913 (c) One hundred eighty days after the recording of the
 1914 certificate of title or of the deed in lieu of foreclosure if

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1915 the mortgagee acquired the units by foreclosure or by deed in
 1916 lieu of foreclosure.

1917 (5) As the seller, the lender-unit purchaser shall include
 1918 the following disclosure to purchasers in conspicuous type on
 1919 the first page of the sales contract:

1920
 1921 SELLER IS A LENDER-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
 1922 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
 1923 UNDER THE CONDOMINIUM ACT. SELLER TOOK TITLE TO THE UNIT(S)
 1924 BEING SOLD TO PURCHASER BY FORECLOSURE OR DEED IN LIEU OF
 1925 FORECLOSURE.

1926
 1927 (6) (a) At or before the signing of a contract to sell a
 1928 unit, the bulk-unit purchaser and the lender-unit purchaser must
 1929 provide a condition report that complies with s. 718.616(2) and
 1930 (3) and this section to the prospective purchaser and must
 1931 obtain verification of delivery of such condition report. A
 1932 condition report is not required in connection with a sale to a
 1933 bulk-unit purchaser or in connection with a deed in lieu of
 1934 foreclosure to a lender-unit purchaser. A mortgagee is not
 1935 required to deliver to a bulk-unit purchaser a condition report
 1936 even if the mortgagee acquires and transfers developer rights to
 1937 such bulk-unit purchaser.

1938 (b) The condition report must include a reasonably detailed
 1939 description of the repairs or replacements necessary to cure
 1940 defective construction identified in the condition report.

1941 (c) If, during the course of preparing the condition
 1942 report, the architect or engineer becomes aware of a component
 1943 that violates an applicable building code or federal or state

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1944 law or that deviates from the building plans approved by the
 1945 permitting authority, the architect or engineer shall disclose
 1946 such information in the condition report. The architect or
 1947 engineer shall make written inquiry to the applicable local
 1948 government authority of any building code violations and shall
 1949 include in the condition report any of the authority's responses
 1950 or its failure to respond.

1951 (d) The condition report shall be prepared before the bulk-
 1952 unit purchaser or the lender-unit purchaser enters into his or
 1953 her first sales contract, but the condition report may not be
 1954 prepared more than 6 months before the first sales contract is
 1955 agreed upon. If the bulk-unit purchaser or lender-unit purchaser
 1956 remains engaged in selling units, the condition report shall be
 1957 updated no later than 1 year after the closing of the first
 1958 sales contract and each year thereafter.

1959 (e) If a bulk-unit purchaser or lender-unit purchaser fails
 1960 to provide the condition report in accordance with this section,
 1961 the bulk-unit purchaser or lender-unit purchaser is deemed to
 1962 grant implied warranties of fitness and merchantability which
 1963 are not limited to the construction, improvements, or repairs
 1964 that he or she undertakes to the units, common elements, or
 1965 limited common elements.

1966 718.809 Joint and several liability.—For purposes of this
 1967 chapter, if there are multiple bulk-unit purchasers within the
 1968 same association, the units owned by the multiple bulk-unit
 1969 purchasers and the rights of the bulk-unit purchasers shall be
 1970 aggregated as if there were only one bulk-unit purchaser. Each
 1971 bulk-unit purchaser is jointly and severally liable with his or
 1972 her predecessor bulk-unit purchasers for compliance with this

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chapter.

718.810 Construction disputes.—A board of administration composed of a majority of directors elected or appointed by a bulk-unit purchaser may not resolve a construction dispute that is subject to chapter 558 unless such resolution is approved by a majority of the voting interests of the unit owners other than the developer and a bulk-unit purchaser.

718.811 Noncompliance.—A bulk-unit purchaser or a lender-unit purchaser who fails to substantially comply with the requirements of this chapter pertaining to the obligations and rights of bulk-unit purchasers and lender-unit purchasers forfeits all protections or exemptions provided under the Condominium Act.

718.812 Documents to be delivered upon turnover.—If a bulk-unit purchaser elects a majority of the board of administration and the unit owners other than the bulk-unit purchaser elect a majority, the bulk-unit purchaser must deliver all of the items specified in s. 718.301(4) to the association. However, the bulk-unit purchaser is not required to deliver items that were never in the possession of the bulk-unit purchaser. In conjunction with the acquisition of units, the bulk-unit purchaser shall undertake a good faith effort to obtain the items specified in s. 718.301(4) which must be delivered to the association. If the bulk-unit purchaser cannot obtain such items, the bulk-unit purchaser must deliver a certificate in writing to the association which names or describes items that were not obtainable by the bulk-unit purchaser and which describes the good faith efforts that were undertaken to obtain the items. Delivery of the certificate relieves the bulk-unit

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purchaser of his or her responsibility under s. 718.301 to deliver the documents and materials referenced in the certificate. The responsibility of the bulk-unit purchaser to conduct the audit required by s. 718.301(4)(c) begins on the date the bulk-unit purchaser elects or appoints a majority of the members of the board of administration and ends on the date the bulk-unit purchaser no longer controls the board.

718.813 Timeshare Condominiums.—With respect to the acquisition of title to units or timeshare interests in a condominium, which units or timeshare interests are or ultimately will be included in a timeshare plan governed by chapter 721:

(1) Any person otherwise qualified to be a bulk-unit purchaser pursuant to s. 718.802 is not a bulk-unit purchaser unless that person makes an election to become a bulk-unit purchaser by providing notice to the association addressed to the registered agent at the address specified in the records of the Department of State. The notice shall be delivered within the time period ending upon the earliest of:

(a) The date on which the person exercises any developer rights other than the developer rights described in s.

718.803(1)(a);

(b) The sale of any unit or timeshare interest by the person; or

(c) One hundred eighty days after the recording of the deed or other instrument of conveyance by which the person acquired the units or timeshare interests.

(2) If a person has made an election to be a bulk-unit purchaser pursuant to subsection (1), the bulk-unit purchaser,

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when selling units or timeshare interests, shall include the following disclosure to purchasers in conspicuous type on the first page of the contract for sale of units or timeshare interests:

SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE UNDER THE CONDOMINIUM.

Section 14. Paragraph (a) of subsection (2) of section 719.104, Florida Statutes, is amended to read:

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

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than 7 years.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain

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the electronic mailing addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and

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financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

Section 15. Paragraphs (c) and (d) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration; however, a unit owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association. The right to attend such meetings includes the right to speak at such meetings with reference to all

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designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property not less than 14 days before the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a notice posted physically on the cooperative

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2147 property, the notice and agenda must be broadcast at least four
 2148 times every broadcast hour of each day that a posted notice is
 2149 otherwise required under this section. When broadcast notice is
 2150 provided, the notice and agenda must be broadcast in a manner
 2151 and for a sufficient continuous length of time so as to allow an
 2152 average reader to observe the notice and read and comprehend the
 2153 entire content of the notice and the agenda. Notice of any
 2154 meeting in which regular assessments against unit owners are to
 2155 be considered for any reason shall specifically contain a
 2156 statement that assessments will be considered and the nature of
 2157 any such assessments. Meetings of a committee to take final
 2158 action on behalf of the board or to make recommendations to the
 2159 board regarding the association budget are subject to the
 2160 provisions of this paragraph. Meetings of a committee that does
 2161 not take final action on behalf of the board or make
 2162 recommendations to the board regarding the association budget
 2163 are subject to the provisions of this section, unless those
 2164 meetings are exempted from this section by the bylaws of the
 2165 association. Notwithstanding any other law to the contrary, the
 2166 requirement that board meetings and committee meetings be open
 2167 to the unit owners does not apply to board or committee meetings
 2168 held for the purpose of discussing personnel matters or meetings
 2169 between the board or a committee and the association's attorney,
 2170 with respect to proposed or pending litigation, if the meeting
 2171 is held for the purpose of seeking or rendering legal advice.

2172 (d) *Shareholder meetings.*—There shall be an annual meeting
 2173 of the shareholders. All members of the board of administration
 2174 shall be elected at the annual meeting unless the bylaws provide
 2175 for staggered election terms or for their election at another

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2176 meeting. Any unit owner desiring to be a candidate for board
 2177 membership must comply with subparagraph 1. The bylaws must
 2178 provide the method for calling meetings, including annual
 2179 meetings. Written notice, which must incorporate an
 2180 identification of agenda items, shall be given to each unit
 2181 owner at least 14 days before the annual meeting and posted in a
 2182 conspicuous place on the cooperative property at least 14
 2183 continuous days preceding the annual meeting. Upon notice to the
 2184 unit owners, the board must by duly adopted rule designate a
 2185 specific location on the cooperative property upon which all
 2186 notice of unit owner meetings are posted. In lieu of or in
 2187 addition to the physical posting of the meeting notice, the
 2188 association may, by reasonable rule, adopt a procedure for
 2189 conspicuously posting and repeatedly broadcasting the notice and
 2190 the agenda on a closed-circuit cable television system serving
 2191 the cooperative association. However, if broadcast notice is
 2192 used in lieu of a posted notice, the notice and agenda must be
 2193 broadcast at least four times every broadcast hour of each day
 2194 that a posted notice is otherwise required under this section.
 2195 If broadcast notice is provided, the notice and agenda must be
 2196 broadcast in a manner and for a sufficient continuous length of
 2197 time to allow an average reader to observe the notice and read
 2198 and comprehend the entire content of the notice and the agenda.
 2199 Unless a unit owner waives in writing the right to receive
 2200 notice of the annual meeting, the notice of the annual meeting
 2201 must be sent by mail, hand delivered, or electronically
 2202 transmitted to each unit owner. An officer of the association
 2203 must provide an affidavit or United States Postal Service
 2204 certificate of mailing, to be included in the official records

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of the association, affirming that notices of the association meeting were mailed, hand delivered, or electronically transmitted, in accordance with this provision, to each unit owner at the address last furnished to the association.

1. The board of administration shall be elected by written ballot or voting machine. A proxy may not be used in electing the board of administration in general elections or elections to fill vacancies caused by recall, resignation, or otherwise unless otherwise provided in this chapter.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or transmit, whether by separate association mailing, delivery, or electronic transmission or included in another association mailing, delivery, or electronic transmission, including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in this section, the association shall mail, deliver, or electronically transmit a second notice of election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, to be included with the mailing, delivery, or electronic transmission of the ballot, with the costs of mailing, delivery, or transmission and copying to be borne by the association. The

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association is not liable for the contents of the information sheets provided by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There is no quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any such ballots improperly cast are invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 719.303. The regular election must occur on the date of the annual meeting. This subparagraph does not apply to timeshare cooperatives. Notwithstanding this subparagraph, an election and balloting are not required unless more candidates file a notice of intent to run or are nominated than vacancies exist on the board. Any challenge to the election process must be commenced within 60 days after the election results are announced.

b. Within 90 days after being elected or appointed to the board, each new director shall certify in writing to the secretary of the association that he or she has read the association's bylaws, articles of incorporation, proprietary lease, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her

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2263 ability; and that he or she will faithfully discharge his or her
 2264 fiduciary responsibility to the association's members. Within 90
 2265 days after being elected or appointed to the board, in lieu of
 2266 this written certification, the newly elected or appointed
 2267 director may submit a certificate of having satisfactorily
 2268 completed the educational curriculum administered by an
 2269 education provider as approved by the division pursuant to the
 2270 requirements established in chapter 718 within 1 year before or
 2271 90 days after the date of election or appointment. The
 2272 educational certificate is valid and does not have to be
 2273 resubmitted as long as the director serves on the board without
 2274 interruption. A director who fails to timely file the written
 2275 certification or educational certificate is suspended from
 2276 service on the board until he or she complies with this sub-
 2277 subparagraph. The board may temporarily fill the vacancy during
 2278 the period of suspension. The secretary of the association shall
 2279 cause the association to retain a director's written
 2280 certification or educational certificate for inspection by the
 2281 members for 5 years after a director's election or the duration
 2282 of the director's uninterrupted tenure, whichever is longer.
 2283 Failure to have such written certification or educational
 2284 certificate on file does not affect the validity of any board
 2285 action.

2286 2. Any approval by unit owners called for by this chapter,
 2287 or the applicable cooperative documents, must be made at a duly
 2288 noticed meeting of unit owners and is subject to this chapter or
 2289 the applicable cooperative documents relating to unit owner
 2290 decisionmaking, except that unit owners may take action by
 2291 written agreement, without meetings, on matters for which action

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2292 by written agreement without meetings is expressly allowed by
 2293 the applicable cooperative documents or law which provides for
 2294 the unit owner action.

2295 3. Unit owners may waive notice of specific meetings if
 2296 allowed by the applicable cooperative documents or law. ~~If~~
 2297 ~~authorized by the bylaws,~~ Notice of meetings of the board of
 2298 administration, shareholder meetings, except shareholder
 2299 meetings called to recall board members under paragraph (f), and
 2300 committee meetings may be given by electronic transmission to
 2301 unit owners who consent to receive notice by electronic
 2302 transmission.

2303 4. Unit owners have the right to participate in meetings of
 2304 unit owners with reference to all designated agenda items.
 2305 However, the association may adopt reasonable rules governing
 2306 the frequency, duration, and manner of unit owner participation.

2307 5. Any unit owner may tape record or videotape meetings of
 2308 the unit owners subject to reasonable rules adopted by the
 2309 division; however, a unit owner may not post the recordings on
 2310 any website or other media that can readily be viewed by persons
 2311 who are not members of the association.

2312 6. Unless otherwise provided in the bylaws, a vacancy
 2313 occurring on the board before the expiration of a term may be
 2314 filled by the affirmative vote of the majority of the remaining
 2315 directors, even if the remaining directors constitute less than
 2316 a quorum, or by the sole remaining director. In the alternative,
 2317 a board may hold an election to fill the vacancy, in which case
 2318 the election procedures must conform to the requirements of
 2319 subparagraph 1. unless the association has opted out of the
 2320 statutory election process, in which case the bylaws of the

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association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (f) and rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)1., an association may, by the affirmative vote of a majority of the total voting interests, provide for a different voting and election procedure in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

Section 16. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. The association may also recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or

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bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be based on the actual time expended performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association's legal counsel. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, then to any reasonable costs for collection services contracted for by the association, and then to the delinquent assessment. The foregoing applies notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, any reasonable costs for collection services contracted for by the association, and any ~~authorized~~ administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as otherwise provided in this chapter, a lien may not be filed by the association against a

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cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT

TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...
The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)... \$.....

Late fee, if applicable \$.....

Interest through ...(dates)...* \$.....

Certified mail charges \$.....

Other costs \$.....

TOTAL OUTSTANDING \$.....

*Interest accrues at the rate of percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified

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mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...

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2437 You are notified that the undersigned contests the claim of lien
 2438 filed by you on, ...(year)..., and recorded in Official
 2439 Records Book at Page, of the public records of
 2440 County, Florida, and that the time within which you may file
 2441 suit to enforce your lien is limited to 90 days from the date of
 2442 service of this notice. Executed this day of,
 2443 ...(year)....
 2444 Signed: ...(Owner or Attorney)..
 2445 After notice of contest of lien has been recorded, the clerk of
 2446 the circuit court shall mail a copy of the recorded notice to
 2447 the association by certified mail, return receipt requested, at
 2448 the address shown in the claim of lien or most recent amendment
 2449 to it and shall certify to the service on the face of the
 2450 notice. Service is complete upon mailing. After service, the
 2451 association has 90 days in which to file an action to enforce
 2452 the lien. If the action is not filed within the 90-day period,
 2453 the lien is void. However, the 90-day period shall be extended
 2454 for any length of time during which the association is prevented
 2455 from filing its action because of an automatic stay resulting
 2456 from the filing of a bankruptcy petition by the unit owner or by
 2457 any other person claiming an interest in the parcel.
 2458 (d) A release of lien must be in substantially the
 2459 following form:
 2460
 2461 RELEASE OF LIEN
 2462 The undersigned lienor, in consideration of the final payment in
 2463 the amount of \$...., hereby waives and releases its lien and
 2464 right to claim a lien for unpaid assessments through,
 2465 ...(year)..., recorded in the Official Records Book at Page
, of the public records of County, Florida, for the

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2466 following described real property:
 2467 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. OF ...(NAME
 2468 OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE
 2469 COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND
 2470 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK,
 2471 PAGE, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.
 2472 ...(Signature of Authorized Agent)... ...(Signature of
 2473 Witness)..
 2474 ...(Print Name)... ...(Print Name)..
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Sworn to (or affirmed) and subscribed before me this day of
, ...(year)..., by ...(name of person making statement)....
 ...(Signature of Notary Public)..
 ...(Print, type, or stamp commissioned name of Notary Public)..
 Personally Known OR Produced as identification.

Section 17. Section 719.129, Florida Statutes, is created
 to read:
719.129 Electronic voting.—The association may conduct
 elections and other unit owner votes through an Internet-based
 online voting system if a unit owner consents in writing to
 online voting and if the following requirements are met:
(1) The association provides each unit owner with:
(a) A method to authenticate the unit owner's identity to
the online voting system.
(b) For elections of the board, a method to transmit an
electronic ballot to the online voting system that ensures the
secrecy and integrity of each ballot.
(c) A method to confirm, at least 14 days before the voting

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2495 deadline, that the unit owner's electronic device can
 2496 successfully communicate with the online voting system.
 2497 (2) The association uses an online voting system that is:
 2498 (a) Able to authenticate the unit owner's identity.
 2499 (b) Able to authenticate the validity of each electronic
 2500 vote to ensure that the vote is not altered in transit.
 2501 (c) Able to transmit a receipt from the online voting
 2502 system to each unit owner who casts an electronic vote.
 2503 (d) For elections of the board of administration, able to
 2504 permanently separate any authentication or identifying
 2505 information from the electronic election ballot, rendering it
 2506 impossible to tie an election ballot to a specific unit owner.
 2507 (e) Able to store and keep electronic votes accessible to
 2508 election officials for recount, inspection, and review purposes.
 2509 (3) A unit owner voting electronically pursuant to this
 2510 section shall be counted as being in attendance at the meeting
 2511 for purposes of determining a quorum. A substantive vote of the
 2512 unit owners may not be taken on any issue other than the issues
 2513 specifically identified in the electronic vote when a quorum is
 2514 established based on unit owners voting electronically pursuant
 2515 to this section.
 2516 (4) This section applies to an association that provides
 2517 for and authorizes an online voting system pursuant to this
 2518 section by a board resolution. The board resolution must provide
 2519 that unit owners receive notice of the opportunity to vote
 2520 through an online voting system, must establish reasonable
 2521 procedures and deadlines for unit owners to consent in writing
 2522 to online voting, and must establish reasonable procedures and
 2523 deadlines for unit owners to opt out of online voting after

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2524 giving consent. Written notice of a meeting at which the
 2525 resolution will be considered must be mailed, delivered, or
 2526 electronically transmitted to the unit owners and posted
 2527 conspicuously on the condominium property or association
 2528 property at least 14 days before the meeting. Evidence of
 2529 compliance with the 14-day notice requirement must be made by an
 2530 affidavit executed by the person providing the notice and filed
 2531 with the official records of the association.
 2532 (5) A unit owner's consent to online voting is valid until
 2533 the unit owner opts out of online voting pursuant to the
 2534 procedures established by the board of administration pursuant
 2535 to paragraph (4).
 2536 (6) This section may apply to any matter that requires a
 2537 vote of the unit owners.
 2538 Section 18. Subsection (3) of section 719.303, Florida
 2539 Statutes, is amended to read:
 2540 719.303 Obligations of owners.—
 2541 (3) The association may levy reasonable fines for failure
 2542 of the unit owner or the unit's occupant, licensee, or invitee
 2543 to comply with any provision of the cooperative documents or
 2544 reasonable rules of the association. A fine may not become a
 2545 lien against a unit. A fine may be levied by the board of
 2546 administration or its authorized designee on the basis of each
 2547 day of a continuing violation, with a single notice and
 2548 opportunity for hearing before an impartial committee as
 2549 provided in paragraph (b). However, the fine may not exceed \$100
 2550 per violation, or \$1,000 in the aggregate.
 2551 (a) An association may suspend, for a reasonable period of
 2552 time, the right of a unit owner, or a unit owner's tenant,

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guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the cooperative documents or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration or its authorized designee may not be imposed unless the board first provides at least 14 days' written notice after giving reasonable notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, the unit's licensee, or invitee. The hearing must be held before an impartial a committee of other unit owners who are neither board members, persons residing in a board member's household, nor the authorized designee or members of the authorized designee's household. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board or its authorized designee. If the impartial committee does not agree with the fine or suspension, it may not be imposed.

Section 19. Subsection (8) of section 720.301, Florida Statutes, is amended to read:

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

(8) "Governing documents" means:

(a) The recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; ~~and~~

(b) The articles of incorporation and bylaws of the

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homeowners' association, and any duly adopted amendments thereto; ~~and~~

(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Section 20. Section 720.3015, Florida Statutes, is created to read:

720.3015 Short title.—This chapter may be cited as the "Homeowners' Association Act."

Section 21. Paragraph (c) of subsection (2) of section 720.303, Florida Statutes, is amended to read:

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

(2) BOARD MEETINGS.—

(c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to provide the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and

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repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The association bylaws or ~~amended bylaws~~ may provide for giving notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the

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meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

Section 22. Section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney ~~attorney's~~ fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional

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amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) The association may levy reasonable fines. A fine may not exceed ~~of up to~~ \$100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board or its authorized designee for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not

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~~prohibit~~ ~~impair the right of~~ an owner or tenant of a parcel from having to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension may not be imposed by the board of administration or its authorized designee without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before an impartial a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, ~~or~~ employee, or the board's designee or the designee's family. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board or its authorized designee. If the board of administration or its authorized designee ~~association~~ imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) If a member is more than 90 days delinquent in paying any fee, fine, or other a monetary obligation due to the association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility

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services to the parcel. A suspension ~~may does~~ not prohibit
~~impair the right of~~ an owner or tenant of a parcel from having
~~to have~~ vehicular and pedestrian ingress to and egress from the
 parcel, including, but not limited to, the right to park. The
 notice and hearing requirements under subsection (2) do not
 apply to a suspension imposed under this subsection.

(4) An association may suspend the voting rights of a
 parcel or member for the nonpayment of any fee, fine, or other
 monetary obligation due to the association which that is more
 than 90 days delinquent. A voting interest or consent right
 allocated to a parcel or member which has been suspended by the
 association shall be subtracted from ~~may not be counted towards~~
 the total number of voting interests in the association, which
shall be reduced by the number of suspended voting interests
when calculating the total percentage or number of all voting
interests available to take or approve any action, and the
suspended voting interests may not be considered for any
 purpose, including, but not limited to, the percentage or number
 of voting interests necessary to constitute a quorum, the
percentage or number of voting interests required to conduct an
 election, or the percentage or number of voting interests
 required to approve an action under this chapter or pursuant to
 the governing documents. The notice and hearing requirements
 under subsection (2) do not apply to a suspension imposed under
 this subsection. The suspension ends upon full payment of all
 obligations currently due or overdue to the association.

(5) All suspensions imposed pursuant to subsection (3) or
 subsection (4) must be approved at a properly noticed board
 meeting. Upon approval, the association must notify the parcel

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owner and, if applicable, the parcel's occupant, licensee, or
 invitee by mail or hand delivery.

(6) The suspensions permitted by paragraph (2)(a) and
 subsections (3) and (4) apply to a member and, when appropriate,
 the member's tenants, guests, or invitees, even if the
 delinquency or failure that resulted in the suspension arose
 from less than all of the multiple parcels owned by the member.

Section 23. Paragraph (b) of subsection (1) and subsections
 (9) and (10) of section 720.306, Florida Statutes, are amended
 to read:

720.306 Meetings of members; voting and election
 procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(b) Unless otherwise provided in the governing documents or
 required by law, and other than those matters set forth in
 paragraph (c), any governing document of an association may be
 amended by the affirmative vote of two-thirds of the voting
 interests of the association. Within 30 days after recording an
 amendment to the governing documents, the association shall
 provide copies of the amendment to the members. However, if a
 copy of the proposed amendment is provided to the members before
 they vote on the amendment ~~and the proposed amendment is not~~
~~changed before the vote~~, the association, in lieu of providing a
 copy of the amendment, may provide notice to the members that
 the amendment was adopted, identifying the official book and
 page number or instrument number of the recorded amendment and
 that a copy of the amendment is available at no charge to the
 member upon written request to the association. The copies and
 notice described in this paragraph may be provided

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electronically to those owners who previously consented to receive notice electronically. The failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

(9) ELECTIONS AND BOARD VACANCIES.—

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. Except as provided in paragraph (b), all members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

(b) A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name may not be listed on the ballot. A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the association shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to

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be filled according to law. For purposes of this paragraph, the term "any fee, fine, or other monetary obligation" means any delinquency to the association with respect to any parcel for more than 90 days is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, may not seek election to the board and is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a person was ineligible to seek election to the board or that a member of the board is ineligible for board membership.

(c) Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the

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seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

(10) RECORDING.—Any parcel owner may tape record or videotape meetings of the board of directors and meetings of the members; however, a parcel owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association. The board of directors of the association may adopt reasonable rules governing the taping of meetings of the board and the membership.

Section 24. Paragraph (a) of subsection (1) and subsection (3) of section 720.3085, Florida Statutes, are amended to read: 720.3085 Payment for assessments; lien claims.—

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the parcel is located. This subsection does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, including the lien for unpaid assessments created in this section, a priority that, by law, the lien, mortgage, or judgment did not have before July 1, 2008.

(a) To be valid, a claim of lien must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date. The claim of lien secures all unpaid assessments that

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are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable collection costs and attorney fees incurred by the association incident to the collection process. The person making payment is entitled to a satisfaction of the lien upon payment in full.

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(a) If the declaration or bylaws so provide, the association may also charge an administrative late fee not to exceed the greater of \$25 or 5 percent of the amount of each installment that is paid past the due date. The association may also recover from the parcel owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be based on the actual time expended performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association's legal counsel.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, then to any reasonable costs for collection services contracted for by the association,

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and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine.

Section 25. Section 720.317, Florida Statutes, is created to read:

720.317 Electronic voting.—The association may conduct elections and other membership votes through an Internet-based online voting system if a member consents in writing to online voting and if the following requirements are met:

(1) The association provides each member with:

(a) A method to authenticate the member's identity to the online voting system.

(b) A method to confirm, at least 14 days before the voting deadline, that the member's electronic device can successfully communicate with the online voting system.

(c) A method that is consistent with the election and voting procedures in the association's bylaws.

(2) The association uses an online voting system that is:

(a) Able to authenticate the member's identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each member who casts an electronic vote.

(d) Able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific member. This paragraph only applies if the association's bylaws provide for secret ballots for the election of directors.

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(e) Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that members receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for members to consent in writing to online voting, and must establish reasonable procedures and deadlines for members to opt out of online voting after giving consent. Written notice of a meeting at which the board resolution regarding online voting will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A member's consent to online voting is valid until the member opts out of online voting pursuant to the procedures established by the board of administration pursuant to paragraph (4).

(6) This section may apply to any matter that requires a vote of the members.

Section 26. 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)

4/12/15

Meeting Date

748

Bill Number (if applicable)

Topic Condo

Amendment Barcode (if applicable)

Name Rusky Payton

Job Title CEO

Address 2600 Centennial Place
Street

Phone 850-567-1023

Tally FL 32308
City State Zip

Email rpayton@fhba.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Home Builders 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
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: April 8, 2015

I respectfully request that **Senate Bill #748**, relating to Residential Properties, be placed on the:

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

A handwritten signature in cursive script that reads "Jeremy Ring".

Senator Jeremy Ring
Florida Senate, District 29



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING

29th District

April 20, 2015

The Honorable Anitere Flores, Chair
Committee on Fiscal Policy
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores,

I appreciate you including my legislation, SB 530, SB 726, SB 748, and SB 1212 on the Committee on Fiscal Policy agenda for the meeting scheduled at 1:00pm today. Unfortunately, my American Airlines flight out of Miami is currently delayed and may not arrive in Tallahassee in time to present my bills. In my absence, please allow my legislative assistant, Joel Ramos to present my bills on agenda. I apologize for any inconvenience this may have caused you or the committee.

Please do not hesitate to contact me if you or your staff have any questions.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- ☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

DON GAETZ
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 1212

INTRODUCER: Commerce and Tourism Committee and Senator Ring

SUBJECT: Contracts for Goods and Services

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Siples	McKay	CM	Fav/CS
2. Procaccini	Cibula	JU	Favorable
3. Harmsen	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1212 provides that a contract for goods or services is unlawful if it includes a provision that requires the consumer to waive his or her right to make any statement regarding the seller or lessor or the goods or services. The bill also makes it unlawful for a party to threaten or seek enforcement of such a provision or to penalize the consumer for making a statement regarding his or her experiences with the seller or lessor or the goods or services. The bill provides that any waiver of a consumer's right to provide such a statement is contrary to public policy and would be void and unenforceable. The bill creates civil penalties for violation of its provisions, enforceable against a business or its employers or agents.

II. Present Situation:

Contracts

The formation of a contract requires the following: offer, acceptance, and consideration.¹ A contract may be written or oral.² A contract formed under duress, induced by fraud, or with a

¹ 11 Fla. Jur. 2d *Contracts* s. 25.

² In some cases, there is a statutory requirement that a contract be written.

person that lacks capacity are voidable.³ A contract is void, or without legal effect, if it is unconscionable,⁴ contravenes public policy, or is otherwise illegal.⁵

General provisions and definitions for certain commercial transactions are found in the Florida Uniform Commercial Code (UCC).⁶ Among other things, the UCC applies to the sale of goods and leases, but does not generally govern contracts for services. “Contract” is defined as the total legal obligation that results from the parties’ agreement, consistent with law.⁷

Freedom of Speech

Both the First Amendment of the United States Constitution and Art. 1, s. 4 of the Florida Constitution protect against infringement of free speech. Although one may contractually waive his or her constitutional rights, a court may determine: (1) whether the waiver was voluntary, free, deliberate, and not procured through intimidation, coercion, or deception; and (2) whether the waiver was executed with full awareness of the nature of the rights being abandoned and the consequences of such abandonment.⁸

Customer Reviews

Many internet websites allow a consumer to share his or her experience with a business through publically accessible reviews, rating systems, or commenting sections.⁹ When seeking services or goods, an individual may consider the reviews that others shared about their experience with a company. Online reviews are the second most trusted source of information relied on by consumers, behind recommendations from friends and family.¹⁰

Some businesses have attempted to contractually limit consumers’ abilities to share opinions about the business or the goods or services received via a “non-disparagement clause.” Several stories about such contractual clauses have made the news recently:

- In 2013, an online retailer threatened enforcement of a non-disparagement clause against customers, after the customers left a negative review on a consumer review website. The

³ 11 Fla. Jur. 2d *Contracts* s. 10.

⁴ Unconscionability is common law doctrine that courts may use to refuse to enforce contractual provisions in which one party overreaches the other party to gain “...an unjust and undeserving advantage which it would be inequitable to permit him to enforce...” *Steinhardt v. Rudolph*, 422 So.2d 884, 889 (Fla. 3rd DCA 1982) (citations omitted). Unconscionability may be either procedural, dealing with the factors surrounding the entering of the contract; or substantive, focusing directly on the contract terms. *Steinhardt* at 889 (citations omitted).

⁵ 11 Fla. Jur. 2d *Contracts* s. 11.

⁶ Chapters 670-680, F.S., are cited as the Uniform Commercial Code (UCC). General provisions of the Uniform Commercial Code are found in ch. 671, F.S.; the Uniform Commercial Code – Sales is found in ch. 672, F.S.; and the Uniform Commercial Code – Leases is found in ch. 680, F.S.

⁷ Section 671.201(12), F.S.

⁸ *Peterson v. Florida Bar*, 720 F. Supp.2d 1351, 1358 (M.D. Fla. 2010) (citations omitted).

⁹ For example, see TripAdvisor, *About TripAdvisor*, available at http://www.tripadvisor.com/PressCenter-c6-About_Us.html; Yelp.com, *About Us*, available at <http://www.yelp.com/about>; and Angieslist.com, *Angie’s List*, <http://www.angieslist.com/aboutus.htm> (websites last visited 4/16/2015). Additionally, many search engines, such as Google, Yahoo, or Bing, offer access to consumer reviews within the search engine results.

¹⁰ Nielsen, *Consumer Trust in Online, Social and Mobile Advertising Grows*, (April 10, 2012) available at <http://www.nielsen.com/us/en/insights/news/2012/consumer-trust-in-online-social-and-mobile-advertising-grows.html> (last visited 4/16/2015).

retailer demanded removal of the review or a payment of \$3,500 from the customers. The customer refused to pay and the retailer reported the fine for collection, which negatively impacted the customers' credit ratings. The customers filed a lawsuit in a federal district court in Utah seeking compensation for violations of the Fair Credit Reporting Act and tort law. The lawsuit claimed that the clause was unconscionable and unlawfully restricted the customers' First Amendment rights. Ultimately, the customers obtained a default judgment against the retailer and was awarded compensatory and punitive damages, as well as attorney's fees and expenses.¹¹

- A hotel in New York posted a policy that indicated it would fine wedding parties \$500 for each negative review posted by any member of the wedding party or their guests. After public backlash, this policy was removed.¹²
- Medical Justice provided standard agreements to medical professionals for use in their practices that asked patients to waive the right to, directly or indirectly, provide commentary regarding the practitioner or the services received. Some of the standard agreements required the patient to sign over any written, pictorial, or electronic commentary about the practitioner.¹³ One dentist, using a Medical Justice form contract, was sued by a patient, and in March 2015, a federal district court in New York ruled that the contract was unenforceable and constituted a misuse of copyright law.¹⁴

Defamation¹⁵

If a business is concerned about false reviews that may have a negative impact on its business, it may bring a civil action against a consumer who publishes false or misleading reviews. To prevail, the business must show that the customer:

- Published a false statement about the business;
- The false statement was published to a third party; and
- The falsity of the statement caused injury to the business.¹⁶

III. Effect of Proposed Changes:

Section 1 creates s. 725.09, F.S., to prohibit the inclusion of a provision that limits a consumer's right to make statements regarding his or her experiences with the seller or lessor, the seller's or lessor's employees, or the goods or services in a contract for the sale or lease of consumer goods or services. The bill makes it unlawful to threaten or seek to enforce a provision made unlawful under this bill, or otherwise penalize a consumer for making a statement protected under this bill.

¹¹ Nelson, Steven, *Retailer That Fined Couple \$3,500 for Negative Review Hit with Lawsuit*, U.S. NEWS & WORLD REPORT, (December 13, 2013) available at <http://www.usnews.com/news/articles/2013/12/18/retailer-that-fined-couple-3500-for-negative-review-hit-with-lawsuit>; and Volokh, Eugene, *Default Judgment Against KlearGear, the Company that Billed Customers for \$3,500, Because They Posted a Negative Review*, THE WASHINGTON POST, (May 16, 2014) available at <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/16/default-judgment-against-kleargear-the-company-that-billed-customers-for-3500-because-they-posted-a-negative-review/> (websites last visited 4/16/2015).

¹² Hetter, Katia, CNN, *A \$500 Fine for Bad Reviews? Inn's Policy Pummeled*, (August 5, 2014) available at <http://www.cnn.com/2014/08/04/travel/bad-hotel-review-fine-backlash/> (last visited 4/16/2015).

¹³ Doctored Reviews, available at <http://doctoredreviews.com/patients/the-back-story/> (last visited 4/16/2015).

¹⁴ Lexology.com, *Court Finds Dentist Misused Copyright Law to Stop Bad Yelp Reviews*, (March 17, 2015) available at <http://www.lexology.com/library/detail.aspx?g=56373e86-0715-4b86-97c7-68582badf0cd> (last visited 4/16/2015).

¹⁵ Defamation is defined as the unprivileged publication of false statements that naturally and proximately result in an injury to another. Under Florida law, defamation also includes libel and slander. 19 FLA. JUR. 2D s. 2.

¹⁶ *Razner v. Wellington Regional Medical Center, Inc.*, 837 So. 2d 437, 442 (Fla. 4th DCA 2002) (citations omitted).

Any statement of penalty for undesired reviews about the business included within a contract is null and void.

The bill creates a civil action for the violation of the provisions of the bill, which may be brought by a consumer, the Office of Attorney General, or the state attorney for the county in which the violation occurred. A court may impose a civil penalty of no more than \$2,500 for the first violation and no more than \$5,000 for each subsequent violation. Willful, intentional, or reckless violations may incur an additional civil penalty of up to \$10,000. The civil penalty will be awarded to the consumer, if he or she brought the civil action, or to the general fund of the Office of Attorney General or the state attorney, if one of these entities brought the action. The imposition of these civil penalties does not affect any other relief or remedy available by law.

The bill does not limit the ability of a host of online consumer reviews or comments from removing consumer reviews or comments that the host may lawfully remove.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.¹⁷ “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”¹⁸ If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.¹⁹ The

¹⁷ U.S. Const. Article I, s. 10; Art. I, s. 10, Fla. Const.

¹⁸ *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779 (Fla. 1979) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

¹⁹ *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681, 683 (Fla. 1980); *Yellow Cab Co. of Dade County v. Dade County*, 412 So. 2d 395, 397 (Fla. 3rd DCA 1982) (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977)).

factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- Whether the law results in a temporary alteration of the contractual relationships of those within its scope, or whether it permanently and immediately changes those contractual relationships, irrevocably and retroactively.²⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses and their employees or agents may be subject to civil actions and penalties for violations of the provisions of the bill, including the inclusion of a contractual provision or seeking to enforce such provision on a customer to waive the ability to make statements regarding his or her experiences.

C. Government Sector Impact:

To the extent that businesses, or their employees or agents, violate the provisions of the bill, there may be an insignificant, negative fiscal impact to the state court system or legal agencies seeking to enforce the provisions of the bill.²¹ However, some of those costs may be offset by the recovery of civil penalties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 725.09, Florida Statutes.

²⁰ See *supra* note 18.

²¹ Office of the State Courts Administrator, *2015 Judicial Impact Statement: CS/SB 1212* (March 31, 2015).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Commerce and Tourism Committee on March 23, 2015:

The committee substitute moves the bill's provisions from ch. 672, F.S., to ch. 725, F.S.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senator Ring

577-02756-15

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A bill to be entitled

An act relating to contracts for goods and services; creating s. 725.09, F.S.; prohibiting contracts for the sale or lease of consumer goods or services from waiving the right of the consumer to make certain statements; providing civil penalties; providing construction and applicability; providing an effective date.

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

Section 1. Section 725.09, Florida Statutes, is created to read:

725.09 Right of consumer to make statements.—

(1) (a) A contract for the sale or lease of consumer goods or services may not include a provision waiving the right of the consumer to make any statement regarding the seller or lessor, the seller's or lessor's employees or agents, or the goods or services.

(b) A seller or lessor or its employees or agents may not threaten or seek to enforce a provision prohibited under this subsection or otherwise penalize a consumer for making a statement protected under this subsection.

(c) A waiver of this section is contrary to public policy, void, and unenforceable.

(2) (a) A seller or lessor or its employees or agents that violate this section are subject to a civil penalty not to exceed \$2,500 for the first violation and \$5,000 for each subsequent violation. For a willful, intentional, or reckless

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violation, an additional civil penalty not to exceed \$10,000 may be assessed.

(b) The penalty shall be assessed and collected in a civil action brought by the consumer, the Attorney General, or the state attorney for the county in which the violation occurred. The penalty shall be payable, as appropriate, to the consumer or to the general fund of the governmental entity that brought the action.

(c) The penalties in this subsection are not exclusive remedies and do not affect other relief or remedies provided by law.

(3) This section does not prohibit a person or business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove.

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)

4/20/2015

Meeting Date

Topic _____

Bill Number 1212
(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)

"SB 1212 Agenda Request" Not Found!!!



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING

29th District

April 20, 2015

The Honorable Anitere Flores, Chair
Committee on Fiscal Policy
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores,

I appreciate you including my legislation, SB 530, SB 726, SB 748, and SB 1212 on the Committee on Fiscal Policy agenda for the meeting scheduled at 1:00pm today. Unfortunately, my American Airlines flight out of Miami is currently delayed and may not arrive in Tallahassee in time to present my bills. In my absence, please allow my legislative assistant, Joel Ramos to present my bills on agenda. I apologize for any inconvenience this may have caused you or the committee.

Please do not hesitate to contact me if you or your staff have any questions.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- ☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



247066

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 478 and 479
insert:

Section 3. Subsection (5) of Section 435.02, Florida
Statutes, is amended to read:

435.02 Definitions.—For the purposes of this chapter, the
term:

(5) "Specified agency" means the Department of Health, the
Department of Children and Families, the Division of Vocational



247066

Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, ~~and~~ the Agency for Persons with Disabilities, and local licensing agencies approved pursuant to s. 402.307, when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.

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

And the title is amended as follows:

Delete line 33

and insert:

services; amending s. 435.02, F.S.; redefining a term; providing an effective date.



234884

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 478 and 479
insert:

Section 6. Subsection (5) is added to section 409.977,
Florida Statutes, to read:

409.977 Enrollment.—

(5) Specialty plans serving children in the care and
custody of the department may serve such children as long as
they remain in care, including those remaining in extended



234884

foster care pursuant to s. 39.6251, or are in subsidized
adoption and continue to be eligible for Medicaid pursuant to s.
409.903.

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

And the title is amended as follows:

Delete line 33

and insert:

services; amending s. 409.977, F.S.; authorizing
Medicaid managed care specialty plans to serve
specified children; 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: CS/SB 7078

INTRODUCER: Fiscal Policy Committee and Children, Families, and Elder Affairs Committee

SUBJECT: Child Welfare

DATE: April 21, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Preston	Hendon		CF Submitted as Committee Bill
1.	Pace	Hrdlicka	FP	Fav/CS

I. Summary:

CS/SB 7078 addresses issues related to the child welfare system. Specifically, the bill:

- Clarifies the roles of the state and local review committees within the Child Abuse Death Review (CADR) process and imposes specific reporting requirements to address the increased volume of cases reviewed through the CADR process and better align it with the newly created Critical Incident Rapid Response Team (CIRRT) process;
- Permits the Secretary of Department of Children and Families (DCF) to deploy CIRRTs in response to other child deaths in addition to those with verified abuse and neglect in the last 12 months;
- Requires more frequent reviews and reports by the CIRRT advisory committee;
- Requires a multi-agency staffing to be convened for cases of alleged medical neglect, clarifying that the staffing shall be convened only if medical neglect is substantiated by the child protection team;
- Permits specialty plans to continue to serve children in custody of the DCF under certain conditions; and
- Implements Florida Institute for Child Welfare (FICW) interim report recommendations by clarifying legislative intent to prioritize evidence-based and trauma-informed services.

The bill does not have a fiscal impact on state or local government.

II. Present Situation:

SB 1666 was passed in 2014 in response to concerns about the number of deaths of children known to the child welfare system.¹ SB 1666 made a number of changes to state law to improve the investigation of and subsequent response to allegations of abuse or neglect.² Among those

¹ Senate Children, Families, and Elder Affairs Committee, *Bill Analysis SB 1666*, (March 12, 2014), available at <http://www.flsenate.gov/Session/Bill/2014/1666/Analyses/2014s1666.cf.PDF> (last visited April 16, 2015).

² Chapter 2014-224, L.O.F.

changes were the creation of the Critical Incident Rapid Response Team (CIRTT), expansion of the number and types of cases reviewed through the Child Abuse Death Review (CADR) process, and the creation of the Florida Institute for Child Welfare (FICW).

Child Abuse Death Review

The state Child Abuse Death Review (CADR) is a statewide multidisciplinary, multiagency child abuse death assessment and prevention system.³ The purposes of CADR reviews are to:

- Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse;
- Develop a communitywide approach to address such cases and contributing factors, whenever possible;
- Identify any gaps, deficiencies, or problems in the delivery of services to children and their families by public and private agencies which may be related to deaths that are the result of child abuse; and
- Make and implement recommendations for changes in law, rules, and policies, as well as develop practice standards that support the safe and healthy development of children and reduce preventable child abuse deaths.⁴

Florida's CADR is a two-tiered review system comprised of the State Child Abuse Death Review Committee and local review committees operating across the state. These committees work cooperatively to review the facts and circumstances surrounding child deaths that are reported through the central abuse hotline.⁵

The State Child Abuse Death Review Committee is housed within the Department of Health (DOH) and consists of representatives from the DOH, the Department of Children and Families (DCF), the Department of Legal Affairs, the Department of Law Enforcement, the Department of Education, the Florida Prosecuting Attorneys Association, Inc., and the Florida Medical Examiners Commission, whose representative must be a forensic pathologist. In addition, the State Surgeon General must appoint the following members to the CADR:

- The Statewide Medical Director for Child Protection;
- A public health nurse;
- A mental health professional who treats children or adolescents;
- An employee of the DCF who supervises family services counselors and who has at least 5 years of experience in child protective investigations;
- A medical director of a child protection team;
- A member of a child advocacy organization;
- A social worker who has experience in working with victims and perpetrators of child abuse;
- A person trained as a paraprofessional in patient resources who is employed in a child abuse prevention program;
- A law enforcement officer who has at least 5 years of experience in children's issues;
- A representative of the Florida Coalition Against Domestic Violence; and

³ Section 383.402(1), F.S.

⁴ Id.

⁵ The committees review the deaths of all children from birth through age 18 that occurred in Florida.

- A representative from a private provider of programs on preventing child abuse and neglect.⁶

Local review committees have the primary responsibility of reviewing all child abuse and neglect deaths reported to the child abuse hotline and assisting the state committee in data collection and reporting. The local review committees are comprised of members determined by the state committee and a local state attorney.⁷ Statute requires no other staffing requirements or structure for the local review committee.

The state committee must prepare an annual statistical report on the incidence and causes of death resulting from reported child abuse in the state. The report must include recommendations for:

- State and local action, including specific policy, procedural, regulatory, or statutory changes; and
- Any other recommended preventive action.⁸

Currently, child abuse review committees have broad access to any information related to the deceased child, or his or her family, that is necessary to carry out their duties, including:

- Medical, dental, or mental health treatment records;
- Records in the possession of a state agency or political subdivision; and
- Records of law enforcement which are not part of an active investigation.⁹

Records typically obtained by the committees include, among others: death and birth certificates; medical examiner reports; law enforcement reports; criminal history reports; first responder reports; physician, hospital, and substance abuse and mental health records; and the DCF case file.¹⁰

Critical Incident Rapid Response Team

The CIRRT process involves an immediate root-cause analysis of critical incidents to rapidly determine the need to change policies and practices related to child protection and welfare. The DCF is required to conduct CIRRT investigations of child deaths if the child or another child in the home was the subject of a verified report of abuse or neglect within the previous 12 months. At the discretion of the secretary a CIRRT investigation may be initiated for other cases involving serious injury to a child.¹¹

Each CIRRT must include at least five professionals with expertise in child protection, child welfare, and organizational management.¹² The types of deaths investigated by a CIRRT are

⁶ Section 383.402(2)(a) and (b), F.S.

⁷ Section 383.402(6) and (7), F.S.

⁸ Section 383.402(3)(c), F.S.

⁹ Section 383.402(8) and (9), F.S.

¹⁰ E-mail from Bryan Wendel, Office of Legislative Planning, Florida Dept. of Health, (August 25, 2014) (on file with the Senate Committee on Health Policy).

¹¹ Section 39.2015(2), F.S.

¹² Section 39.2015(3), F.S.

accidental or inflicted trauma, unsafe sleep, natural causes, drowning, sudden infant death syndrome, and other causes under investigation.¹³

An advisory committee of experts in child protection and welfare is tasked with meeting annually to conduct an independent review of the CIRRT investigations and submit an annual report to the Governor and the Legislature that includes findings and recommendations.¹⁴ CIRRT reports have identified issues with process and policies. These issues have prompted immediate changes such as updating the Maltreatment Index to allow for the presence of obvious mental health symptoms to be categorized as problematic and amending related protocol to facilitate immediate response priority for obvious mental health symptoms.

Medical Neglect

Section 39.3068, F.S., requires that reports of alleged medical neglect¹⁵ be handled in a prescribed manner:

- Reports of medical neglect must be investigated by staff with specialized training in medical neglect and medically complex children;
- The investigation identifies any immediate medical needs of the child and uses a family-centered approach to assess the capacity of the family to meet those needs;
- Any investigation of cases involving medically complex children include determination of Medicaid coverage for needed services and coordination with Agency for Health Care Administration (AHCA) to secure such covered services;
- A case staffing be convened and attended by staff from DCF's child protective investigations unit, Children's Legal Services, the child protection team, Children's Medical Services, the AHCA, the community-based care lead agency, and any providers of services to the child.¹⁶

Currently, a multiagency staffing must occur on any case that alleges medical neglect, whether or not the allegation was substantiated as medical neglect by the child protection team.¹⁷

Community Based Care Organizations

The DCF contracts for foster care and related services with lead agencies, also known as community-based care organizations (CBCs).¹⁸ The transition to outsourced provision of child welfare services was intended to increase local community ownership of service delivery and design. CBCs are responsible for providing foster care and related services including:

- Family preservation;
- Emergency shelter; and

¹³ Department of Children and Families, *Statewide Data (2015)*, available at <http://www.dcf.state.fl.us/childfatality/state.shtml> (last visited April 16, 2015).

¹⁴ Section 39.2015(11), F.S.

¹⁵ There is no definition of the term "medical neglect" in ch. 39, F.S., the definition of "neglect" encompasses cases of medical neglect. Neglect is defined as when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment, or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired.

¹⁶ Section 39.3068, F.S.

¹⁷ Section 39.3068(3), F.S.

¹⁸ Section 409.986(1), F.S.

- Adoption.

Under the CBC model, many services are provided through contracts with subcontracted service providers. Currently, the services provided by these contracted entities must be supported by research or be considered best child welfare practices. The statute allows for innovative services such as family-centered, cognitive-behavioral, and trauma-informed interventions designed to mitigate out-of-home placements.¹⁹

Florida Institute for Child Welfare

The Florida Institute for Child Welfare (FICW), within the Florida State University College of Social Work²⁰ was created to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development. The institute consists of a consortium of public and private universities offering degrees in social work.²¹ The FICW is required to submit an annual report that presents significant research findings and results of other programs, and make specific recommendations for improving child protection and child welfare services.²²

Trauma-Informed Practice

The FICW's 2015 interim report²³ recommended that evidence-based and trauma-informed practices be prioritized in statute. Children in the child welfare system have often suffered tremendous trauma due to abuse or neglect. This trauma can have a lifelong effect on their physical and mental health, education, relationships, and social function. To provide trauma-informed care to children, youth, and families involved with the child welfare system, professionals must understand the impact of trauma on child development and learn how to effectively minimize its effects without causing additional trauma. Untreated child trauma is a root cause of many of the most pressing problems that communities face, including poverty, crime, low academic achievement, addiction, mental health problems, and poor health outcomes. There are evidence-based treatments and services developed that are highly effective for child traumatic stress; improving access to effective evidence-based treatments for children who experience traumatic stress can reduce suffering and decrease the costs of health care.

Currently, CBCs are not required to implement trauma informed services.

¹⁹ Section 409.988(3), F.S.

²⁰ Florida State University College of Social Work, *Florida Institute for Child Welfare*, available at <http://csw.fsu.edu/ficw/> (last visited April 16, 2015).

²¹ Section 1004.615(1), F.S.

²² Section 1004.615(6), F.S.

²³ Florida Institute for Child Welfare, Interim Report (2015), available at http://csw.fsu.edu/wp-content/uploads/2015_FICW_InterimReport.pdf (last visited April 16, 2015).

III. Effect of Proposed Changes:

Child Abuse Death Review (Section 3)

The bill amends s. 383.402, F.S., to clarify the intent of the Legislature, specifying the data-based, epidemiological focus of the child abuse death assessment and prevention system as well as clarifying the cooperative roles of the state and local child abuse death review committees.

State Child Abuse Death Review Committee

The bill clarifies that the primary function of the state review committee is to provide direction and leadership for the review system and to analyze data and recommendations from local review committees to identify issues and trends and to recommend statewide action.

The bill also revises the composition of the state child abuse death review committee to add a substance abuse treatment professional to the committee membership and limits the number of appointments a member may serve to no more than 3 consecutive terms.

The bill requires the committee to develop statewide uniform guidelines, standards and protocols, including a protocol for standardized data collection and reporting for local child abuse death review committees. The committee must also develop statewide uniform guidelines for reviewing deaths that are the result of child abuse.

The bill requires the state review committee to provide an annual statistical report to the Governor and the Legislature. The data in the annual report must be presented on an individual calendar year basis and in the context of a multi-year trend and must include:

- Descriptive statistics;
- A detailed analysis of incidences and causes of death;
- Specific issues identified in current policy, procedure, regulation, or statute and recommendations to address them from both the state and local committees; and
- Other recommendations to prevent deaths from child abuse based on the reported data.

Local Death Review Committee

The bill clarifies that the primary function of the local review committee is to conduct individual case reviews of deaths, generate information for the state committee, make recommendations, and implement improvements at the local level. The bill repeals the requirement that the local committee be convened by agreement between the State Surgeon General, the director of each county health department, or the directors of two or more county health departments. Instead, the bill authorizes the State Surgeon General to convene the committee.

The bill specifies that the local committee membership include representatives from:

- The local state attorney's office;
- The local DCF child protective investigations unit;
- The DOH child protection team;
- The medical examiner's office;
- The local CBC;
- Law enforcement;

- The school district;
- A mental health treatment provider;
- A certified domestic violence center;
- A substance abuse treatment provider; and
- Any other members determined by guidelines developed by the state committee.

The bill also requires, to the extent possible, that the individuals involved with a child whose death is verified as caused by abuse or neglect must attend meetings where the child's case is reviewed.

The bill modifies the reporting requirements of the local committee to include of any systemic issues identified through the review process and recommendations for system improvements and needed resources, training, and information dissemination, where gaps and deficiencies may exist.

Data Collection

The bill revises the duties of the state child abuse death committee to include the development of a system for collecting data from local committees on deaths that are reported to the central abuse hotline. The bill requires the use of the Child Death Review Case Reporting System administered by the National Center for the Review and Prevention of Child Deaths by both the state and local review committee. The bill also clarifies that the committees may only share *with each other* any relevant information that pertains to the review of the death of a child. Currently, the committees may share any relevant information that pertains to the review of the death of a child.

The bill makes other clarifying and editorial changes in regard to the roles and responsibilities of the DOH and DCF in child abuse death reviews.

Critical Incident Rapid Response Team (Section 1)

The bill amends s. 39.2015(2), F.S., to allow a CIRRT to be deployed, at the secretary's discretion, for other cases involving *child deaths, including but not limited to, a death or serious injury occurring during an open investigation*. Currently, a CIRRT can be deployed at the secretary's discretion for other cases involving *serious injury to a child*. The purpose of the investigation is to identify root causes and rapidly determine the need to change policies and practices related to child protection and welfare.

The bill also requires the CIRRT advisory committee to meet quarterly and submit quarterly reports, instead of once annually. This change will allow more rapid identification of and response to information acquired through the CIRRT process.

Reports of Medical Neglect (Section 2)

The bill amends s. 39.3068(3), F.S., to require a multi-agency staffing to be convened for cases of alleged medical neglect, clarifying that the staffing shall be convened only *if medical neglect*

is substantiated by the child protection team. Currently, the department convenes the multi-agency staffing *after the receipt of the report* from the child protection team.

Community-Based Care Organizations (Sections 5 and 6)

The bill amends s. 409.986(1)(a), F.S., to clarify the legislative intent that CBCs prioritize use of evidence-based and trauma-informed services. The bill also amends s. 409.988(3), F.S., to require use of evidenced-based trauma-informed best practices by CBCs.

Medicaid Managed Care (Section 4)

The Medicaid program is established as a statewide, integrated managed care program for all covered medical services, including long-term care services.²⁴ A managed care plan is an eligible plan under contract with the ACHA to provide services in the Medicaid program. A specialty plan is a managed care plan that serves Medicaid recipients who meet specified criteria based on age, medical condition, or diagnosis.²⁵ When a specialty plan is available to accommodate a specific condition or diagnosis of a recipient, the agency assigns the recipient to that plan, if the recipient does not choose another plan.²⁶ The bill amends s. 409.977, F.S. to permit specialty plans serving children in the care and custody of the DCF to continue to serve such children as long as they remain in care, including those remaining in extended foster care or those who are in subsidized adoption and continue to be eligible for Medicaid.

Background Screenings (Section 7)

The bill amends s. 435.02(5), F.S., to include local licensing agencies approved pursuant to s. 402.307, F.S., under the definition of “specified agency,” for background screening purposes. Currently, a “specified agency,” is the DOH, the DCF, the Division of Vocational Rehabilitation within the Department of Education, the AHCA, the Department of Elderly Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities, when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.

Section 8 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁴ Section 409.964, F.S.

²⁵ Section 409.962(14), F.S.

²⁶ Section 409.977, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Requiring evidenced-based trauma-informed services may necessitate CBCs amending contracts with subcontractors providing direct services to children to include this requirement, if their contracts do not currently do so. The bill does not provide a definition of “trauma-informed.”

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: 39.2015, 39.3068, 383.402, 409.977, 409.986, 409.988, and 435.02.

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 Committee on April 20, 2015:

The committee substitute permits specialty plans to continue serving children in custody of the DCF under certain conditions and includes local licensing agencies under the definition of “specified agency” for background screening purposes.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-03426-15

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1 A bill to be entitled
 2 An act relating to child welfare; amending s. 39.2015,
 3 F.S.; authorizing critical incident rapid response
 4 teams to review cases of child deaths occurring during
 5 an open investigation; requiring the advisory
 6 committee to meet quarterly and submit quarterly
 7 reports; amending s. 39.3068, F.S.; requiring case
 8 staffing when medical neglect is substantiated;
 9 amending s. 383.402, F.S.; requiring an
 10 epidemiological child abuse death assessment and
 11 prevention system; providing intent for the operation
 12 of and interaction between the state and local death
 13 review committees; limiting members of the state
 14 committee to terms of 2 years, not to exceed three
 15 consecutive terms; requiring the committee to elect a
 16 chairperson and authorizing specified duties of the
 17 chairperson; providing for per diem and reimbursement
 18 of expenses; specifying duties of the state committee;
 19 deleting obsolete provisions; providing for the
 20 convening of county or multicounty local review
 21 committees and support by the county health department
 22 directors; specifying membership and duties of local
 23 review committees; requiring an annual statistical
 24 report; specifying that certain responsibilities of
 25 the Department of Children and Families are to be
 26 administered at the regional level, rather than at the
 27 district level; amending s. 409.986, F.S.; revising
 28 legislative intent to require community-based care
 29 lead agencies to give priority to the use of evidence-

Page 1 of 17

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

586-03426-15

20157078__

30 based and trauma-informed services; amending s.
 31 409.988; requiring lead agencies to give priority to
 32 the use of evidence-based and trauma-informed
 33 services; providing an effective date.
 34

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

36
 37 Section 1. Subsections (2) and (11) of section 39.2015,
 38 Florida Statutes, are amended to read:

39 39.2015 Critical incident rapid response team.—

40 (2) An immediate onsite investigation conducted by a
 41 critical incident rapid response team is required for all child
 42 deaths reported to the department if the child or another child
 43 in his or her family was the subject of a verified report of
 44 suspected abuse or neglect during the previous 12 months. The
 45 secretary may direct an immediate investigation for other cases
 46 involving death or serious injury to a child, including, but not
 47 limited to, a death or serious injury occurring during an open
 48 investigation.

49 (11) The secretary shall appoint an advisory committee made
 50 up of experts in child protection and child welfare, including
 51 the Statewide Medical Director for Child Protection under the
 52 Department of Health, a representative from the institute
 53 established pursuant to s. 1004.615, an expert in organizational
 54 management, and an attorney with experience in child welfare, to
 55 conduct an independent review of investigative reports from the
 56 critical incident rapid response teams and to make
 57 recommendations to improve policies and practices related to
 58 child protection and child welfare services. The advisory

Page 2 of 17

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

586-03426-15

20157078

~~committee shall meet at least once each quarter and By October 1 of each year, the advisory committee shall submit quarterly reports a report~~ to the secretary which ~~include~~ includes findings and recommendations. The secretary shall submit ~~each~~ the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 2. Subsection (3) of section 39.3068, Florida Statutes, is amended to read:

39.3068 Reports of medical neglect.—

(3) The child shall be evaluated by the child protection team as soon as practicable. If After receipt of the report from the child protection team reports that medical neglect is substantiated, the department shall convene a case staffing which shall be attended, at a minimum, by the child protective investigator; department legal staff; and representatives from the child protection team that evaluated the child, Children's Medical Services, the Agency for Health Care Administration, the community-based care lead agency, and any providers of services to the child. However, the Agency for Health Care Administration is not required to attend the staffing if the child is not Medicaid eligible. The staffing shall consider, at a minimum, available services, given the family's eligibility for services; services that are effective in addressing conditions leading to medical neglect allegations; and services that would enable the child to safely remain at home. Any services that are available and effective shall be provided.

Section 3. Section 383.402, Florida Statutes, is amended to read:

383.402 Child abuse death review; State Child Abuse Death

586-03426-15

20157078

Review Committee; local child abuse death review committees.—

(1) INTENT.—It is the intent of the Legislature to establish a statewide multidisciplinary, multiagency, epidemiological child abuse death assessment and prevention system that consists of state and local review committees. The ~~state and local review~~ committees shall review the facts and circumstances of all deaths of children from birth ~~to through~~ age 18 which occur in this state and are reported to the central abuse hotline of the Department of Children and Families. The state and local review committees shall work cooperatively. The primary function of the state review committee is to provide direction and leadership for the review system and to analyze data and recommendations from local review committees to identify issues and trends and to recommend statewide action. The local review committees is to conduct individual case reviews of deaths, generate information, make recommendations, and implement improvements at the local level. Each case ~~The purpose of the review must use a data-based, epidemiological approach shall be to:~~

(a) Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse.

(b) Whenever possible, develop a communitywide approach to address such causes ~~cases~~ and contributing factors.

(c) Identify any gaps, deficiencies, or problems in the delivery of services to children and their families by public and private agencies which may be related to deaths that are the result of child abuse.

(d) Recommend ~~Make and implement recommendations for~~ changes in law, rules, and policies at the state and local

586-03426-15

20157078__

117 levels, as well as develop practice standards that support the
 118 safe and healthy development of children and reduce preventable
 119 child abuse deaths.

120 (e) Implement approved recommendations, to the extent
 121 possible.

122 (2) STATE CHILD ABUSE DEATH REVIEW COMMITTEE.—

123 (a) Membership.—

124 1. The State Child Abuse Death Review Committee is
 125 established within the Department of Health and shall consist of
 126 a representative of the Department of Health, appointed by the
 127 State Surgeon General, who shall serve as the state committee
 128 coordinator. The head of each of the following agencies or
 129 organizations shall also appoint a representative to the state
 130 committee:

131 a.1. The Department of Legal Affairs.

132 b.2. The Department of Children and Families.

133 c.3. The Department of Law Enforcement.

134 d.4. The Department of Education.

135 e.5. The Florida Prosecuting Attorneys Association, Inc.

136 f.6. The Florida Medical Examiners Commission, whose
 137 representative must be a forensic pathologist.

138 2.(b) In addition, the State Surgeon General shall appoint
 139 the following members to the state committee, based on
 140 recommendations from the Department of Health and the agencies
 141 listed in subparagraph 1. paragraph (a), and ensuring that the
 142 committee represents the regional, gender, and ethnic diversity
 143 of the state to the greatest extent possible:

144 a.1. The Department of Health Statewide Child Protection
 145 Team Medical Director for Child Protection.

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146 b.2. A public health nurse.

147 c.3. A mental health professional who treats children or
 148 adolescents.

149 d.4. An employee of the Department of Children and Families
 150 who supervises family services counselors and who has at least 5
 151 years of experience in child protective investigations.

152 e.5. The medical director of a child protection team.

153 f.6. A member of a child advocacy organization.

154 g.7. A social worker who has experience in working with
 155 victims and perpetrators of child abuse.

156 h.8. A person trained as a paraprofessional in patient
 157 resources who is employed in a child abuse prevention program.

158 i.9. A law enforcement officer who has at least 5 years of
 159 experience in children's issues.

160 j.10. A representative of the Florida Coalition Against
 161 Domestic Violence.

162 k.11. A representative from a private provider of programs
 163 on preventing child abuse and neglect.

164 1. A substance abuse treatment professional.

165 3. The members of the state committee shall be appointed to
 166 staggered terms not to exceed 2 years each, as determined by the
 167 State Surgeon General. Members may be appointed to no more than
 168 three consecutive terms. The state committee shall elect a
 169 chairperson from among its members to serve for a 2-year term,
 170 and the chairperson may appoint ad hoc committees as necessary
 171 to carry out the duties of the committee.

172 4. Members of the state committee shall serve without
 173 compensation but may receive reimbursement for per diem and
 174 travel expenses incurred in the performance of their duties as

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175 provided in s. 112.061 and to the extent that funds are
 176 available.

177 ~~(b)(3)~~ Duties.—The State Child Abuse Death Review Committee
 178 shall:

179 ~~1.(a)~~ Develop a system for collecting data from local
 180 committees on deaths that are reported to the central abuse
 181 hotline the result of child abuse. The system must include a
 182 protocol for the uniform collection of data statewide, which
 183 must, at a minimum, use the National Child Death Review Case
 184 Reporting System administered by the National Center for the
 185 Review and Prevention of Child Deaths uses existing data-
 186 collection systems to the greatest extent possible.

187 ~~2.(b)~~ Provide training to cooperating agencies,
 188 individuals, and local child abuse death review committees on
 189 the use of the child abuse death data system.

190 ~~(c)~~ Prepare an annual statistical report on the incidence
 191 and causes of death resulting from reported child abuse in the
 192 state during the prior calendar year. The state committee shall
 193 submit a copy of the report by October 1 of each year to the
 194 Governor, the President of the Senate, and the Speaker of the
 195 House of Representatives. The report must include
 196 recommendations for state and local action, including specific
 197 policy, procedural, regulatory, or statutory changes, and any
 198 other recommended preventive action.

199 ~~3.(d)~~ Provide training to local child abuse death review
 200 committee members on the dynamics and impact of domestic
 201 violence, substance abuse, or mental health disorders when there
 202 is a co-occurrence of child abuse. Training must ~~shall~~ be
 203 provided by the Florida Coalition Against Domestic Violence, the

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204 Florida Alcohol and Drug Abuse Association, and the Florida
 205 Council for Community Mental Health in each entity's respective
 206 area of expertise.

207 ~~4.(e)~~ Develop statewide uniform guidelines, standards, and
 208 protocols, including a protocol for standardized data
 209 collection, and reporting, for local child abuse death review
 210 committees, and provide training and technical assistance to
 211 local committees.

212 ~~5.(f)~~ Develop statewide uniform guidelines for reviewing
 213 deaths that are the result of child abuse, including guidelines
 214 to be used by law enforcement agencies, prosecutors, medical
 215 examiners, health care practitioners, health care facilities,
 216 and social service agencies.

217 ~~6.(g)~~ Study the adequacy of laws, rules, training, and
 218 services to determine what changes are needed to decrease the
 219 incidence of child abuse deaths and develop strategies and
 220 recruit partners to implement these changes.

221 ~~7.(h)~~ Provide consultation on individual cases to local
 222 committees upon request.

223 ~~8.(i)~~ Educate the public regarding the provisions of
 224 chapter 99-168, Laws of Florida, the incidence and causes of
 225 child abuse death, and ways by which such deaths may be
 226 prevented.

227 ~~9.(j)~~ Promote continuing education for professionals who
 228 investigate, treat, and prevent child abuse or neglect.

229 ~~10.(k)~~ Recommend, when appropriate, the review of the death
 230 certificate of a child who died as a result of abuse or neglect.

231 ~~(4)~~ The members of the state committee shall be appointed
 232 to staggered terms of office which may not exceed 2 years, as

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determined by the State Surgeon General. Members are eligible for ~~2-reappointments~~. The state committee shall elect a chairperson from among its members to serve for a 2-year term, and the chairperson may appoint ad hoc committees as necessary ~~to carry out the duties of the committee.~~

~~(5) Members of the state committee shall serve without compensation but are entitled to reimbursement for per diem and travel expenses incurred in the performance of their duties as provided in s. 112.061 and to the extent that funds are available.~~

(3)(6) LOCAL DEATH REVIEW COMMITTEES.—At the direction of the State Surgeon General, a county or multicounty death review committee shall be convened and supported by the county health department directors the director of each county health department, or the directors of two or more county health departments by agreement, may convene and support a county or multicounty child abuse death review committee in accordance with the protocols established by the State Child Abuse Death Review Committee.

(a) Membership.—Each local committee must include local representatives from:

1. The state attorney's office. a local state attorney, or his or her designee, and

2. The medical examiner's office.

3. The local Department of Children and Families child protective investigations unit.

4. The Department of Health child protection team.

5. The community-based care lead agency.

6. State, county, or local law enforcement agencies.

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7. The school district.

8. A mental health treatment provider.

9. A certified domestic violence center.

10. A substance abuse treatment provider.

11. Any other members that are determined by guidelines developed by the State Child Abuse Death Review Committee.

To the extent possible, individuals from these organizations or entities who, in a professional capacity, dealt with a child whose death is verified as caused by abuse or neglect, or with the family of the child, shall attend any meetings where the child's case is reviewed. The members of a local committee shall be appointed to 2-year terms and may be reappointed. ~~The local committee shall elect a chairperson from among its members.~~ Members shall serve without compensation but may receive ~~are~~ entitled to reimbursement for per diem and travel expenses incurred in the performance of their duties as provided in s. 112.061 and to the extent that funds are available.

(b)(7) Duties.—Each local child abuse death review committee shall:

1.(a) Assist the state committee in collecting data on deaths that are the result of child abuse, in accordance with the protocol established by the state committee. The local committee shall complete, to the fullest extent possible, the individual case report in the National Child Death Review Case Reporting System.

2.(b) Submit written reports as required by ~~at the~~ direction of the state committee. The reports must include:

a. Nonidentifying information from ~~on~~ individual cases.

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291 b. Identification of any problems with the data system
 292 uncovered through the review process and the committee's
 293 recommendations for system improvements and needed resources,
 294 training, and information dissemination, where gaps or
 295 deficiencies may exist. ~~and~~

296 c. All ~~the~~ steps taken by the local committee and private
 297 and public agencies to implement necessary changes and improve
 298 the coordination of services and reviews.

299 3.~~(e)~~ Submit all records requested by the state committee
 300 at the conclusion of its review of a death resulting from child
 301 abuse.

302 4.~~(d)~~ Abide by the standards and protocols developed by the
 303 state committee.

304 5.~~(e)~~ On a case-by-case basis, request that the state
 305 committee review the data of a particular case.

306 (4) ANNUAL STATISTICAL REPORT.—The state committee shall
 307 prepare and submit a comprehensive statistical report by October
 308 1 of each year to the Governor, the President of the Senate, and
 309 the Speaker of the House of Representatives which includes data,
 310 trends, analysis, findings, and recommendations for state and
 311 local action regarding deaths from child abuse. Data must be
 312 presented on an individual calendar year basis and in the
 313 context of a multiyear trend. At a minimum, the report must
 314 include:

315 (a) Descriptive statistics, including demographic
 316 information regarding victims and caregivers, and the causes and
 317 nature of deaths.

318 (b) A detailed statistical analysis of the incidence and
 319 causes of deaths.

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320 (c) Specific issues identified within current policy,
 321 procedure, rule, or statute and recommendations to address those
 322 issues from both the state and local committees.

323 (d) Other recommendations to prevent deaths from child
 324 abuse based on an analysis of the data presented in the report.

325 ~~(5)-(8)~~ ACCESS TO AND USE OF RECORDS.—

326 (a) Notwithstanding any other law, the chairperson of the
 327 State Child Abuse Death Review Committee, or the chairperson of
 328 a local committee, shall be provided with access to any
 329 information or records that pertain to a child whose death is
 330 being reviewed by the committee and that are necessary for the
 331 committee to carry out its duties, including information or
 332 records that pertain to the child's family, as follows:

333 1.~~(a)~~ Patient records in the possession of a public or
 334 private provider of medical, dental, or mental health care,
 335 including, but not limited to, a facility licensed under chapter
 336 393, chapter 394, or chapter 395, or a health care practitioner
 337 as defined in s. 456.001. Providers may charge a fee for copies
 338 not to exceed 50 cents per page for paper records and \$1 per
 339 fiche for microfiche records.

340 2.~~(b)~~ Information or records of any state agency or
 341 political subdivision which might assist a committee in
 342 reviewing a child's death, including, but not limited to,
 343 information or records of the Department of Children and
 344 Families, the Department of Health, the Department of Education,
 345 or the Department of Juvenile Justice.

346 ~~(b)-(9)~~ The State Child Abuse Death Review Committee or a
 347 local committee shall have access to all information of a law
 348 enforcement agency which is not the subject of an active

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investigation and which pertains to the review of the death of a child. A committee may not disclose any information that is not subject to public disclosure by the law enforcement agency, and active criminal intelligence information or criminal investigative information, as defined in s. 119.011(3), may not be made available for review or access under this section.

(c) ~~(10)~~ The state committee and any local committee may share with each other any relevant information that pertains to the review of the death of a child.

(d) ~~(11)~~ A member of the state committee or a local committee may not contact, interview, or obtain information by request or subpoena directly from a member of a deceased child's family as part of a committee's review of a child abuse death, except that if a committee member is also a public officer or state employee, that member may contact, interview, or obtain information from a member of the deceased child's family, if necessary, as part of the committee's review. A member of the deceased child's family may voluntarily provide records or information to the state committee or a local committee.

(e) ~~(12)~~ The chairperson of the State Child Abuse Death Review Committee may require the production of records by requesting a subpoena, through the Department of Legal Affairs, in any county of the state. Such subpoena is effective throughout the state and may be served by any sheriff. Failure to obey the subpoena is punishable as provided by law.

(f) ~~(13)~~ This section does not authorize the members of the state committee or any local committee to have access to any grand jury proceedings.

(g) ~~(14)~~ A person who has attended a meeting of the state

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committee or a local committee or who has otherwise participated in activities authorized by this section may not be permitted or required to testify in any civil, criminal, or administrative proceeding as to any records or information produced or presented to a committee during meetings or other activities authorized by this section. However, this subsection does not prevent any person who testifies before the committee or who is a member of the committee from testifying as to matters otherwise within his or her knowledge. An organization, institution, committee member, or other person who furnishes information, data, reports, or records to the state committee or a local committee is not liable for damages to any person and is not subject to any other civil, criminal, or administrative recourse. This subsection does not apply to any person who admits to committing a crime.

(6) ~~(15)~~ DEPARTMENT OF HEALTH RESPONSIBILITIES.—

(a) The Department of Health shall administer the funds appropriated to operate the review committees and may apply for grants and accept donations.

(b) ~~(16)~~ To the extent that funds are available, the Department of Health may hire staff or consultants to assist a review committee in performing its duties. Funds may also be used to reimburse reasonable expenses of the staff and consultants for the state committee and the local committees.

(c) ~~(17)~~ For the purpose of carrying out the responsibilities assigned to the State Child Abuse Death Review Committee and the local review committees, the State Surgeon General may substitute an existing entity whose function and organization includes ~~include~~ the function and organization of

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the committees established by this section.

~~(7)(18)~~ DEPARTMENT OF CHILDREN AND FAMILIES

RESPONSIBILITIES.—Each regional managing director ~~district administrator~~ of the Department of Children and Families must appoint a child abuse death review coordinator for the region ~~district~~. The coordinator must have knowledge and expertise in the area of child abuse and neglect. The coordinator's general responsibilities include:

(a) Coordinating with the local child abuse death review committee.

(b) Ensuring the appropriate implementation of the child abuse death review process and all regional ~~district~~ activities related to the review of child abuse deaths.

(c) Working with the committee to ensure that the reviews are thorough and that all issues are appropriately addressed.

(d) Maintaining a system of logging child abuse deaths covered by this procedure and tracking cases during the child abuse death review process.

(e) Conducting or arranging for a Florida Safe Families Network Abuse Hotline Information System (FAHIS) record check on all child abuse deaths covered by this procedure to determine whether there were any prior reports concerning the child or concerning any siblings, other children, or adults in the home.

(f) Coordinating child abuse death review activities, as needed, with individuals in the community and the Department of Health.

(g) Notifying the regional managing director ~~district administrator~~, the Secretary of Children and Families, the Department of Health Deputy Secretary for Health and Deputy

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State Health Officer for Children's Medical Services, and the Department of Health Child Abuse Death Review Coordinator of all ~~child abuse~~ deaths meeting criteria for review as specified in this section within 1 working day after case closure ~~verifying the child's death was due to abuse, neglect, or abandonment~~.

(h) Ensuring that all critical issues identified by the local child abuse death review committee are brought to the attention of the regional managing director ~~district administrator~~ and the Secretary of Children and Families.

(i) Providing technical assistance to the local child abuse death review committee during the review of any child abuse death.

Section 4. Paragraph (a) of subsection (1) of section 409.986, Florida Statutes, is amended to read:

409.986 Legislative findings and intent; child protection and child welfare outcomes; definitions.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) It is the intent of the Legislature that the Department of Children and Families provide child protection and child welfare services to children through contracting with community-based care lead agencies. The community-based lead agencies shall give priority to the use of services that are evidence-based and trauma-informed. Counties that provide children and family services with at least 40 licensed residential group care beds by July 1, 2003, and that provide at least \$2 million annually in county general revenue funds to supplement foster and family care services shall continue to contract directly with the state. It is the further intent of the Legislature that communities have responsibility for and participate in ensuring

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465 safety, permanence, and well-being for all children in the
466 state.

467 Section 5. Subsection (3) of section 409.988, Florida
468 Statutes, is amended to read:

469 409.988 Lead agency duties; general provisions.—

470 (3) SERVICES.—A lead agency must provide ~~serve~~ dependent
471 children ~~with through~~ services that are supported by research or
472 that are recognized as best practices in the best child welfare
473 field practices. The agency shall give priority to the use of
474 services that are evidence-based and trauma-informed and may
475 also provide other innovative services, including, but not
476 limited to, family-centered and, cognitive-behavioral, ~~trauma-~~
477 ~~informed~~ interventions designed to mitigate out-of-home
478 placements.

479 Section 6. 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)

4-20-15

Meeting Date

7078

Bill Number (if applicable)

247066

Amendment Barcode (if applicable)

Topic Child Welfare

Name Marty Cassini

Job Title Legislator Counsel

Address 115 S. Andrews Ave

Street

Fort Lauderdale

City

FL

State

33301

Zip

Phone 954-357-7575

Email mcassini@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4-20-15

Meeting Date

57078
~~HB 211~~
Bill Number (if applicable)

Topic An Act to Protect private
Amy Datz child placing
Name agencies
Job Title Legislative Liaison

Amendment Barcode (if applicable)

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 National Council of Jewish Women

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

7078 4/20/15
Meeting Date

7078
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.
Street

Phone _____

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 _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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/SB 1170 (308648)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Bradley

SUBJECT: Problem-solving Courts

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</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>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1170 authorizes cases in a veterans' court or a mental health court to be transferred to another county. The bill also defines the term "problem-solving court" to include drug courts, veterans' courts, and mental health courts.

This bill does not have a discernable fiscal impact.

II. Present Situation:

Transfer of Criminal Cases between Counties

Florida law authorizes the transfer of a criminal case between counties when:

- An indictment or information is pending in one county and a defendant is arrested or held in another county, if the defendant requests in writing to plead guilty or nolo contendere, waive trial in the county in which the warrant was issued, and consent to disposition of the case in another county. The prosecutor of the court in which the indictment or information is pending must also consent to the transfer.¹

¹ The formal charging document in a criminal case is known as an indictment or an information. Indictments are returned by a grand jury and presented to the court, and an information is made by a prosecutor in the absence of an indictment by the grand jury. BLACK'S LAW DICTIONARY (10th ed. 2014).

- An indictment or information is not pending and a defendant is arrested on a warrant issued in a county other than the county of arrest and requests in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and consent to disposition of the case in the county in which the defendant was arrested. The prosecuting attorney must also consent to the transfer.
- A defendant is eligible to participate in a drug court treatment program as part of a pretrial intervention program. Additionally, the drug court must consent and the following conditions must be met:
 - The authorized representatives of the drug court programs consult about the transfer;
 - The trial court accepts a plea from the defendant of nolo contendere and enters a transfer order² for the clerk to transfer the case to the county which has accepted the defendant into its drug court program; and
 - Once the transfer takes place, the clerk must schedule a hearing before the drug court for the defendant to begin the drug court program.³

If a case is transferred to a county where the defendant successfully completes a drug court program, the court that received the transfer will dispose of the case by dismissing the criminal charges. If the court finds that the defendant failed to successfully complete the program, the court may order the defendant to continue education and treatment including through substance-abuse treatment or jail-based treatment programs, or authorize the prosecution of the criminal charges.⁴

National Use of Veterans' Courts

A 2012 national survey found that 71 percent of participants in veterans' courts experienced trauma while serving in the military. More recently, in 2014 a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.⁵

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of specialty courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."⁶

Like other specialty courts, veterans' courts require the defendant to appear before the court over a specified period of time. On average, it takes 12 to 18 months for a veterans' court to dispose of a case.⁷

² The transfer order must include all documents relating to the case, including the probable cause affidavit, charging documents, witness statements, the defendant's written consent to abide by all rules of the drug court program, and the defendant's contact information. s. 910.035(5)(c), F.S.

³ Section 910.035(1), (2), and (5), F.S.

⁴ Section 948.08(6)(c), F.S.

⁵ Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

⁶ *Id.*

⁷ *Id.*

Veterans' Courts in Florida

In 2012 the Legislature passed the “T. Patt Maney Veterans’ Treatment Intervention Act” which recognized veterans’ courts in Florida.⁸ The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program to serve the special needs of veterans and servicemembers who are convicted of criminal offenses.⁹ In sentencing defendants, these specialty courts will consider whether military-related conditions, such as mental illness, traumatic brain injury, or substance abuse can be addressed through programs designed to serve the specific needs of the participant.¹⁰

As of January 2015, there were 21 veterans’ courts in 20 Florida counties.¹¹ Seven courts received funding from state general revenue. From July 2013 to October 2014, 45 participants graduated from the state-funded courts and 62 percent of the participants in state-funded veterans’ courts had a dual diagnosis of mental health issues and substance abuse.¹²

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.¹³

A defendant is eligible for release to a pretrial intervention if the defendant:

- Receives approval from the administrator of the pretrial intervention program, the victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntarily agreed to the program; and
- Knowingly and intelligently waived his or her right to a speedy trial for the term of his or her diversion.¹⁴

The criminal charges against the defendant remain pending while he or she is in a pretrial intervention program and for 90 days after the defendant is released from the program.¹⁵ The pending criminal charges can resume at any time if the program administrator or the state attorney find that the defendant is not fulfilling his or her obligations under the program or if the

⁸ Chapter 2012-159, L.O.F.

⁹ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

¹⁰ Section 394.47891, F.S.

¹¹ *Supra* note 5 at p. 2 and 8. In FY 2014-15, Alachua, Clay, Duval, Okaloosa, Orange, Pasco, and Pinellas counties received state general revenue funding to operate veterans’ courts. Other counties having veterans’ courts are Brevard, Broward, Collier, Hillsborough, Indian River, Lake, Lee, Marion, Osceola, Palm Beach, Seminole, St. Lucie, and Volusia counties. Volusia County maintains two veterans’ courts.

¹² *Id.* at 3.

¹³ A misdemeanor is punishable by up to 1 year term in a county jail and up to a \$500 to a \$1,000 fine. Sections 775.08(2) and 775.083(1)(d) and (e), F.S. A felony is punishable by a minimum of more than a 1 year term of imprisonment in a state penitentiary and fines that range from \$5,000 to \$15,000. Sections 775.08(1) and 775.083(1)(a)-(d), F.S.

¹⁴ Section 948.08(2), F.S.

¹⁵ Section 948.08(3), F.S.

public interest requires. The defendant does not have the right to a public defender unless the defendant's release is revoked and subject to incarceration if convicted.¹⁶ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.¹⁷

The purpose of a pretrial intervention program is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.¹⁸

Pretrial Veterans' Treatment Intervention Program

To be eligible to participate in a pretrial veterans' treatment intervention program, veterans can be charged with misdemeanors¹⁹ or felonies.²⁰ However, veterans cannot be charged with a disqualifying felony offense. Disqualifying offenses are serious felony offenses and include:

- Kidnapping and attempted kidnapping;
- Murder or attempted murder;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery and certain other sexual offenses against children;
- Robbery or attempted robbery;
- Burglary or attempted burglary;
- Aggravated assault;
- Aggravated stalking; and
- Treason.²¹

Prior to placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the 10 therapeutic jurisprudence principles and key components for treatment-based drug court programs.²²

Eligible veterans who successfully complete the diversion program may petition the court to expunge the arrest record of the dismissed charges under s. 943.0585, F.S.²³

¹⁶ Section 948.08(4), F.S.

¹⁷ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

¹⁸ Section 948.08(1), F.S.

¹⁹ Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

²⁰ Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs.

²¹ Section 948.06(8)(c), F.S.

²² Section 948.08(7)(b) and 948.16(2)(b), F.S. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.

²³ Section 948.08(7)(b), F.S.

Post-adjudication Treatment Programs

Veterans and servicemembers on probation or community control who committed a crime on or after July 1, 2012, and who suffer from military-related mental illness, traumatic brain injury, or substance abuse may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.²⁴

Mental Health Courts

Florida law does not recognize the specialty court of a mental health court. However, while not codified in statute, many judicial circuits have created what are often referred to as “mental health courts.” Mental health courts are diversionary programs for persons diagnosed with a severe mental illness or developmental disability.

III. Effect of Proposed Changes:

This bill enables veterans’ courts and mental health courts to transfer cases to other counties.

The bill establishes the term “problem-solving court” to apply to the specialty courts of drug courts, veterans’ courts, and mental health courts.

The bill allows any person eligible for participation in a problem-solving court to request to have their case transferred another county. The court can request for a case to be transferred to another county as well. The court representative and the representative from the problem-solving court in the other county must agree to the transfer. If there is an agreement to transfer a case to another county, the court must enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into the problem-solving court.

The bill specifies that the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant’s successful completion of the program, order continued treatment, or authorize prosecution.

The bill also requires, when transferring a postadjudicatory problem-solving court case, the transfer order to include a copy of the charging documents in the case; the final disposition; all reports, test results, and other documents in the case; the defendant’s mailing address and telephone number; and the defendant’s written consent to abide by the rules and procedures of the receiving county’s problem-solving court.

The bill is effective on July 1, 2015.

²⁴ Section 948.21, F.S.

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

This bill requires consent from a receiving county prior to transfer. Therefore, a county does not have to accept transfer of a problem-solving court case and provide services.

For this reason, the bill does not appear to create a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may facilitate a person's participation in a veterans' court program or mental health court program by allowing a defendant to participate in a program in his or her home county instead of the county where a crime occurred.

C. Government Sector Impact:

Although the original legislation creating veterans' courts in 2012 included an appropriation, this bill does not.

The Office of the State Courts Administrator (OSCA) expects no judicial or court workload impact from this bill as cases would be transferred and no net additional cases would be generated. Additional orders of transfer and completion of necessary paperwork resulting from the bill may have a minimal fiscal impact on expenditures.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁵ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 10, 2015) (on file with the Senate Judiciary Committee).

VIII. Statutes Affected:

This bill substantially amends section 910.035 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 by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute:

- Makes technical changes to the bill.
- Requires specific information to be included in the transfer order when transferring a problem-solving court case to another county.

B. Amendments:

None.



308648

594-03729-15

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 defendants in specialized courts;
amending s. 910.035, F.S.; providing a definition;
requiring a trial court to transfer certain criminal
cases involving participants in specified programs to
another jurisdiction having such a program under
certain conditions; providing an effective date.

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

Section 1. Subsection (5) of section 910.035, Florida
Statutes, is amended to read:

910.035 Transfer from county for plea, ~~and~~ sentence, or
participation in a problem-solving court.

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.

(a) For purposes of this subsection, the term "problem-
solving court" means a drug court pursuant to s. 948.01, s.
948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans' court
pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
a mental health court.

(b) Any person eligible for participation in a problem-
solving drug court shall, upon request by the person or a court,
treatment program pursuant to s. 948.08(6) may be eligible to
have the case transferred to a county other than that in which
the charge arose if the person agrees to the transfer, the drug
court program agrees and if the following conditions are met:

~~(a)~~ the authorized representative of the trial drug court



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594-03729-15

~~consults program of the county requesting to transfer the case~~
~~shall consult~~ with the authorized representative of the problem-
solving drug court program in the county to which transfer is
desired, and both representatives agree to the transfer.

~~(c)(b)~~ If all parties agree to the transfer as required by
paragraph (b), approval for transfer is received from all
~~parties,~~ the trial court shall ~~accept a plea of nolo contendere~~
~~and~~ enter a transfer order directing the clerk to transfer the
case to the county which has accepted the defendant into its
problem-solving drug court program.

~~(d)1.(c)~~ When transferring a pretrial problem-solving court
case, the transfer order shall include a copy of the probable
cause affidavit; any charging documents in the case; all
reports, witness statements, test results, evidence lists, and
other documents in the case; the defendant's mailing address and
telephone phone number; and the defendant's written consent to
abide by the rules and procedures of the receiving county's
problem-solving drug court program.

2. When transferring a postadjudicatory problem-solving
court case, the transfer order shall include a copy of the
charging documents in the case; the final disposition; all
reports, test results, and other documents in the case; the
defendant's mailing address and telephone number; and the
defendant's written consent to abide by the rules and procedures
of the receiving county's problem-solving court.

~~(e)(d)~~ After the transfer takes place, the receiving clerk
shall set the matter for a hearing before the problem-solving
drug court in the receiving jurisdiction to program judge and
~~the court shall ensure the defendant's entry into the problem-~~



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57 solving drug court ~~program~~.

58 ~~(f)(e)~~ Upon successful completion of the problem-solving
59 ~~drug~~ court program, the jurisdiction to which the case has been
60 transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.
61 If the defendant does not complete the problem-solving drug
62 court program successfully, the jurisdiction to which the case
63 has been transferred shall dispose of the case within the
64 guidelines of the Criminal Punishment Code.

65 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/SB 1170

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Bradley

SUBJECT: Problem-solving Courts

DATE: April 21, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</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 1170 authorizes cases in a veterans' court or a mental health court to be transferred to another county. The bill also defines the term "problem-solving court" to include drug courts, veterans' courts, and mental health courts.

This bill does not have a discernable fiscal impact.

II. Present Situation:

Transfer of Criminal Cases between Counties

Florida law authorizes the transfer of a criminal case between counties when:

- An indictment or information is pending in one county and a defendant is arrested or held in another county, if the defendant requests in writing to plead guilty or nolo contendere, waive trial in the county in which the warrant was issued, and consent to disposition of the case in another county. The prosecutor of the court in which the indictment or information is pending must also consent to the transfer.¹

¹ The formal charging document in a criminal case is known as an indictment or an information. Indictments are returned by a grand jury and presented to the court, and an information is made by a prosecutor in the absence of an indictment by the grand jury. BLACK'S LAW DICTIONARY (10th ed. 2014).

- An indictment or information is not pending and a defendant is arrested on a warrant issued in a county other than the county of arrest and requests in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and consent to disposition of the case in the county in which the defendant was arrested. The prosecuting attorney must also consent to the transfer.
- A defendant is eligible to participate in a drug court treatment program as part of a pretrial intervention program. Additionally, the drug court must consent and the following conditions must be met:
 - The authorized representatives of the drug court programs consult about the transfer;
 - The trial court accepts a plea from the defendant of nolo contendere and enters a transfer order² for the clerk to transfer the case to the county which has accepted the defendant into its drug court program; and
 - Once the transfer takes place, the clerk must schedule a hearing before the drug court for the defendant to begin the drug court program.³

If a case is transferred to a county where the defendant successfully completes a drug court program, the court that received the transfer will dispose of the case by dismissing the criminal charges. If the court finds that the defendant failed to successfully complete the program, the court may order the defendant to continue education and treatment including through substance-abuse treatment or jail-based treatment programs, or authorize the prosecution of the criminal charges.⁴

National Use of Veterans' Courts

A 2012 national survey found that 71 percent of participants in veterans' courts experienced trauma while serving in the military. More recently, in 2014 a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.⁵

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of specialty courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."⁶

Like other specialty courts, veterans' courts require the defendant to appear before the court over a specified period of time. On average, it takes 12 to 18 months for a veterans' court to dispose of a case.⁷

² The transfer order must include all documents relating to the case, including the probable cause affidavit, charging documents, witness statements, the defendant's written consent to abide by all rules of the drug court program, and the defendant's contact information. s. 910.035(5)(c), F.S.

³ Section 910.035(1), (2), and (5), F.S.

⁴ Section 948.08(6)(c), F.S.

⁵ Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

⁶ *Id.*

⁷ *Id.*

Veterans' Courts in Florida

In 2012 the Legislature passed the “T. Patt Maney Veterans’ Treatment Intervention Act” which recognized veterans’ courts in Florida.⁸ The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program to serve the special needs of veterans and servicemembers who are convicted of criminal offenses.⁹ In sentencing defendants, these specialty courts will consider whether military-related conditions, such as mental illness, traumatic brain injury, or substance abuse can be addressed through programs designed to serve the specific needs of the participant.¹⁰

As of January 2015, there were 21 veterans’ courts in 20 Florida counties.¹¹ Seven courts received funding from state general revenue. From July 2013 to October 2014, 45 participants graduated from the state-funded courts and 62 percent of the participants in state-funded veterans’ courts had a dual diagnosis of mental health issues and substance abuse.¹²

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.¹³

A defendant is eligible for release to a pretrial intervention if the defendant:

- Receives approval from the administrator of the pretrial intervention program, the victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntarily agreed to the program; and
- Knowingly and intelligently waived his or her right to a speedy trial for the term of his or her diversion.¹⁴

The criminal charges against the defendant remain pending while he or she is in a pretrial intervention program and for 90 days after the defendant is released from the program.¹⁵ The pending criminal charges can resume at any time if the program administrator or the state attorney find that the defendant is not fulfilling his or her obligations under the program or if the

⁸ Chapter 2012-159, L.O.F.

⁹ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

¹⁰ Section 394.47891, F.S.

¹¹ *Supra* note 5 at p. 2 and 8. In FY 2014-15, Alachua, Clay, Duval, Okaloosa, Orange, Pasco, and Pinellas counties received state general revenue funding to operate veterans’ courts. Other counties having veterans’ courts are Brevard, Broward, Collier, Hillsborough, Indian River, Lake, Lee, Marion, Osceola, Palm Beach, Seminole, St. Lucie, and Volusia counties. Volusia County maintains two veterans’ courts.

¹² *Id.* at 3.

¹³ A misdemeanor is punishable by up to 1 year term in a county jail and up to a \$500 to a \$1,000 fine. ss. 775.08(2) and 775.083(1)(d) and (e), F.S. A felony is punishable by a minimum of more than a 1 year term of imprisonment in a state penitentiary and fines that range from \$5,000 to \$15,000. Sections 775.08(1) and 775.083(1)(a)-(d), F.S.

¹⁴ Section 948.08(2), F.S.

¹⁵ Section 948.08(3), F.S.

public interest requires. The defendant does not have the right to a public defender unless the defendant's release is revoked and subject to incarceration if convicted.¹⁶ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.¹⁷

The purpose of a pretrial intervention program is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.¹⁸

Pretrial Veterans' Treatment Intervention Program

To be eligible to participate in a pretrial veterans' treatment intervention program, veterans can be charged with misdemeanors¹⁹ or felonies.²⁰ However, veterans cannot be charged with a disqualifying felony offense. Disqualifying offenses are serious felony offenses and include:

- Kidnapping and attempted kidnapping;
- Murder or attempted murder;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery and certain other sexual offenses against children;
- Robbery or attempted robbery;
- Burglary or attempted burglary;
- Aggravated assault;
- Aggravated stalking; and
- Treason.²¹

Prior to placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the 10 therapeutic jurisprudence principles and key components for treatment-based drug court programs.²²

Eligible veterans who successfully complete the diversion program may petition the court to expunge the arrest record of the dismissed charges under s. 943.0585, F.S.²³

¹⁶ Section 948.08(4), F.S.

¹⁷ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

¹⁸ Section 948.08(1), F.S.

¹⁹ Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

²⁰ Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs.

²¹ Section 948.06(8)(c), F.S.

²² Sections 948.08(7)(b) and 948.16(2)(b), F.S. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.

²³ Section 948.08(7)(b), F.S.

Post-adjudication Treatment Programs

Veterans and servicemembers on probation or community control who committed a crime on or after July 1, 2012, and who suffer from military-related mental illness, traumatic brain injury, or substance abuse may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.²⁴

Mental Health Courts

Florida law does not recognize the specialty court of a mental health court. However, while not codified in statute, many judicial circuits have created what are often referred to as “mental health courts.” Mental health courts are diversionary programs for persons diagnosed with a severe mental illness or developmental disability.

III. Effect of Proposed Changes:

This bill enables veterans’ courts and mental health courts to transfer cases to other counties.

The bill establishes the term “problem-solving court” to apply to the specialty courts of drug courts, veterans’ courts, and mental health courts.

The bill allows any person eligible for participation in a problem-solving court to request to have their case transferred another county. The court can request for a case to be transferred to another county as well. The court representative and the representative from the problem-solving court in the other county must agree to the transfer. If there is an agreement to transfer a case to another county, the court must enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into the problem-solving court.

The bill specifies that the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant’s successful completion of the program, order continued treatment, or authorize prosecution.

The bill also requires, when transferring a postadjudicatory problem-solving court case, the transfer order to include a copy of the charging documents in the case; the final disposition; all reports, test results, and other documents in the case; the defendant’s mailing address and telephone number; and the defendant’s written consent to abide by the rules and procedures of the receiving county’s problem-solving court.

The bill is effective on July 1, 2015.

²⁴ Section 948.21, F.S.

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

This bill requires consent from a receiving county prior to transfer. Therefore, a county does not have to accept transfer of a problem-solving court case and provide services.

For this reason, the bill does not appear to create a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may facilitate a person's participation in a veterans' court program or mental health court program by allowing a defendant to participate in a program in his or her home county instead of the county where a crime occurred.

C. Government Sector Impact:

Although the original legislation creating veterans' courts in 2012 included an appropriation, this bill does not.

The Office of the State Courts Administrator expects no judicial or court workload impact from this bill as cases would be transferred and no net additional cases would be generated. Additional orders of transfer and completion of necessary paperwork resulting from the bill may have a minimal fiscal impact on expenditures.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁵ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 10, 2015) (on file with the Senate Judiciary Committee).

VIII. Statutes Affected:

This bill substantially amends section 910.035 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 Fiscal Policy on April 20, 2015:

As recommended by the Appropriations Subcommittee on Criminal and Civil Justice, the committee substitute:

- Makes technical changes to the bill.
- Requires specific information to be included in the transfer order when transferring a problem-solving court case to another county.

B. Amendments:

None.

By Senator Bradley

7-00661A-15

20151170__

A bill to be entitled

An act relating to problem-solving courts; amending s. 910.035, F.S.; defining the term "problem-solving court"; authorizing a person eligible for participation in a problem-solving court to transfer his or her case to another county's problem-solving court under certain circumstances; making technical changes; providing an effective date.

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

Section 1. Section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea and sentence or participation in a problem-solving court.—

(1) INDICTMENT OR INFORMATION PENDING.—A defendant arrested or held in a county other than that in which an indictment or information is pending against him or her may state in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the indictment or information is pending, and to consent to disposition of the case in the county in which the defendant was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction for the county in which the

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defendant is held, and the prosecution shall continue in that county upon the information or indictment originally filed. In the event a fine is imposed upon the defendant in that county, two-thirds thereof shall be returned to the county in which the indictment or information was originally filed.

(2) INDICTMENT OR INFORMATION NOT PENDING.—A defendant arrested on a warrant issued upon a complaint in a county other than the county of arrest may state in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and to consent to disposition of the case in the county in which the defendant was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, and upon the filing of an information or the return of an indictment, the clerk of the court from which the warrant was issued shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction in the county in which the defendant was arrested, and the prosecution shall continue in that county upon the information or indictment originally filed.

(3) EFFECT OF NOT GUILTY PLEA.—If, after the proceeding has been transferred pursuant to subsection (1) or subsection (2), the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court. The defendant's statement that he or she wishes to plead guilty or nolo contendere shall not be used against the defendant.

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(4) APPEARANCE IN RESPONSE TO A SUMMONS.—For the purpose of initiating a transfer under this section, a person who appears in response to a summons shall be treated as if he or she had been arrested on a warrant in the county of such appearance.

(5) TRANSFERS FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—For purposes of this subsection, the term “problem-solving court” means a drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans’ court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or a mental health court. A ~~Any~~ person eligible for participation in a problem-solving drug court treatment program pursuant to s. 948.08(6) may be eligible to have the case transferred to a county other than that in which the charge arose if the problem-solving drug court program agrees and these procedures ~~if the following conditions~~ are met:

(a) The authorized representative of the problem-solving drug court program of the county requesting to transfer the case shall consult with the authorized representative of the problem-solving drug court program in the county to which transfer is desired.

(b) If approval for transfer is received from all parties, the trial court ~~must~~ shall accept, in the case of a pretrial problem-solving court, a plea of nolo contendere and enter a transfer order directing the clerk to transfer the case to the county that ~~which~~ has accepted the defendant into its problem-solving drug court program.

(c) The transfer order ~~must~~ shall include a copy of the probable cause affidavit, in the case of a pre-trial problem-solving court; any charging or sentencing documents in the case;

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20151170__

all reports, witness statements, test results, evidence lists, and other documents in the case; the defendant’s mailing address and phone number; and the defendant’s written consent to abide by the rules and procedures of the receiving county’s problem-solving drug court program.

(d) After the transfer takes place, the clerk shall set the matter for a hearing before the problem-solving drug court program judge, and the court shall ensure the defendant’s entry into the problem-solving drug court program.

(e) Upon successful completion of the problem-solving drug court program, the jurisdiction to which the case has been transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~. If the defendant does not complete the problem-solving drug court program successfully, the jurisdiction to which the case has been transferred shall dispose of the case within the guidelines of the Criminal Punishment Code.

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)

4 120/2015
Meeting Date

Topic _____

Bill Number 1170
(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)

April 20, 2015

Meeting Date

1170

Bill Number (if applicable)

Topic Problem Solving Courts

Amendment Barcode (if applicable)

Name Robert Trammell

Job Title General Counsel

Address 103 North Gadsden Street

Street

Tallahassee

City

Florida

State

32301

Zip

Phone 850.510.2187

Email roberttrammell45@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-15

Meeting Date

1170

Bill Number (if applicable)

Topic PROBLEM-SOLVING COURTS

Amendment Barcode (if applicable)

Name LAURA YOUNANS

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST

Street

TAL

City

FL

State

32301

Zip

Phone 294-1838

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
APPEARANCE RECORD

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

4/20/15

Meeting Date

1170

Bill Number (if applicable)

Topic Problem solving courts/defendants in specialized courts

Amendment Barcode (if applicable)

Name Eric Maclure

Job Title Deputy State Courts Administrator

Address 500 South Duval Street

Phone 850-488-3733

Street

Tallahassee

FL

32399

City

State

Zip

Email macluree@flcourts.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing State Courts System/Substance Abuse Task Force

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4-20-15

Meeting Date

1170

Bill Number (if applicable)

both

Amendment Barcode (if applicable)

Topic

SPECIALTY COURTS

Name

DAN HENDRICKSON

Job Title

Legislative Liaison

Address

319 E PARK Ave

Phone

850 570 1967

Street

TALLAHASSEE

FL

32302

Email

danhendrickson@comcast.net

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Big Bend Mental Health Coalition, NFI Veterans Standdown

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 13, 2015

I respectfully request that **Senate Bill # 1170**, relating to Problem-solving Courts, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 7



128966

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Before line 49

insert:

Section 1. Section 1013.385, Florida Statutes, is created to read:

1013.385 School district construction flexibility.-

(1) A district school board, with a supermajority vote at a public meeting that begins no earlier than 5 p.m., may adopt a resolution to implement one or more of the exceptions to the



128966

educational facilities construction requirements provided in this section. Before voting on the resolution, a district school board must conduct a cost-benefit analysis prepared according to a professionally accepted methodology that describes how each exception selected by the district school board achieves cost savings, improves the efficient use of school district resources, and impacts the life-cycle costs and life span, as applicable, for each educational facility to be constructed, as applicable, and demonstrates that implementation of the exception will not compromise student safety or the quality of student instruction. The district school board must conduct at least one public workshop to discuss and receive public comment on the proposed resolution and cost-benefit analysis, which must begin no earlier than 5 p.m. and may occur at the same meeting at which the resolution will be voted upon.

(2) A resolution adopted under this section may propose implementation of exceptions to requirements of the uniform statewide building code for the planning and construction of public educational and ancillary plants adopted pursuant to ss. 553.73 and 1013.37 relating to:

(a) Interior nonload-bearing walls, by approving the use of fire-rated wood stud walls in new construction or remodeling for interior nonload-bearing wall assemblies that will not be exposed to water or located in wet areas.

(b) Walkways, roadways, driveways, and parking areas, by approving the use of designated, stabilized, and well-drained gravel or grassed student parking areas.

(c) Standards for relocatables used as classroom space, as specified in s. 1013.20, by approving construction



128966

specifications for installation of relocatable buildings that do not have covered walkways leading to the permanent buildings onsite.

(d) Site lighting, by approving construction specifications regarding site lighting which:

1. Do not provide for lighting of gravel or grassed auxiliary or student parking areas.

2. Provide lighting for walkways, roadways, driveways, paved parking lots, exterior stairs, ramps, and walkways from the exterior of the building to a public walkway through installation of a timer that is set to provide lighting only during periods in which the site is occupied.

3. Allow lighting for building entrances and exits to be installed with a timer that is set to provide lighting only during periods in which the building is occupied. The minimum illumination level at single-door exits may be reduced to no less than 1 footcandle.

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

And the title is amended as follows:

Delete lines 2 - 3

and insert:

An act relating to public educational facilities;
creating s. 1013.385, F.S.; providing for school
district construction flexibility; authorizing
exceptions to educational facilities construction
requirements under certain circumstances; creating s.
215.165, F.S.;



402642

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Before line 49

insert:

Section 1. Subsection (4) of section 1013.40, Florida Statutes, is amended to read:

1013.40 Planning and construction of Florida College System institution facilities; property acquisition.—

(4) The campus of a Florida College System institution within a municipality designated as an area of critical state



402642

concern, as defined in s. 380.05, and having a comprehensive plan and land development regulations containing a building permit allocation system that limits annual growth, may construct dormitories for up to 400 ~~100~~ beds for Florida College System institution students. Such dormitories are ~~shall be~~ exempt from the building permit allocation system and may be constructed up to 45 feet in height if the dormitories provided ~~that they~~ are otherwise consistent with the comprehensive plan, the Florida College System institution has a hurricane evacuation plan that requires all dormitory occupants to be evacuated 48 hours in advance of tropical force winds, and ~~that~~ transportation is provided for dormitory occupants during an evacuation.

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

And the title is amended as follows:

Delete lines 2 - 3

and insert:

An act relating to public educational facilities;
amending s. 1013.40, F.S.; increasing the number of
beds that may be in a dormitory constructed by certain
Florida College System institutions; creating s.
215.165, F.S.;



479116

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 97
and insert:
(4) Voluntary contributions become state funds at the
moment of collection by a participating business and are not
receipts of the participating business. The department shall
deposit voluntary contributions

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

And the title is amended as follows:



479116

12 Delete line 13
13 and insert:
14 specified timeframe; providing that contributions
15 become state funds at the moment of collection by a
16 participating business; requiring the department to



537222

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 138
and insert:
first \$1,200 in voluntary contributions remitted on each return
to the department, up to a maximum deduction of \$30 per return.

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

And the title is amended as follows:

Delete line 37
and insert:



537222

12 percentage, up to a certain maximum amount, of the
13 voluntary contributions collected to



951052

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 167 and 168
insert:

Section 4. For the 2015-2016 fiscal year, the sums of \$59,421 in recurring funds and \$136,065 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Revenue for the purpose of implementing the provisions of this act.



951052

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

13 And the title is amended as follows:

14 Delete line 45

15 and insert:

16 expiration; providing an appropriation; providing an
17 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: PCS/CS/SB 118 (454494)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Education); Finance and Tax Committee; and Senators Hays and Gaetz

SUBJECT: Voluntary Contributions for Public Education Facilities

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Hrdlicka</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 118 sets up a process for businesses to solicit and collect voluntary contributions for the construction and maintenance of public education facilities. Participating businesses are required to remit the contributions to the Department of Revenue (DOR) for deposit into the Public Education Capital Outlay and Debt Service (PECO) Trust Fund.

The bill authorizes the Department of Revenue to audit voluntary contribution remittances by a participating business if the department is auditing the business for taxes. The participating business is given 90 days to correct any deficiencies prior to the imposition of penalty and interest.

The bill authorizes participating businesses to retain 2.5 percent of voluntary contributions remitted to the DOR as compensation for maintaining records, filing returns, and properly accounting for and remitting contributions.

The Revenue Estimating Conference estimates that the bill will increase PECO Trust Fund receipts by an indeterminate amount.

II. Present Situation:

Voluntary Contributions for Public Education Facilities

Currently, the state does not provide a mechanism for a business to collect and remit voluntary contributions for public education facilities.

Tax Audits, Interest, and Collection Allowances for Dealers

The Department of Revenue (DOR) is charged with auditing tax dealers and conducting other enforcement activities related to the taxes that it administers.¹

When a taxpayer fails to remit taxes due, the deficiency is typically subject to interest and penalty.² Interest varies by tax, but a common interest rate is the prime rate plus 4 percent, which is required to be periodically calculated by the executive director of the DOR under s. 213.235, F.S. The penalty is often 10 percent per month, up to a maximum of 50 percent.³ Deficiencies remaining after 90 days can also be subject to a 10 percent administrative collection processing fee under s. 213.24, F.S.

To compensate dealers for the burden of complying with collection and remittance duties, dealers are permitted to retain a portion of certain taxes that they collect. For instance, s. 212.12(1)(a)1., F.S., authorizes sales tax dealers to retain 2.5 percent of the first \$1,200 of tax due.

III. Effect of Proposed Changes:

Section 1 creates s. 215.165, F.S., authorizing a business to solicit and collect voluntary contributions from its customers for the construction and maintenance of public education facilities. In order to participate, a business must register as a participating business with the DOR. To register, the business is required to provide certain identifying information, including the business name, physical and mailing addresses, telephone number, e-mail address, and federal employer identification number. Registration for the voluntary contributions program is separate from registration for tax purposes.

Once registered, a participating business may solicit voluntary contributions by any means, including point of sale solicitation and through monthly invoices or billing statements.

A participating business that collects voluntary contributions must file a return and remit the contributions to the DOR by the 20th day of the following calendar month. If the 20th day is a Saturday, Sunday, or legal holiday, the return and contributions are due on the next business day. Returns must include the business's identifying information, as well as the amount of voluntary contributions collected, the amount being remitted, and any applicable adjustments. If no contributions are collected, no return is required. Returns may be filed and contributions may be paid by mail or electronically.

¹ Section 20.21(2)(c) and (d), F.S.

² See *e.g.* s. 212.12, F.S. (imposing interest and various penalties related to sales tax deficiencies).

³ Section 212.12, F.S.

If the DOR receives a return from a business that has not registered as a participating business, the DOR must register the business as a participating business with the information included with the return.

If a participating business makes an error in a remittance, it may correct the error on a future filing.

The DOR must deposit the contributions into the PECO Trust Fund.

The DOR may adopt rules establishing forms and procedures for remitting voluntary contributions. New forms may be created or the required information may be included on existing returns.

The bill provides that the DOR may only audit voluntary contributions or undertake enforcement proceedings if the DOR is already auditing the participating business for another area of tax, and for purposes of audit, the only the tax-related provisions that apply to the participating business are the DOR's authority to audit, the DOR's authority to make assessments, and the duty to maintain records provisions of chs. 212 and 213, F.S.

The bill provides that if the DOR finds a deficiency in a participating business's remittance of voluntary contributions, the participating business has 90 days to pay the deficiency, after which the deficiency accrues interest as imposed under s. 213.235, F.S., as well as the penalty imposed under s. 212.12, F.S. However, the administrative collection processing fee imposed by s. 213.24, F.S., does not apply.

The bill authorizes participating businesses to retain 2.5 percent of the voluntary contributions remitted to the DOR as compensation for maintaining books and records, filing returns, and properly accounting for and remitting voluntary contributions.

Section 2 amends s. 1013.65, F.S., to include voluntary contributions remitted under s. 216.165, F.S., as a source of revenue for the PECO Trust Fund.

Section 3 authorizes the DOR to adopt emergency rules to implement the act.

Section 4 provides an effective date of January 1, 2016.

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 and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill will increase PECO Trust Fund receipts by an indeterminate amount.

B. Private Sector Impact:

Participation is voluntary. Businesses that participate will be required to file returns and remit collections to the DOR.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOR may adopt rules establishing forms and procedures for remitting voluntary contributions.

VIII. Statutes Affected:

This bill creates section 215.165 of the Florida Statutes.

This bill substantially amends section 1013.65 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/CS by Appropriations Subcommittee on Education on April 2, 2015:

The committee substitute:

- Authorizes the Department of Revenue (DOR) to conduct audits of voluntary contributions if the DOR is already auditing the participating business.
- Imposes penalty and interest on deficiencies found by the DOR if unpaid after 90 days.
- Authorizes participating businesses to retain a collection allowance of 2.5 percent of voluntary contributions remitted to the DOR.

CS by Finance and Tax on March 16, 2015:

The CS adds the following administrative provisions:

- A participating business will receive a certificate of registration specific to participation in the voluntary contributions program.
- A participating business need not file a return for a period when no contributions were collected.
- A participating business may correct an error with a prior remittance by adjusting a future return.
- If the DOR receives a return from an unregistered business, the DOR must register the business using the information on the return.

In addition, the DOR's rulemaking authority is made discretionary and the effective date of the bill is changed to January 1, 2016.

B. Amendments:

None.



454494

594-04031-15

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to voluntary contributions for public education facilities; creating s. 215.165, F.S.; authorizing a participating business that registers with the Department of Revenue to solicit and collect contributions from its customers for the construction and maintenance of public education facilities; providing registration requirements; requiring the department to issue a certificate and taxpayer identification number to a participating business; requiring a participating business to file a return and remit contributions to the department within a specified timeframe; requiring the department to deposit contributions into the Public Education Capital Outlay and Debt Service Trust Fund; authorizing the department to adopt rules establishing forms and procedures; providing that certain provisions of law regarding the authority to audit and make assessments and the maintenance of books and records apply to the collection and remittance of voluntary contributions; providing that certain provisions of law regarding interest and penalties, estimated tax liability, and a dealer's credit for collections do not apply to such collections and remittances; authorizing the department to conduct an audit of voluntary contributions or undertake enforcement proceedings under certain circumstances;



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requiring the department to provide written notification to a participating business if the department finds during an audit that voluntary contributions were not remitted; providing for the remittance of unremitted contributions without penalty or interest within a specified period; providing for penalties and interest on contributions that are not remitted within the specified period; authorizing participating businesses to deduct a specified percentage of the voluntary contributions collected to compensate themselves for certain expenses; amending s. 1013.65, F.S.; including voluntary contributions as a source of funding for the Public Education Capital Outlay and Debt Service Trust Fund; authorizing the executive director of the department to adopt emergency rules; providing that such rules are effective for a specified period; providing for expiration; providing an effective date.

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

Section 1. Section 215.165, Florida Statutes, is created to read:

215.165 Voluntary contributions for public education facilities.—A business that registers with the Department of Revenue as a participating business may solicit and collect voluntary contributions from its customers for the construction and maintenance of public education facilities. Such contributions may be solicited and collected through any means,



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57 including point-of-sale transactions and monthly customer
58 invoices.

59 (1) To register as a participating business, the business
60 must provide the department with its name, physical address,
61 mailing address, telephone number, e-mail address, and federal
62 employer identification number. Upon receipt of this
63 information, the department shall issue to the participating
64 business a certificate indicating that the business is
65 registered with the department for the collection of voluntary
66 contributions and providing a taxpayer identification number to
67 be used by the business for returns under this section. The
68 department may issue this certificate electronically or by
69 United States mail.

70 (2) By the 20th day of each month that immediately follows
71 a month in which voluntary contributions were collected, a
72 participating business shall file a return with, and remit the
73 contributions collected during the prior month to, the
74 department. If the 20th day is a Saturday, Sunday, or legal
75 holiday, the return and voluntary contributions are due on the
76 next business day. A participating business may file a return
77 that is initiated by electronic means and may remit voluntary
78 contributions by electronic funds transfer. A return is not
79 required for a period in which voluntary contributions were not
80 collected. A participating business may correct an error in a
81 prior remittance by adjusting the amount remitted on a future
82 return.

83 (3) (a) A participating business shall provide the following
84 information on each return:

85 1. The information required under subsection (1).



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86 2. The taxpayer identification number issued by the
87 department.

88 3. The amount of voluntary contributions collected and the
89 amount of any adjustment to such contributions.

90 4. The amount of voluntary contributions being remitted.

91 (b) If the department receives a return from a business
92 that has not registered as a participating business, the
93 department shall deposit the voluntary contributions pursuant to
94 subsection (4) and shall register the business as a
95 participating business with the information included on the
96 return.

97 (4) The department shall deposit voluntary contributions
98 remitted under this section into the Public Education Capital
99 Outlay and Debt Service Trust Fund.

100 (5) The department may adopt rules to establish forms and
101 procedures for filing returns and remitting voluntary
102 contributions, which may include the use of existing or new
103 forms.

104 (6) The provisions of chapter 212 regarding the authority
105 to audit and make assessments and the maintenance of books and
106 records apply to the collection and remittance of voluntary
107 contributions by participating businesses under this section.
108 The provisions of chapters 212 and 213 regarding interest and
109 penalties, estimated tax liability, and a dealer's credit for
110 collecting taxes or fees do not apply to such collections and
111 remittances, except as provided in paragraphs (a) and (b). The
112 department may not conduct an audit of voluntary contributions
113 or undertake enforcement proceedings under this subsection
114 unless the participating business is otherwise undergoing an



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audit for another area of tax.

(a) If the department engages in an audit of a participating business under this subsection and finds that voluntary contributions received by the participating business were not remitted to the department, the department shall provide written notification to the participating business of the deficiency. The participating business may remit the unremitted contributions to the department at any time up to 90 days after the department provides written notification of the deficiency without incurring any penalty or interest on the unremitted contributions. If the unremitted contributions are not provided to the department for deposit within the 90-day period, the unremitted amount is subject to the penalty imposed under s. 212.12 and interest imposed under s. 213.235, beginning with the 91st day and continuing until the collected amounts are remitted. For purposes of this subsection, the administrative collection processing fee imposed under s. 213.24 does not apply.

(b) For the purpose of compensating participating businesses for the maintenance of books and records, the filing of returns, and the proper accounting and remitting of contributions, participating businesses collecting voluntary contributions under this section may deduct 2.5 percent of the amount of voluntary contributions remitted to the department.

Section 2. Paragraph (a) of subsection (2) of section 1013.65, Florida Statutes, is amended to read:

1013.65 Educational and ancillary plant construction funds; Public Education Capital Outlay and Debt Service Trust Fund; allocation of funds.—



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(2) (a) The Public Education Capital Outlay and Debt Service Trust Fund shall be comprised of the following sources, which are hereby appropriated to the trust fund:

1. Proceeds, premiums, and accrued interest from the sale of public education bonds and that portion of the revenues accruing from the gross receipts tax as provided by s. 9(a)(2), Art. XII of the State Constitution, as amended, interest on investments, and federal interest subsidies.

2. General revenue funds appropriated to the fund for educational capital outlay purposes.

3. All capital outlay funds previously appropriated and certified forward pursuant to s. 216.301.

4. Deposits from voluntary contributions collected pursuant to s. 215.165.

Section 3. (1) The executive director of the Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing this act.

(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires July 1, 2018.

Section 4. This act shall take effect January 1, 2016.

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 118

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Education); Finance and Tax Committee; and Senators Hays and Gaetz

SUBJECT: Voluntary Contributions for Public Education Facilities

DATE: April 21, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: 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/SB 118 sets up a process for businesses to solicit and collect voluntary contributions for the construction and maintenance of public education facilities. Participating businesses are required to remit the contributions to the Department of Revenue (DOR) for deposit into the Public Education Capital Outlay and Debt Service (PECO) Trust Fund.

The bill authorizes the Department of Revenue to audit voluntary contribution remittances by a participating business if the department is auditing the business for taxes. The participating business is given 90 days to correct any deficiencies prior to the imposition of penalty and interest.

The bill authorizes participating businesses to retain 2.5 percent of the first \$1,200 in voluntary contributions remitted on each return to the DOR, up to a maximum of \$30, as compensation for maintaining records, filing returns, and properly accounting for and remitting contributions.

The Revenue Estimating Conference estimates that the bill will increase PECO Trust Fund receipts by an indeterminate amount. For Fiscal Year 2015-2016, the bill appropriates \$59,421 in recurring funds and \$136,065 in nonrecurring funds from the General Revenue Fund to the DOR.

II. Present Situation:

Voluntary Contributions for Public Education Facilities

Currently, the state does not provide a mechanism for a business to collect and remit voluntary contributions for public education facilities.

Tax Audits, Interest, and Collection Allowances for Dealers

The Department of Revenue (DOR) is charged with auditing tax dealers and conducting other enforcement activities related to the taxes that it administers.¹

When a taxpayer fails to remit taxes due, the deficiency is typically subject to interest and penalty.² Interest varies by tax, but a common interest rate is the prime rate plus 4 percent, which is required to be periodically calculated by the executive director of the DOR under s. 213.235, F.S. The penalty is often 10 percent per month, up to a maximum of 50 percent.³ Deficiencies remaining after 90 days can also be subject to a 10 percent administrative collection processing fee under s. 213.24, F.S.

To compensate dealers for the burden of complying with collection and remittance duties, dealers are permitted to retain a portion of certain taxes that they collect. For instance, s. 212.12(1)(a)1., F.S., authorizes sales tax dealers to retain 2.5 percent of the first \$1,200 of tax due.

III. Effect of Proposed Changes:

Section 1 creates s. 215.165, F.S., authorizing a business to solicit and collect voluntary contributions from its customers for the construction and maintenance of public education facilities. In order to participate, a business must register as a participating business with the DOR. To register, the business is required to provide certain identifying information, including the business name, physical and mailing addresses, telephone number, e-mail address, and federal employer identification number. Registration for the voluntary contributions program is separate from registration for tax purposes.

Once registered, a participating business may solicit voluntary contributions by any means, including point of sale solicitation and through monthly invoices or billing statements.

A participating business that collects voluntary contributions must file a return and remit the contributions to the DOR by the 20th day of the following calendar month. If the 20th day is a Saturday, Sunday, or legal holiday, the return and contributions are due on the next business day. Returns must include the business's identifying information, as well as the amount of voluntary contributions collected, the amount being remitted, and any applicable adjustments. If no contributions are collected, no return is required. Returns may be filed and contributions may be

¹ Section 20.21(2)(c) and (d), F.S.

² See *e.g.* s. 212.12, F.S. (imposing interest and various penalties related to sales tax deficiencies).

³ Section 212.12, F.S.

paid by mail or electronically. If a participating business makes an error in a remittance, it may correct the error on a future filing.

If the DOR receives a return from a business that has not registered as a participating business, the DOR must register the business as a participating business with the information included with the return.

The funds become state funds at the time of collection and not receipts of a participating business. The DOR must deposit the contributions into the PECO Trust Fund.

The DOR may adopt rules establishing forms and procedures for remitting voluntary contributions. New forms may be created or the required information may be included on existing returns.

The bill provides that the DOR may only audit voluntary contributions or undertake enforcement proceedings if the DOR is already auditing the participating business for another area of tax, and for purposes of audit, the only the tax-related provisions that apply to the participating business are the DOR's authority to audit, the DOR's authority to make assessments, and the duty to maintain records provisions of chs. 212 and 213, F.S.

The bill provides that if the DOR finds a deficiency in a participating business's remittance of voluntary contributions, the participating business has 90 days to pay the deficiency, after which the deficiency accrues interest as imposed under s. 213.235, F.S., as well as the penalty imposed under s. 212.12, F.S. However, the administrative collection processing fee imposed by s. 213.24, F.S., does not apply.

The bill authorizes participating businesses to retain 2.5 percent of the first \$1,200 in the voluntary contributions remitted on each return to the DOR, up to a maximum of \$30 per return, as compensation for maintaining books and records, filing returns, and properly accounting for and remitting voluntary contributions.

Section 2 amends s. 1013.65, F.S., to include voluntary contributions remitted under s. 216.165, F.S., as a source of revenue for the PECO Trust Fund.

Section 3 authorizes the DOR to adopt emergency rules to implement the act.

Section 4 appropriates \$59,421 in recurring funds and \$136,065 in nonrecurring funds from the General Revenue Fund to the DOR for Fiscal Year 2015-2016 to implement the bill.

Section 5 provides an effective date of January 1, 2016.

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 and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The Revenue Estimating Conference estimates that the bill will increase PECO Trust Fund receipts by an indeterminate amount.

B. Private Sector Impact:

Participation is voluntary. Businesses that participate will be required to file returns and remit collections to the DOR.

C. Government Sector Impact:

The bill appropriates \$59,421 in recurring funds and \$136,065 in nonrecurring funds from the General Revenue Fund to the DOR for Fiscal Year 2015-2016. The bill is effective on January 1, 2016.

The DOR reported that for Fiscal Year 2015-2016 it would need \$53,940 in nonrecurring funds to implement changes to the SUNTAX system; \$55,000 in nonrecurring funds for public announcements for the program; and, related to return and revenue processing, \$27,125 in nonrecurring funds to contract with a vendor to develop a new website for the program for filing and paying electronically and \$29,711 in recurring funds to pay processing and transaction costs (the annual recurring cost is \$59,421).⁴

VI. Technical Deficiencies:

None.

⁴ DOR, 2015 Legislative Bill Analysis: CS/SB 118 (April 16, 2015).

VII. Related Issues:

The DOR may adopt rules establishing forms and procedures for remitting voluntary contributions.

VIII. Statutes Affected:

This bill creates section 215.165 of the Florida Statutes.

This bill substantially amends section 1013.65 of the Florida Statutes.

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

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

CS/CS by Fiscal Policy on April 20, 2015:

As recommended by the Appropriations Subcommittee on Education, the committee substitute:

- Authorizes the Department of Revenue (DOR) to conduct audits of voluntary contributions if the DOR is already auditing the participating business.
- Imposes penalty and interest on deficiencies found by the DOR if unpaid after 90 days.
- Authorizes participating businesses to retain a collection allowance of 2.5 percent of voluntary contributions remitted to the DOR.

The CS also:

- Clarifies that voluntary contributions become state funds at the moment of collection by a participating business and are not receipts of that business.
- Restricts the administrative fee for a participating business retain to 2.5 percent *of the first \$1,200* in voluntary contributions remitted on *each return* to the DOR, up to a maximum of \$30 per return.
- Provides an appropriation to the DOR to implement the bill.

CS by Finance and Tax on March 16, 2015:

The CS adds the following administrative provisions:

- A participating business will receive a certificate of registration specific to participation in the voluntary contributions program.
- A participating business need not file a return for a period when no contributions were collected.
- A participating business may correct an error with a prior remittance by adjusting a future return.
- If the DOR receives a return from an unregistered business, the DOR must register the business using the information on the return.

In addition, the DOR's rulemaking authority is made discretionary and the effective date of the bill is changed to January 1, 2016.

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 Finance and Tax; and Senators Hays and Gaetz

593-02340-15

2015118c1

A bill to be entitled

An act relating to voluntary contributions for public education facilities; creating s. 215.165, F.S.; authorizing a participating business that registers with the Department of Revenue to solicit and collect contributions from its customers for the construction and maintenance of public education facilities; providing registration requirements; requiring the department to issue a certificate and taxpayer identification number to a participating business; requiring a participating business to file a return and remit contributions to the department within a specified timeframe; requiring the department to deposit contributions into the Public Education Capital Outlay and Debt Service Trust Fund; authorizing the department to adopt rules establishing forms and procedures; providing that voluntary contributions are not subject to audit by the department; amending s. 1013.65, F.S.; including voluntary contributions as a source of funding for the Public Education Capital Outlay and Debt Service Trust Fund; authorizing the executive director of the department to adopt emergency rules; providing that such rules are effective for a specified period; providing for expiration; providing an effective date.

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

Section 1. Section 215.165, Florida Statutes, is created to

Page 1 of 4

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

593-02340-15

2015118c1

read:

215.165 Voluntary contributions for public education facilities.—A business that registers with the Department of Revenue as a participating business may solicit and collect voluntary contributions from its customers for the construction and maintenance of public education facilities. Such contributions may be solicited and collected through any means, including point-of-sale transactions and monthly customer invoices.

(1) To register as a participating business, the business must provide the department with its name, physical address, mailing address, telephone number, e-mail address, and federal employer identification number. Upon receipt of this information, the department shall issue to the participating business a certificate indicating that the business is registered with the department for the collection of voluntary contributions and providing a taxpayer identification number to be used by the business for returns under this section. The department may issue this certificate electronically or by United States mail.

(2) By the 20th day of each month that immediately follows a month in which voluntary contributions were collected, a participating business shall file a return with, and remit the contributions collected during the prior month to, the department. If the 20th day is a Saturday, Sunday, or legal holiday, the return and voluntary contributions are due on the next business day. A participating business may file a return that is initiated by electronic means and may remit voluntary contributions by electronic funds transfer. A return is not

Page 2 of 4

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

593-02340-15

2015118c1

59 required for a period in which voluntary contributions were not
 60 collected. A participating business may correct an error in a
 61 prior remittance by adjusting the amount remitted on a future
 62 return.

63 (3) (a) A participating business shall provide the following
 64 information on each return:

65 1. The information required under subsection (1).

66 2. The taxpayer identification number issued by the
 67 department.

68 3. The amount of voluntary contributions collected and the
 69 amount of any adjustment to such contributions.

70 4. The amount of voluntary contributions being remitted.

71 (b) If the department receives a return from a business
 72 that has not registered as a participating business, the
 73 department shall deposit the voluntary contributions pursuant to
 74 subsection (4) and shall register the business as a
 75 participating business with the information included on the
 76 return.

77 (4) The department shall deposit voluntary contributions
 78 remitted under this section into the Public Education Capital
 79 Outlay and Debt Service Trust Fund.

80 (5) The department may adopt rules to establish forms and
 81 procedures for filing returns and remitting voluntary
 82 contributions, which may include the use of existing or new
 83 forms.

84 (6) Voluntary contributions collected and remitted by a
 85 participating business under this section are not subject to
 86 audit by the department.

87 Section 2. Paragraph (a) of subsection (2) of section

593-02340-15

2015118c1

88 1013.65, Florida Statutes, is amended to read:

89 1013.65 Educational and ancillary plant construction funds;
 90 Public Education Capital Outlay and Debt Service Trust Fund;
 91 allocation of funds.—

92 (2) (a) The Public Education Capital Outlay and Debt Service
 93 Trust Fund shall be comprised of the following sources, which
 94 are hereby appropriated to the trust fund:

95 1. Proceeds, premiums, and accrued interest from the sale
 96 of public education bonds and that portion of the revenues
 97 accruing from the gross receipts tax as provided by s. 9(a)(2),
 98 Art. XII of the State Constitution, as amended, interest on
 99 investments, and federal interest subsidies.

100 2. General revenue funds appropriated to the fund for
 101 educational capital outlay purposes.

102 3. All capital outlay funds previously appropriated and
 103 certified forward pursuant to s. 216.301.

104 4. Deposits from voluntary contributions collected pursuant
 105 to s. 215.165.

106 Section 3. (1) The executive director of the Department of
 107 Revenue is authorized, and all conditions are deemed to be met,
 108 to adopt emergency rules pursuant to s. 120.54(4), Florida
 109 Statutes, for the purpose of implementing this act.

110 (2) Notwithstanding any other provision of law, emergency
 111 rules adopted pursuant to subsection (1) are effective for 6
 112 months after adoption and may be renewed during the pendency of
 113 procedures to adopt permanent rules addressing the subject of
 114 the emergency rules.

115 (3) This section expires July 1, 2018.

116 Section 4. This act shall take effect January 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15
Meeting Date

118
Bill Number (if applicable)

402642
Amendment Barcode (if applicable)

Topic Housing - State colleges

Name John Wayne Smith

Job Title Lobbyist

Address 301 S. Bronough St. Suite 580
Street

Tallahassee FL 32301
City State Zip

Phone 850-570-7242

Email john@peebles-smith.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Keys Community College Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-20-15

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

118

Meeting Date

Bill Number (if applicable)

Topic Voluntary cont. to PECO

Amendment Barcode (if applicable)

Name Jon Costello

Job Title lobbyist

Address 119 S. Monroe
Street

Phone 850-766-8654

Tallahassee FL 32301
City State Zip

Email Jon@outledge-ec.europa.eu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 120 12015

Meeting Date

Topic _____

Bill Number 118
(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

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 118 – Voluntary Contributions for Public Education Facilities

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".

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
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 7080

INTRODUCER: Criminal Justice Committee

SUBJECT: Law Enforcement Officer Body Cameras

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Erikson	Cannon		CJ Submitted as Committee Bill
1. Jones	Hrdlicka	FP	Favorable

I. Summary:

SB 7080 creates s. 943.1715, F.S., pertaining to body cameras. The bill requires law enforcement agencies that use body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The bill specifies what must be included in those policies and procedures, such as general guidelines for the proper use, maintenance, and storage of body cameras and limitations on recording law enforcement-related encounters and activities.

The bill also requires these agencies to conduct training, retain audio and video data recorded by body cameras, and perform periodic review of practices.

The bill specifies that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras.

II. Present Situation:

Body-Worn Cameras

Body-Worn Cameras (BWCs) or “body cameras” are currently being used or considered for use by many law enforcement agencies. BWCs are mobile audio and video devices worn by officers to record what they see and hear. They can record officer interactions that previously could only be captured by in-car or interrogation room camera systems.¹

¹ National Institute of Justice, *A Primer on Body-Worn Cameras for Law Enforcement*, p. 5 (September 2012), available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf> (last viewed on April 13, 2015).

One recent study of BWCs noted some of the perceived benefits and perceived concerns and problems regarding their use:

Perceived Benefits:

- BWCs increase transparency and citizen views of police legitimacy;
- BWCs have a civilizing effect, resulting in improved behavior among both police officers and citizens;
- BWCs have evidentiary benefits that expedite resolution of citizen complaints or lawsuits and that improve evidence for arrest and prosecution; and
- BWCs provide opportunities for police training.²

Perceived Concerns and Problems:

- BWCs create concerns for citizen and police officer privacy;
- BWCs create concerns for officer health and safety;
- BWCs require investments in terms of training and policy development; and
- BWCs require substantial commitment of finances, resources, and logistics.³

Florida Police Chiefs Association staff report 13 Florida police departments that currently use BWCs⁴ and 9 Florida police departments that have implemented pilot programs to test the use of BWCs.⁵ The media has reported that the Flagler County Sheriff's Office is using BWCs⁶ and the Pasco County Sheriff has indicated an intent to purchase BWCs.⁷ Other Florida sheriffs' offices may be considering whether to use BWCs.

On December 1, 2014, the White House announced that President Barack Obama was proposing "a three-year \$263 million investment package that will increase use of body-worn cameras, expand training for law enforcement agencies (LEAs), add more resources for police department reform, and multiply the number of cities where [Department of Justice] facilitates community and local LEA engagement." The initiative includes a program that would provide a 50 percent match to state or local governments that purchase body worn cameras and requisite storage.⁸

² White, Michael D., 2014, *Police Officer Body-Worn Cameras Assessing the Evidence*, Washington, DC: Office of Community Oriented Policing Services, p. 6-7 (2014), available at <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> (last viewed on April 13, 2015).

³ *Id.* at 7-9.

⁴ Police departments: Eustis; City of Miami; Cocoa; Daytona Beach; Daytona Beach Shores; Florida State University (motorcycle officers); Gulfport; Palm Bay (SWAT Officers); Pensacola; West Melbourne; Windermere; Miami Beach; and Rockledge.

⁵ Police departments: Clearwater; Ft. Myers; Marianna; Orlando (University of South Florida study); Plant City; Sarasota; St. Petersburg; Tampa; and West Palm Beach. (Information is on file with the Senate Criminal Justice Committee staff).

⁶ Metz, Claire. "Flagler County deputies fitted with new body cameras." WESH.com (Orlando), (August 28, 2014), available at <http://www.wesh.com/flagler-county-deputies-fitted-with-new-body-cameras/27779830> (last viewed on April 13, 2015).

⁷ Behrman, Elizabeth. "Local law enforcement split on body cameras." *The Tampa Tribune*, (December 26, 2014), available at <http://tbo.com/news/crime/-20141226/> (last viewed on April 13, 2015).

⁸ The White House, Office of the Press Secretary, *FACT SHEET: Strengthening Community Policing*, (December 1, 2014) available at <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing> (last viewed on April 13, 2015).

Currently, Florida law does not require law enforcement agencies to have policies in place that govern the use of such technology.

Interception of Communications

Chapter 934, F.S., governs the security of various types of communications in the state, and limits the ability to intercept, monitor, and record such communications. Chapter 934, F.S., also provides for criminal penalties⁹ and civil remedies¹⁰ when communications are intercepted in violation of the chapter. For example, it is a third degree felony¹¹ to intentionally “intercept”¹² an “oral communication.”¹³

The statute provides for a number of exceptions to this general prohibition.¹⁴ For example, it is lawful for:

- A law enforcement officer to intercept an oral communication if the officer is a party to the communication or one of the parties to the communication has given prior consent to the interception and the purpose of the interception is to obtain evidence of a criminal act;¹⁵ or
- A person to intercept an oral communication when all of the parties to the communication have given prior consent to the interception.¹⁶

The contents of an intercepted communication and any evidence derived from the contents may not be received in evidence in court proceedings and other specified proceedings if the disclosure of the information would violate ch. 934, F.S.¹⁷

Florida state courts have not addressed whether a body camera recording that records “oral communications” constitutes an “intercept” within the meaning of that term in s. 934.02, F.S. However, the Florida Supreme Court has previously held that other recordings of “oral communications” constituted an “intercept.”¹⁸ Body camera recordings are not expressly addressed in any existing exception in ch. 934, F.S., or otherwise excluded from ch. 934, F.S. Assuming body camera recordings are an “intercept,” some recordings might fall under an existing exception but others might not. Absent the recording falling under a current exception or otherwise being excluded from ch. 934, F.S., it might be in violation of ch. 934, F.S., and therefore inadmissible.

⁹ Sections 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.

¹⁰ Section 934.05, F.S.

¹¹ A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. ss. 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. s. 775.082(10), F.S.

¹² Section 934.02(3), F.S., defines “intercept” as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

¹³ Sections 934.03(1)(a) and (4)(a), F.S. Section 934.02(2), F.S., defines “oral communication” as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

¹⁴ Section 934.03(2)(a)-(j), F.S.

¹⁵ Section 934.03(2)(c), F.S.

¹⁶ Section 934.03(2)(d), F.S.

¹⁷ Section 934.06, F.S.

¹⁸ See *Guilder v. State*, 899 So. 2d 412 (Fla. 4th DCA 2005).

III. Effect of Proposed Changes:

The bill creates s. 943.1718, F.S., pertaining to body cameras.

The bill defines a “body camera” as a portable electronic recording device that is worn on a law enforcement officer’s person and records audio and video data of the officer’s law-enforcement-related encounters and activities.

A “law enforcement agency” is defined as an agency that has a primary mission of preventing and detecting crime and enforcing the penal, criminal, traffic, and motor vehicle laws of the state and in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S. A “law enforcement officer” is any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.¹⁹

The bill requires law enforcement agencies that use body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras.
- Any limitations on which law enforcement officers are permitted to wear body cameras.
- Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires a law enforcement agency that permits its law enforcement officers to wear body cameras to:

- Ensure that all personnel who wear, use, maintain, or store body cameras are trained in the law enforcement agency’s policies and procedures concerning them.
- Ensure that all personnel who use, maintain, store, or release audio or video data recorded by body cameras are trained in the law enforcement agency’s policies and procedures.
- Retain audio and video data recorded by body cameras in accordance with the requirements of s. 119.021, F.S. (maintenance of public records), except as otherwise provided by law.
- Perform a periodic review of actual agency body camera practices to ensure conformity with the agency’s policies and procedures.

The bill provides that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras. Therefore, a body camera recording cannot be considered an “intercept” and the general prohibition against interception of wire, oral, and electronic communications does not apply to such recordings.

¹⁹ Section 943.10(1), F.S. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

The bill is effective upon becoming a law.

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 provision may apply because the bill requires county or municipal governments (local law enforcement agencies) that choose to use body cameras to develop policies and procedures on body cameras, conduct training, retain audio and video data recorded by body cameras, and perform periodic review of practices. The provisions of the bill appear to apply to call persons similarly situated – all state and local law enforcement agencies.

Under Art. VII, s. 18(d) of the Florida Constitution, bills having insignificant fiscal impact are exempt from the mandates provisions. If the bill's requirements implicate the mandates provision, the exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

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:

If an agency chooses to use body cameras, the bill may have a minimal impact on state expenditures because the bill creates a new requirement for state law enforcement agencies that use body cameras to establish policies and procedures governing body cameras and to train personnel accordingly.

The bill may also have a minimal impact on local expenditures because the bill creates a new requirement for local law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.1718 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By the Committee on Criminal Justice

591-03617-15

20157080__

A bill to be entitled

An act relating to law enforcement officer body cameras; creating s. 943.1718, F.S.; providing definitions; requiring a law enforcement agency that permits its law enforcement officers to wear body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras; requiring such policies and procedures to include specified information; requiring such a law enforcement agency to ensure that specified personnel are trained in the law enforcement agency's policies and procedures; requiring that data recorded by body cameras be retained in accordance with specified requirements; requiring a periodic review of agency body camera practices to ensure conformity with the agency's policies and procedures; exempting the recordings from specified provisions relating to the interception of wire, electronic, and oral communications; providing an effective date.

WHEREAS, advancements in technology allow body cameras to be affordable and practical tools for law enforcement use, and

WHEREAS, body cameras can provide a valuable source of information to both law enforcement and the general public, and

WHEREAS, the audio and video recording of police and citizen interactions allows law enforcement agencies to improve efforts to reduce crime and properly address citizen complaints, and

Page 1 of 3

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

591-03617-15

20157080__

WHEREAS, establishing uniform procedural requirements for the use of body cameras by law enforcement will provide consistency and reliability throughout the state, and

WHEREAS, there are currently no statewide mandatory and uniform standards or guidelines that apply to use of body cameras by law enforcement officers, NOW, THEREFORE,

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

Section 1. Section 943.1718, Florida Statutes, is created to read:

943.1718 Body cameras; policies and procedures.-

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

(a) "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's person and which records audio and video data of the officer's law enforcement-related encounters and activities.

(b) "Law enforcement agency" means an agency that has a primary mission of preventing and detecting crime and enforcing the penal, criminal, traffic, and motor vehicle laws of the state and in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10.

(c) "Law enforcement officer" has the same meaning as provided in s. 943.10.

(2) A law enforcement agency that permits its law enforcement officers to wear body cameras shall establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

Page 2 of 3

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

591-03617-15

20157080__

59 (a) General guidelines for the proper use, maintenance, and
60 storage of body cameras.

61 (b) Any limitations on which law enforcement officers are
62 permitted to wear body cameras.

63 (c) Any limitations on law enforcement-related encounters
64 and activities under which law enforcement officers are
65 permitted to wear body cameras.

66 (d) General guidelines for the proper storage, retention,
67 and release of audio and video data recorded by body cameras.

68 (3) A law enforcement agency that permits its law
69 enforcement officers to wear body cameras shall:

70 (a) Ensure that all personnel who wear, use, maintain, or
71 store body cameras are trained in the law enforcement agency's
72 policies and procedures concerning them.

73 (b) Ensure that all personnel who use, maintain, store, or
74 release audio or video data recorded by body cameras are trained
75 in the law enforcement agency's policies and procedures.

76 (c) Retain audio and video data recorded by body cameras in
77 accordance with the requirements of s. 119.021, except as
78 otherwise provided by law.

79 (d) Perform a periodic review of actual agency body camera
80 practices to ensure conformity with the agency's policies and
81 procedures.

82 (4) Chapter 934 does not apply to body camera recordings
83 made by law enforcement agencies that elect to use body cameras.

84 Section 2. 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)

4/20/15
Meeting Date

7080
Bill Number (if applicable)

Topic Body Cameras

Name Greg Pound

Job Title _____

Address 9166 Sunrise DR
Street

Phone _____

Largo FL. 33773
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☒ Information

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

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/20/2013

Meeting Date

7080

Bill Number (if applicable)

Topic Law Enforcement Body Cameras

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard Street

Phone 850-222-3329

Street

Tallahassee

City

FL

State

32301

Zip

Email N/A

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 20, 2015

7080

Meeting Date

Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Robert Trammell

Job Title General Counsel

Address 103 North Gadsden Street

Phone 850.510.2187

Street

Tallahassee

Florida

32301

Email roberttrammell45@gmail.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 Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 120/2015
Meeting Date

Topic _____

Bill Number 7080
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

9/20/15

Meeting Date

SB 7080

Bill Number (if applicable)

Topic SB 7080

Amendment Barcode (if applicable)

Name Michelle Richardson

Job Title Director of Public Policy

Address 4500 Biscayne Blvd.

Street

Miami

City

FL

State

33137

Zip

Phone 786-363-2700

Email mrichardson@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 20, 2015

Meeting Date

7080

Bill Number (if applicable)

Topic Law Enforcement Officer Body Cameras

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 924 N. Gadsden Street

Street

Phone 219 - 3631

Tallahassee FL 32303

City

State

Zip

Email amercer@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.20.2015

Meeting Date

7080

Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Sarrah Carroll

Job Title _____

Address 123 S. Adams

Phone 671-4401

Street

Tallahassee

FL

32301

Email carroll@sostrategy.com

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)

4/20/15

Meeting Date

7080

Bill Number (if applicable)

Topic Law Enforcement Body Cameras

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe St

Street

Tallahassee FL 32301

City

State

Zip

Phone 425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU 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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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)

7080

Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Body Camera

Lisa Henning

Title Director Legislative Affairs

Address 240 Office Plaza Dr

Phone 850-766-8808

Street

Tallahassee, FL 32309

Email fllegislative@aol.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

LYON.TAMRA

From: MURZIN.DAVE
Sent: Monday, April 20, 2015 11:59 AM
To: FLORES.ANITERE
Cc: HRDLICKA.JENNIFER; LYON.TAMRA
Subject: Presenting 824, 826 and 7080

Chair Flores,

Senator Evers may not make it here to Tallahassee in time to present SB 824 and 826 on Public Private Partnerships and 7080 on Body Cameras.

The recent bad weather has hampered his departure and travel plans.

I will be prepared to present the bills 824 and 826 on his behalf if he is not able to make it in time.

Senate Criminal Justice Staff will be prepared to present 7080 as well.

Thank you Madame Chairwoman,



Dave Murzin

Senator Greg Evers, District 2

209 E Zaragoza St.

Pensacola, FL 32502-6048

(850) 595-0213

or

308 Senate Office Bldg.

404 S. Monroe Street

Tallahassee, FL 32399-1100

(850) 487-5002

murzin.dave@flsenate.gov



523542

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Before line 35
insert:

Section 1. Section 287.0935, Florida Statutes, is amended
to read:

287.0935 Surety bond insurers.—When the contract amount of
a project that uses public funds does not exceed \$5 million
~~\$500,000 and when public funds are utilized for the project~~, a
person, the state, or a political subdivision may ~~shall~~ not
~~refuse, as surety for the project~~, bid bonds, performance bonds,



523542

labor and materials payment bonds, or any other surety bonds as
surety for the project if such bonds ~~which~~ are issued by a
surety company that meets all ~~which fulfills each~~ of the
following requirements ~~provisions~~:

(1) The surety company is licensed to do business in this
state. ~~the State of Florida;~~

(2) The surety company holds a certificate of authority
authorizing it to write surety bonds in this state.~~;~~

(3) The surety company has twice the minimum surplus and
capital required by the Florida Insurance Code at the time the
invitation to bid is issued, or has an "A-" minimum rating of
performance in the latest publication of Best's Key Rating Guide
by A.M. Best Company.~~;~~

(4) The surety company is otherwise in compliance with the
provisions of the Florida Insurance Code.~~;~~ ~~and~~

(5) The surety company holds a currently valid certificate
of authority issued by the United States Department of the
Treasury under 31 U.S.C. ss. 9304-9308.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to public procurement practices;
amending s. 287.0935, F.S.; increasing the dollar
threshold for a contract amount of a project for which
a person, the state, or a political subdivision is
prohibited from refusing a surety bond issued by a
surety company that meets certain criteria; revising



523542

41 requirements for surety companies with respect to
42 bonds issued for certain publicly funded contracts;



497608

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 89 - 90
and insert:
municipality, school district, special district, or Florida
College System institution ~~board~~, or any other

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 824

INTRODUCER: Fiscal Policy Committee; Governmental Oversight and Accountability Committee;
Community Affairs Committee; and Senator Evers

SUBJECT: Public-private Partnerships

DATE: April 22, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stearns	Yeatman	CA	Fav/CS
2. Peacock	McVaney	GO	Fav/CS
3. McVaney/Stearns	Hrdlicka	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 824 implements many of the recommendations of the statutorily-created Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to create a uniform, improved process for engaging in public-private partnerships (P3s) across the state. The bill repeals the provisions creating the task force.

The bill clarifies that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, special district, or municipal hospital or health care system. It also provides that the P3 process is an alternative method that may be used and does not limit a county, municipality, special district, or other political subdivision of the state pursuant to other statutory or constitutional authority.

The bill also:

- Expands the list of entities authorized to conduct P3s, by amending the term “responsible public entity” to include special districts, school districts rather than school boards, and Florida College System institutions.
- Provides increased flexibility to the responsible public entity by permitting a responsible public entity to deviate from the provided procurement timeframes if approved by majority vote of the entity’s governing body.
- Provides that an unsolicited proposal must be submitted concurrently with an initial application fee, which may be established by the responsible public entity.

- Requires a solicitation to include a specified design criteria package.
- Repeals the requirement that a responsible public entity provide each affected local jurisdiction with a copy of the unsolicited proposal.
- Authorizes the Department of Management Services to accept and maintain copies of comprehensive agreements received from responsible public entities.
- Prohibits a governmental entity from refusing a surety bond issued by certain companies for projects worth up to \$5 million (rather than \$500,000).

The bill is expected to have a minimal fiscal impact on the Department of Management Services.

II. Present Situation:

Background

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects.¹ Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for use by the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.²

Section 287.05712, F.S., governs the procurement process for P3s for public purpose projects. It authorizes a responsible public entity to enter into a P3 for a specified qualifying project if the responsible public entity determines the project is in the public's best interest.³

Section 287.05712(1)(j), F.S., defines "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

Section 287.05712(1)(i), F.S., defines "qualifying project" as:

- A facility or project that serves a public purpose, including, but not limited to, any recreational, cultural, ferry or mass transit, vehicle parking, fuel supply, airport, seaport, or medical or nursing care facility; rail facility or project; oil or gas pipeline; or educational facility or other building or facility that is used or will be used by a public educational institution; or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
- An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
- A water, wastewater, or surface water management facility or other related infrastructure; or
- For projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned

¹ See, the Federal Highway Administration, United State Department of Transportation, Innovative Program Delivery website, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on April 15, 2015).

² *Id.*

³ Section 287.05712(4)(d)1., F.S.

or operated by a municipal electric utility, only those projects that the governing board designates.

Procurement Procedures

Responsible public entities may receive unsolicited proposals or solicit proposals for qualifying projects and, thereafter, may enter into a comprehensive agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities.⁴ Responsible public entities may establish a reasonable fee to accompany unsolicited proposals that is sufficient to pay the costs of evaluating the proposals.⁵

Unsolicited proposals from private entities must be accompanied by certain material and information, unless waived by the responsible public entity, including:⁶

- A description of the qualifying project, including the conceptual design and schedule for initiation and completion of the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the qualifying project, the responsible public entity must publish a notice in the Florida Administrative Register (FAR) and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals.⁷ The responsible public entity must establish a timeframe in which to accept other proposals; however, the timeframe for allowing other proposals must be at least 21 days, but not more than 120 days after the initial date of publication.⁸

After the notification period has expired, the responsible public entity must rank the proposals received in order of preference.⁹ If negotiations with the first ranked firm are unsuccessful, the responsible public entity may begin negotiations with the second ranked firm. The responsible public entity may reject all proposals at any point in the process.¹⁰

The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the requests, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors and consultants.¹¹

⁴ Section 287.05712(4), F.S.

⁵ Section 287.05712(4)(a), F.S.

⁶ Section 287.05712(5), F.S.

⁷ Section 287.05712(4)(b), F.S.

⁸ *Id.*

⁹ Section 287.05712(6)(c), F.S.

¹⁰ *Id.*

¹¹ Section 287.05712(6)(f), F.S.

The responsible public entity may approve a qualifying project if:¹²

- There is a public need for or benefit derived from the project that the private entity proposes.
- The estimated cost of the qualifying project is reasonable in relation to similar facilities.
- The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Notice to Affected Local Jurisdictions

A responsible public entity must notify each affected local jurisdiction when considering a qualifying project by furnishing a copy of the proposal to each affected local jurisdiction.¹³ The affected local jurisdictions may, within 60 days, submit written comments to the responsible public entity. The responsible public entity is required to consider the comments submitted by the affected local jurisdiction. In addition, a responsible public entity must mail a copy of the notice that is published in the FAR to each local government in the affected area.¹⁴

Agreements

The responsible public entity and private entity must enter into a comprehensive agreement prior to developing or operating a qualifying project.¹⁵ The comprehensive agreement is required to contain certain provisions, including:¹⁶

- Delivery of performance and payment bonds, letters of credit, and other security in connection with the development or operation of the qualifying project.
- Review of the design for the qualifying project by the public entity. This does not require the private entity to complete the design of the project prior to executing the comprehensive agreement.
- Maintenance of a policy or policies of public liability insurance and the filing of financial statements by the private entity on a periodic basis.
- Policies and procedures governing the rights and responsibilities of the public and private entity in the event of a termination of the comprehensive agreement or a material default.
- User fees, lease payments, or service payments as may be established.

The comprehensive agreement may provisions that address grants (federal, state, or local) from the responsible public entity to the private entity; notice of default and cure rights; and terminating the duties of the private entity and dedicating the project to the responsible public entity.¹⁷

¹² Section 287.05712(6)(e), F.S.

¹³ Section 287.05712(7), F.S.

¹⁴ Section 287.05712(4)(b), F.S.

¹⁵ Before entering into a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity, which does not obligate the responsible public entity to enter into a comprehensive agreement. s. 287.05712(8), F.S.

¹⁶ Section 287.05712(9)(a), F.S.

¹⁷ Section 287.05712(9)(b), F.S.

Fees

The comprehensive agreement may authorize the private entity to impose fees to the public for use of the facility.¹⁸

Financing

Section 287.05712(11), F.S., authorizes the use of multiple financing options for P3s. The options include the private entity obtaining private-source financing, the responsible public entity lending funds to the private entity, or the use of other innovative finance techniques associated with P3s.

Powers and Duties of the Private Entity

The private entity must develop, operate, and maintain the qualifying project in accordance with the comprehensive agreement.¹⁹ The private entity must cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and other facilities and infrastructure. The private entity must comply with the terms of the comprehensive agreement and any other lease or contract.

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

Section 287.05712(3), F.S., creates the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (Task Force). The Task Force was created to recommend guidelines for the Legislature to consider for purposes of creating a uniform P3 process across the state. The seven-member Task Force was comprised of the Secretary of the Department of Management Services (DMS) or designee and six members appointed by the Governor comprised of one county government official, one municipal government official, one district school board member, and three representatives from the business community. The DMS provided administrative and technical support to the Task Force.

In July 2014, the Task Force completed its duties and submitted a final report of its recommendations.²⁰ The Task Force was disbanded on December 31, 2014.²¹

Performance Bond Requirements and Limitations

A governmental entity contracting for services with a private sector contractor may require the contractor to post a surety or performance bond. This type of bond is intended to protect the buyer by ensuring that the contractor will perform the work as specified by the contract. The level of the bond is intended to allow the governmental entity to guard against the risk of

¹⁸ Section 287.05712(10), F.S.

¹⁹ Section 287.05712(12), F.S.

²⁰ Partnership for Public Facilities and Infrastructure Act Guidelines Task Force, *Final Report and Recommendations* (July 2014), available at: http://www.dms.myflorida.com/agency_administration/communications/partnership_for_public_facilities_infrastructure_act (last visited April 15, 2015).

²¹ Section 287.05712(3)(f), F.S.

nonperformance by the contractor and provide funds necessary to hold the governmental entity (and taxpayers) harmless to the greatest extent possible.

Requirements

Section 255.05, F.S., requires any person entering into a formal contract with the state or any county, city, or other political subdivision, for the construction of a public building, for the completion of a public work, or for repairs upon a public building or public work, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. The statute specifies some exceptions and the form for the bond.

Section 24.111(2)(i), F.S., specifies that the Department of the Lottery must require performance bonds for the duration of contracts with its vendors.

Section 153.10(4), F.S., specifies that counties must require a performance bond of 2.5 percent of the amount of bids for the construction of water system improvements or sewer improvements. Sewer system improvement contracts bid pursuant to s. 153.79, F.S., also require a performance bond.

Section 337.18, F.S., requires surety bonds from successful bidders for certain Department of Transportation contracts, though the department may waive the requirement for contracts under \$250,000, if certain conditions are met.

Limitations

Section 287.0935, F.S., limits the authority of a state agency or political subdivision of the state to refuse a surety issued by a surety company that meets certain criteria if the contract amount does not exceed \$500,000 and public funds are used for the project. The criteria that the surety company must meet include:

- Licensed to do business in Florida;
- Holds a certificate of authority to issue surety bonds in Florida;
- Complies with the provisions of the Florida Insurance Code;
- Holds a valid certificate of authority issued by the United State Department of the Treasury under 31 U.S.C. ss. 9304-9308 (federal regulation of corporations providing sureties for persons required or permitted to provide a surety bond with the federal government);
- Has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.

Under the Florida Insurance Code, differing levels of surplus are required based upon the type of insurance the insurer writes in Florida. Specifically, s. 624.408, F.S., requires, in pertinent part, an insurer to maintain surplus as to policyholders at least the greater of:²²

- \$1.5 million;
- \$4 million for property and casualty insurers, except for property and casualty insurers authorized to underwrite any line of residential property insurance;

²² Section 624.408(3), F.S., does not require an insurer to have surplus as to policyholders greater than \$100 million.

- \$15 million for residential property insurers not holding a certificate of authority before July 1, 2011;
- For residential property insurers holding a certificate of authority before July 1, 2011, and until June 30, 2016, \$5 million; on or after July 1, 2016, and until June 30, 2021, \$10 million; on or after July 1, 2021, \$15 million.²³

A.M. Best's Financial Strength Rating

A.M. Best's Financial Strength Rating is an independent opinion of an insurer's strength and ability to meet its ongoing insurance policy and contract obligations.²⁴ The rating is based on a comprehensive quantitative and qualitative evaluation of a company's balance sheet strength, operating performance and business profile. The rating system uses certain methodologies to review Property/Casualty (Non-life), Life/Annuity, and Health/HMO industry segments all over the world. The table below shows the highest tier ("Secure") of financial ratings.

Best's Financial Strength Ratings²⁵			
	Rating	Descriptor	Definition
Secure	A++, A+	Superior	Assigned to companies that have, in our opinion, a superior ability to meet their ongoing insurance obligations
	A, A-	Excellent	Assigned to companies that have, in our opinion, an excellent ability to meet their ongoing insurance obligations
	B++, B+	Good	Assigned to companies that have, in our opinion, a good ability to meet their ongoing insurance obligations

Administrative Commission's Uniform Rules of Procedure

The Administrative Commission²⁶ has adopted Uniform Rules of Procedures. These procedures include rules governing bid protests under specified Florida Laws. Chapter 28-110, F.A.C., supplements the laws on bid protests that arise from the contract procurement process under chapters 24, 255, 287, 334 through 349, sections 282.303 through 282.313, F.S., and other statutes applicable to agencies as defined in section 120.52(1), F.S.²⁷

Rule 28.110.005, F.A.C., governs bond requirements for certain bid protests, such as procurement of commodities, contractual services, professional services and insurance, and for procurement of leases of space in privately-owned buildings.

²³ Section 624.408(g), F.S., also provides that the Office of Insurance Regulation may reduce the surplus requirements in paragraphs (f) and (g) if the insurer is not writing new business, has premiums in force of less than \$1 million per year in residential property insurance, or is a mutual insurance company.

²⁴ See A.M. Best Ratings and Criteria Center website, available at: <http://www.ambest.com/ratings/guide.asp> (last visited April 21, 2015).

²⁵ Id.

²⁶ Section 14.202, F.S. The Administrative Commission consists of the Governor and members of the Cabinet.

²⁷ See Rule 28-110.001, F.A.C.

III. Effect of Proposed Changes:

Section 1 transfers s. 287.05712, F.S., and renumbers it as s. 255.065, F.S., to incorporate many of the recommendations contained in the Task Force report, which include best practice recommendations as well as recommendations relating to needed clarification of s. 287.05712, F.S., which may facilitate the implementation of P3s.

Definitions

The bill clarifies that the definition of “responsible public entity” includes special districts, school districts rather than school boards, and Florida College System institutions.²⁸

Public Facilities and Infrastructure Act Guidelines Task Force

The bill repeals the Public Facilities and Infrastructure Act Guidelines Task Force provisions, as the Task Force was disbanded on December 31, 2014.

Application Fees

The bill provides that when a private entity submits an unsolicited proposal, the private entity must concurrently submit the initial application fee.²⁹ The bill provides that if the initial fee, as determined by the responsible public entity, is not sufficient to cover the costs associated with evaluating the unsolicited proposal, the responsible public entity must request in writing the additional amount required. If the private entity fails to pay the additional amount requested within 30 days of the notice, the responsible public entity may stop reviewing the proposal. The bill requires the responsible public entity to return the application fee if the responsible public entity does not evaluate the unsolicited proposal.

Solicitation Timeframes

The bill provides flexibility to the responsible public entity for accepting proposals if an alternative timeframe is approved by majority vote of the entity’s governing body.³⁰ It also removes the provision that required a school board to obtain the approval of the local governing body.³¹

Contents of Solicitation – Design Criteria Package

The bill requires a solicitation to include a design criteria package prepared by an architect, engineer, or landscape architect licensed in Florida that is sufficient to allow private entities to

²⁸ *Id.* at 18. The Task Force recommended amending the definition of “responsible public entity” to reference school district, rather than board, as the district is the unit that provides public primary education. It also recommended clarifying that the definition includes both special districts and the Florida College System.

²⁹ *Id.* at 9. The Task Force recommended amending the fee provisions to ensure that the fees were related to actual, reasonable costs associated with reviewing an unsolicited proposal and not revenue generation.

³⁰ *Id.* at 7. The Task Force discussed that increased flexibility may be necessary when dealing with complex proposals to ensure sufficient time is allowed for the receipt of competing proposals.

³¹ *Id.* at 18. The Task Force recommended striking this provision because school boards are not subject to governance by a local governing body.

prepare a bid or a response to the solicitation. The design criteria package must specify performance-based criteria for the project, including:

- The legal description of the site, with survey information;
- Interior space requirements;
- Material quality standards;
- Schematic layouts and conceptual design criteria for the project, with budget estimates;
- Design and construction schedules; and
- Site and utility requirements.

Ownership by the Responsible Public Entity

The bill clarifies that the project must be owned by the responsible public entity upon expiration of the comprehensive agreement, rather than solely upon completion or termination of the agreement.³²

Material and Information Required for Unsolicited Proposal

The bill clarifies that any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.³³

Project Qualification

The bill alters the parties that must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects to allow the applicable party (or parties) of the private entity's team to be a qualifying entity, rather than just the private entity itself.³⁴

The bill repeals a requirement that a responsible public entity ensure that provision is made for the transfer of a private entity's obligations if the comprehensive agreement is terminated and replaces it with a requirement that the responsible public entity ensure that the comprehensive agreement addresses termination upon a material default.³⁵

Notice to Affected Local Jurisdictions

The bill repeals the requirement that a responsible public entity notify each affected local jurisdiction of an unsolicited proposal by furnishing a copy of the proposal to each affected local jurisdiction when considering it.³⁶ The responsible public entity must still provide each affected local jurisdiction a copy of the notice published in the FAR concerning solicitations for a qualifying project in accordance with s. 287.05712(4)(b), F.S.

³² *Id.* at 14.

³³ *Id.* at 7.

³⁴ *Id.* at 21.

³⁵ *Id.* at 14.

³⁶ *Id.* at 12-13. The report provided a discussion on the notice that is already provided to affected local jurisdictions through the permitting process and stated a mandatory P3 notice process could delay project timelines.

Fees

The bill clarifies that fees imposed by a private entity must be applied as set forth in the comprehensive agreement.³⁷

Financing

The bill clarifies that a financing agreement may not require the responsible public entity to secure financing by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity.³⁸

The bill also repeals a provision that provides for the responsible public entity to appropriate on a priority basis a contractual payment obligation from the government fund from which the qualifying project will be funded.³⁹ Current law raised concerns regarding infringement upon a responsible public entity's appropriation powers. Additionally, had the provision remained in current law, it is unclear how this provision would apply to state universities or Florida College System institutions.

Department of Management Services

The bill provides that DMS may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing the comprehensive agreements with other responsible public entities.⁴⁰ Responsible public entities are not required to provide copies to DMS; however, if a responsible public entity provides a copy, the responsible public entity must first redact any confidential or exempt information from the comprehensive agreement.

Construction

The bill clarifies that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing *body* of a county, municipality, special district, or municipal hospital or health care system. The bill provides that the P3 process is an alternative method that may be used, but that it does not limit a county, municipality, special district, or other political subdivision of the state in the procurement or operation of a qualifying project pursuant to other statutory or constitutional authority.⁴¹

³⁷ *Id.* at 17.

³⁸ *Id.* at 20.

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 11. The report recommended authorizing a state agency to provide assistance to responsible public entities concerning P3s.

⁴¹ *Id.* at 19. The report discussed the need for flexibility in the creation of P3s and noted that clarification is needed to ensure that the process is considered supplemental and alternative to any other applicable statutory authority.

Miscellaneous

The bill transfers and renumbers s. 287.05712, F.S., as s. 255.065, F.S., because ch. 255, F.S., relates to procurement of construction services and P3s are primarily construction related projects.

The bill also makes other editorial changes to provide for the consistent use of terminology and to provide clarity.

Section 2 amends s. 287.0935, F.S., to expand the limitation on state agencies and local governments to refuse surety bonds issued by surety companies that meet specific criteria. Specifically, the statute is amended to expand the limitation to include projects worth up to \$5 million (rather than \$500,000) and to prohibit a governmental entity from refusing a surety bond issued by a company that has at least an A- rating of performance in the latest publication of the Best's Key Rating Guide. Any surety company that does not maintain at least two times the minimum surplus and capital required under the Florida Insurance Code may rely on its A.M. Best rating, if at least an A-, to preclude a governmental entity from refusing its surety bonds for particular projects.

In practical application, this modification may reduce the level of surplus and capital available in Florida of a surety company writing performance bonds on publicly-funded projects. This may reduce the ability of governmental entities to ensure the timely completion of public projects if a contractor fails to comply with a contract.

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:

This bill may provide more opportunities for the private sector to enter into contracts for construction services with state universities and local governments.

C. Government Sector Impact:

The bill will have an insignificant negative fiscal impact on DMS for the purpose of receiving comprehensive agreements and acting as a depository for such comprehensive agreements. According to the DMS, the costs may be absorbed within current resources.

VI. Technical Deficiencies:

The bill refers to a minimum rating of performance in the latest publication of the Best's Key Rating Guide. However, it appears that the reference should be to a minimum rating of "financial strength" rather than "performance."

In addition, the Guide appears to be published on an annual basis. However, A.M. Best can review the ratings of a company at any time and adjust such ratings consistent with the actual financial situation of the company at the time. This means that a governmental entity will not be permitted to refuse the surety issued by a company that had a minimum rating of A- at the time of the last Guide publication but had been downgraded during the interim before the next publication.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 287.05712 and 287.0935 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Fiscal Policy on April 20, 2015:**

The committee substitute removes state universities from the definition of responsible public entity.

The CS also prohibits a governmental entity from refusing a surety bond issued by certain companies for projects worth up to \$5 million (rather than \$500,000). The CS provides that any surety company that does not maintain at least two times the minimum surplus and capital required under the Florida Insurance Code may rely on its A.M. Best rating of an A- or better to preclude a governmental entity from refusing its surety bonds for particular projects.

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

A landscape architect licensed in Florida is added to the list of professionals who can prepare the design criteria package that is required for inclusion with the solicitation to the responsible public entity.

CS by Community Affairs on March 17, 2015:

Requires a solicitation to include a design criteria package prepared by an architect or engineer licensed in Florida that is sufficient to allow private entities to prepare a bid or a response to the solicitation. The bill provides a number of performance-based criteria that must be included in the design criteria package.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Community Affairs; and Senator Evers

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1 A bill to be entitled
2 An act relating to public-private partnerships;
3 transferring, renumbering, and amending s. 287.05712,
4 F.S.; revising definitions; deleting provisions
5 creating the Public-Private Partnership Guidelines
6 Task Force; requiring a private entity that submits an
7 unsolicited proposal to pay an initial application fee
8 and additional amounts if the fee does not cover
9 certain costs; specifying payment methods; authorizing
10 a responsible public entity to alter the statutory
11 timeframe for accepting proposals for a qualifying
12 project under certain circumstances; deleting a
13 provision that requires approval of the local
14 governing body before a school board enters into a
15 comprehensive agreement; requiring a responsible
16 public entity to include a design criteria package in
17 a solicitation; specifying requirements for the design
18 criteria package; revising the conditions necessary
19 for a responsible public entity to approve a
20 comprehensive agreement; deleting provisions relating
21 to notice to affected local jurisdictions; providing
22 that fees imposed by a private entity must be applied
23 as set forth in the comprehensive agreement;
24 restricting provisions in financing agreements that
25 could result in a responsible public entity's losing
26 ownership of real or tangible personal property;
27 deleting a provision that required a responsible
28 public entity to comply with specific financial
29 obligations; providing duties of the Department of

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30 Management Services; revising provisions relating to
31 construction of the act; providing an effective date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Section 287.05712, Florida Statutes, is
36 transferred, renumbered as section 255.065, Florida Statutes,
37 and amended to read:
38 255.065 ~~287.05712~~ Public-private partnerships.—
39 (1) DEFINITIONS.—As used in this section, the term:
40 (a) "Affected local jurisdiction" means a county,
41 municipality, or special district in which all or a portion of a
42 qualifying project is located.
43 (b) "Develop" means to plan, design, finance, lease,
44 acquire, install, construct, or expand.
45 (c) "Fees" means charges imposed by the private entity of a
46 qualifying project for use of all or a portion of such
47 qualifying project pursuant to a comprehensive agreement.
48 (d) "Lease payment" means any form of payment, including a
49 land lease, by a public entity to the private entity of a
50 qualifying project for the use of the project.
51 (e) "Material default" means a nonperformance of its duties
52 by the private entity of a qualifying project which jeopardizes
53 adequate service to the public from the project.
54 (f) "Operate" means to finance, maintain, improve, equip,
55 modify, or repair.
56 (g) "Private entity" means any natural person, corporation,
57 general partnership, limited liability company, limited
58 partnership, joint venture, business trust, public benefit

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corporation, nonprofit entity, or other private business entity.

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;

3. A water, wastewater, or surface water management facility or other related infrastructure; or

4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section.

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(j) "Responsible public entity" means a county, municipality, school district, special district, Florida College System institution, or state university board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) "Revenues" means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(l) "Service contract" means a contract between a responsible public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public

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117 infrastructure and government facilities within the state which
 118 serve a public need and purpose, and that such public need may
 119 not be wholly satisfied by existing procurement methods.

120 2. There are inadequate resources to develop new
 121 educational facilities, transportation facilities, water or
 122 wastewater management facilities and infrastructure, technology
 123 infrastructure, roads, highways, bridges, and other public
 124 infrastructure and government facilities for the benefit of
 125 residents of this state, and that a public-private partnership
 126 has demonstrated that it can meet the needs by improving the
 127 schedule for delivery, lowering the cost, and providing other
 128 benefits to the public.

129 3. There may be state and federal tax incentives that
 130 promote partnerships between public and private entities to
 131 develop and operate qualifying projects.

132 4. A procurement under this section serves the public
 133 purpose of this section if such procurement facilitates the
 134 timely development or operation of a qualifying project.

135 (b) It is the intent of the Legislature to encourage
 136 investment in the state by private entities; to facilitate
 137 various bond financing mechanisms, private capital, and other
 138 funding sources for the development and operation of qualifying
 139 projects, including expansion and acceleration of such financing
 140 to meet the public need; and to provide the greatest possible
 141 flexibility to public and private entities contracting for the
 142 provision of public services.

143 ~~(3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.~~

144 ~~(a) There is created the Partnership for Public Facilities~~
 145 ~~and Infrastructure Act Guidelines Task Force for the purpose of~~

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146 ~~recommending guidelines for the Legislature to consider for~~
 147 ~~purposes of creating a uniform process for establishing public-~~
 148 ~~private partnerships, including the types of factors responsible~~
 149 ~~public entities should review and consider when processing~~
 150 ~~requests for public-private partnership projects pursuant to~~
 151 ~~this section.~~

152 ~~(b) The task force shall be composed of seven members, as~~
 153 ~~follows:~~

154 ~~1. The Secretary of Management Services or his or her~~
 155 ~~designee, who shall serve as chair of the task force.~~

156 ~~2. Six members appointed by the Governor, as follows:~~

157 ~~a. One county government official.~~

158 ~~b. One municipal government official.~~

159 ~~c. One district school board member.~~

160 ~~d. Three representatives of the business community.~~

161 ~~(c) Task force members must be appointed by July 31, 2013.~~
 162 ~~By August 31, 2013, the task force shall meet to establish~~
 163 ~~procedures for the conduct of its business and to elect a vice~~
 164 ~~chair. The task force shall meet at the call of the chair. A~~
 165 ~~majority of the members of the task force constitutes a quorum,~~
 166 ~~and a quorum is necessary for the purpose of voting on any~~
 167 ~~action or recommendation of the task force. All meetings shall~~
 168 ~~be held in Tallahassee, unless otherwise decided by the task~~
 169 ~~force, and then no more than two such meetings may be held in~~
 170 ~~other locations for the purpose of taking public testimony.~~
 171 ~~Administrative and technical support shall be provided by the~~
 172 ~~department. Task force members shall serve without compensation~~
 173 ~~and are not entitled to reimbursement for per diem or travel~~
 174 ~~expenses.~~

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(d) ~~In reviewing public-private partnerships and developing recommendations, the task force must consider:~~

~~1. Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal.~~

~~2. Reasonable criteria for choosing among competing proposals.~~

~~3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.~~

~~4. If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority.~~

~~5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project.~~

~~6. The adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition.~~

~~7. Current exemptions from public records and public meetings requirements, if any changes to those exemptions are necessary, or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal.~~

~~8. Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise~~

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~~employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity.~~

~~(e) The task force must submit a final report of its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2014.~~

~~(f) The task force is terminated December 31, 2014. The establishment of guidelines pursuant to this section or the adoption of such guidelines by a responsible public entity is not required for such entity to request or receive proposals for a qualifying project or to enter into a comprehensive agreement for a qualifying project. A responsible public entity may adopt guidelines so long as such guidelines are not inconsistent with this section.~~

(3)(4) PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into a comprehensive ~~an~~ agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.

(a)1. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section.

2. A private entity that submits an unsolicited proposal to a responsible public entity must concurrently pay an initial application fee, as determined by the responsible public entity.

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Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal checks may not be accepted.

3. If the initial application fee does not cover the responsible public entity's costs to evaluate the unsolicited proposal, the responsible public entity must request in writing the additional amounts required. The private entity must pay the requested additional amounts within 30 days after receipt of the notice. The responsible public entity may stop its review of the unsolicited proposal if the private entity fails to pay the additional fee.

4. If the responsible public entity does not evaluate the unsolicited proposal, the responsible public entity must return the application fee. The fee must be sufficient to pay the costs of evaluating the proposal. The responsible public entity may engage the services of a private consultant to assist in the evaluation.

(b) The responsible public entity may request a proposal from private entities for a qualifying public-private project or, if the responsible public entity receives an unsolicited proposal for a qualifying public-private project and the responsible public entity intends to enter into a comprehensive agreement for the project described in the such unsolicited proposal, the responsible public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the responsible public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the responsible public entity may accept other proposals shall be determined by the responsible public entity

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on a project-by-project basis based upon the complexity of the qualifying project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. If approved by a majority vote of the responsible public entity's governing body, the responsible public entity may alter the timeframe for accepting proposals to more adequately suit the needs of the qualifying project. A copy of the notice must be mailed to each local government in the affected area.

(c) If the responsible public entity solicits proposals under this section, the solicitation must include a design criteria package prepared by an architect, engineer, or landscape architect licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify performance-based criteria for the project, including the legal description of the site, with survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria for the project; cost or budget estimates; design and construction schedules; and site development and utility requirements. ~~A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.~~

(d) Before approving a comprehensive agreement ~~approval~~, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest.

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2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.

3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the responsible public entity.

4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.

5. Will be owned by the responsible public entity upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

(e) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (9) ~~(11)~~; the qualifying project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the comprehensive agreement.

(f) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the

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operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

~~(4)-(5)~~ PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.

(f) Additional material or information that the responsible public entity reasonably requests.

Any pricing or financial terms included in an unsolicited

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proposal must be specific as to when the pricing or terms expire.

~~(5)-(6)~~ PROJECT QUALIFICATION AND PROCESS.—

(a) The private entity, or the applicable party or parties of the private entity's team, must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that ~~provision is made for the transfer of the private entity's obligations if the comprehensive agreement addresses termination upon is terminated or~~ a material default of the comprehensive agreement occurs.

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to,

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professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

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1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.

3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

~~(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—~~

~~(a) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project.~~

~~(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in~~

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~~writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, any development of regional impact processes or timelines, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgment by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.~~

(6)(8) INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

(a) Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and

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development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.

(b) Establish the process and timing of the negotiation of the comprehensive agreement.

(c) Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

(7)(9) COMPREHENSIVE AGREEMENT.—

(a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

1. Delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.

2. Review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

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3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the comprehensive agreement.

4. Maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. Monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. Periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. Procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons

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523 using the facility under like conditions and must not materially
 524 discourage use of the qualifying project. The execution of the
 525 comprehensive agreement or a subsequent amendment is conclusive
 526 evidence that the fees, lease payments, or service payments
 527 provided for in the comprehensive agreement comply with this
 528 section. Fees or lease payments established in the comprehensive
 529 agreement as a source of revenue may be in addition to, or in
 530 lieu of, service payments.

531 9. Duties of the private entity, including the terms and
 532 conditions that the responsible public entity determines serve
 533 the public purpose of this section.

534 (b) The comprehensive agreement may include:

535 1. An agreement by the responsible public entity to make
 536 grants or loans to the private entity from amounts received from
 537 the federal, state, or local government or an agency or
 538 instrumentality thereof.

539 2. A provision under which each entity agrees to provide
 540 notice of default and cure rights for the benefit of the other
 541 entity, including, but not limited to, a provision regarding
 542 unavoidable delays.

543 3. A provision that terminates the authority and duties of
 544 the private entity under this section and dedicates the
 545 qualifying project to the responsible public entity or, if the
 546 qualifying project was initially dedicated by an affected local
 547 jurisdiction, to the affected local jurisdiction for public use.

548 ~~(8)-(10) FEES.~~ A comprehensive ~~an~~ agreement entered into
 549 pursuant to this section may authorize the private entity to
 550 impose fees to members of the public for the use of the
 551 facility. The following provisions apply to the comprehensive

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552 agreement:

553 (a) The responsible public entity may develop new
 554 facilities or increase capacity in existing facilities through a
 555 comprehensive agreement with a private entity ~~agreements with~~
 556 ~~public-private partnerships.~~

557 (b) The comprehensive ~~public-private partnership~~ agreement
 558 must ensure that the facility is properly operated, maintained,
 559 or improved in accordance with standards set forth in the
 560 comprehensive agreement.

561 (c) The responsible public entity may lease existing fee-
 562 for-use facilities through a comprehensive ~~public-private~~
 563 ~~partnership~~ agreement.

564 (d) Any revenues must be authorized by and applied in the
 565 manner set forth in ~~regulated by the responsible public entity~~
 566 ~~pursuant to~~ the comprehensive agreement.

567 (e) A negotiated portion of revenues from fee-generating
 568 uses may ~~must~~ be returned to the responsible public entity over
 569 the life of the comprehensive agreement.

570 ~~(9)-(11) FINANCING.~~

571 (a) A private entity may enter into a private-source
 572 financing agreement between financing sources and the private
 573 entity. A financing agreement and any liens on the property or
 574 facility must be paid in full at the applicable closing that
 575 transfers ownership or operation of the facility to the
 576 responsible public entity at the conclusion of the term of the
 577 comprehensive agreement.

578 (b) The responsible public entity may lend funds to private
 579 entities that construct projects containing facilities that are
 580 approved under this section.

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581 (c) The responsible public entity may use innovative
 582 finance techniques associated with a public-private partnership
 583 under this section, including, but not limited to, federal loans
 584 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
 585 and hedges against inflation from commercial banks or other
 586 private sources. In addition, the responsible public entity may
 587 provide its own capital or operating budget to support a
 588 qualifying project. The budget may be from any legally
 589 permissible funding sources of the responsible public entity,
 590 including the proceeds of debt issuances. A responsible public
 591 entity may use the model financing agreement provided in s.
 592 489.145(6) for its financing of a facility owned by a
 593 responsible public entity. A financing agreement may not require
 594 the responsible public entity to indemnify the financing source,
 595 subject the responsible public entity's facility to liens in
 596 violation of s. 11.066(5), or secure financing of ~~by~~ the
 597 responsible public entity by a mortgage on, or security interest
 598 in, the real or tangible personal property of the responsible
 599 public entity in a manner that could result in the loss of the
 600 fee ownership of the property by the responsible public entity
 601 ~~with a pledge of security interest~~, and any such provision is
 602 void.

603 ~~(d) A responsible public entity shall appropriate on a~~
 604 ~~priority basis as required by the comprehensive agreement a~~
 605 ~~contractual payment obligation, annual or otherwise, from the~~
 606 ~~enterprise or other government fund from which the qualifying~~
 607 ~~projects will be funded. This required payment obligation must~~
 608 ~~be appropriated before other noncontractual obligations payable~~
 609 ~~from the same enterprise or other government fund.~~

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610 (10)-(12) POWERS AND DUTIES OF THE PRIVATE ENTITY.-

611 (a) The private entity shall:

612 1. Develop or operate the qualifying project in a manner
 613 that is acceptable to the responsible public entity in
 614 accordance with the provisions of the comprehensive agreement.
 615 2. Maintain, or provide by contract for the maintenance or
 616 improvement of, the qualifying project if required by the
 617 comprehensive agreement.

618 3. Cooperate with the responsible public entity in making
 619 best efforts to establish interconnection between the qualifying
 620 project and any other facility or infrastructure as requested by
 621 the responsible public entity in accordance with the provisions
 622 of the comprehensive agreement.

623 4. Comply with the comprehensive agreement and any lease or
 624 service contract.

625 (b) Each private facility that is constructed pursuant to
 626 this section must comply with the requirements of federal,
 627 state, and local laws; state, regional, and local comprehensive
 628 plans; the responsible public entity's rules, procedures, and
 629 standards for facilities; and such other conditions that the
 630 responsible public entity determines to be in the public's best
 631 interest and that are included in the comprehensive agreement.

632 (c) The responsible public entity may provide services to
 633 the private entity. An agreement for maintenance and other
 634 services entered into pursuant to this section must provide for
 635 full reimbursement for services rendered for qualifying
 636 projects.

637 (d) A private entity of a qualifying project may provide
 638 additional services for the qualifying project to the public or

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to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

~~(11)-(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive

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agreement.

~~(12)-(14)~~ SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(13) DEPARTMENT OF MANAGEMENT SERVICES.—

(a) A responsible public entity may provide a copy of its comprehensive agreement to the Department of Management Services. A responsible public entity must redact any confidential or exempt information from the copy of the comprehensive agreement before providing it to the Department of Management Services.

(b) The Department of Management Services may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing comprehensive agreements with other responsible public entities.

(c) This subsection does not require a responsible public entity to provide a copy of its comprehensive agreement to the Department of Management Services.

~~(14)-(15)~~ CONSTRUCTION.—

(a) This section shall be liberally construed to effectuate the purposes of this section.

(b) This section shall be construed as cumulative and

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697 supplemental to any other authority or power vested in or
698 exercised by the governing body ~~board~~ of a county, municipality,
699 special district, or municipal hospital or health care system
700 including those contained in acts of the Legislature
701 ~~establishing such public hospital boards or s. 155.40.~~

702 (c) This section does not affect any agreement or existing
703 relationship with a supporting organization involving such
704 governing body ~~board~~ or system in effect as of January 1, 2013.

705 (d) ~~(a)~~ This section provides an alternative method and does
706 not limit a county, municipality, special district, or other
707 political subdivision of the state in the procurement or
708 operation of a qualifying project acquisition, design, or
709 construction of a public project pursuant to other statutory or
710 constitutional authority.

711 (e) ~~(b)~~ Except as otherwise provided in this section, this
712 section does not amend existing laws by granting additional
713 powers to, or further restricting, a local governmental entity
714 from regulating and entering into cooperative arrangements with
715 the private sector for the planning, construction, or operation
716 of a facility.

717 (f) ~~(e)~~ This section does not waive any requirement of s.
718 287.055.

719 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)

4/20

Meeting Date

824

Bill Number (if applicable)

523542

Amendment Barcode (if applicable)

Topic PUBLIC PROCUREMENT

Name DONOVAN BROWN

Job Title _____

Address 215 S. MONROE ST., SUITE 701

Street

TALLAHASSEE

City

FL

State

32312

Zip

Phone 850. 577. 0398

Email dbrown@coladnyfass.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing GRAY INSURANCE COMPANY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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

4/20/15

Meeting Date

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

824

Bill Number (if applicable)

Topic PPP

Amendment Barcode (if applicable)

Name Rick Watson

Job Title Chief Lobbyist

Address 200 W College St

Phone _____

Street

Tallahassee

FL

32301

City

State

Zip

Email ~~fwatson~~@

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ABC of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/120/2015

Meeting Date

Topic _____

Bill Number 828
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 824

Bill Number (if applicable)

Topic Public - Private Partnership

Amendment Barcode (if applicable)

Name David Cruz

Job Title Assistant General Counsel

Address P.O. Box 1757

Street

Tallahassee

City

FL

State

32302

Zip

Phone 701-3076

Email DCRUZ@FLcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Flores
Chair, Fiscal Policy

Subject: Committee Agenda Request

Date: March 31, 2015

I respectfully request that **Senate Bill 824**, relating to Public-Private Partnerships 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

LYON.TAMRA

From: MURZIN.DAVE
Sent: Monday, April 20, 2015 11:59 AM
To: FLORES.ANITERE
Cc: HRDLICKA.JENNIFER; LYON.TAMRA
Subject: Presenting 824, 826 and 7080

Chair Flores,

Senator Evers may not make it here to Tallahassee in time to present SB 824 and 826 on Public Private Partnerships and 7080 on Body Cameras.

The recent bad weather has hampered his departure and travel plans.

I will be prepared to present the bills 824 and 826 on his behalf if he is not able to make it in time.

Senate Criminal Justice Staff will be prepared to present 7080 as well.

Thank you Madame Chairwoman,



Dave Murzin

Senator Greg Evers, District 2

209 E Zaragoza St.

Pensacola, FL 32502-6048

(850) 595-0213

or

308 Senate Office Bldg.

404 S. Monroe Street

Tallahassee, FL 32399-1100

(850) 487-5002

murzin.dave@flsenate.gov

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 826

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Evers

SUBJECT: Public Records and Public Meetings/Public-private Project Proposals

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stearns	Yeatman	CA	Favorable
2. Peacock	McVaney	GO	Fav/CS
3. Stearns	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 826, which is linked to the passage of CS/SB 824, creates an exemption from public record and public meeting requirements for unsolicited proposals for public-private partnership projects for public facilities and infrastructure.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any

¹ FLA. CONST., art. I, s. 24(a).

collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exemption provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹¹

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. FLA. CONST., art. III, s. 4(e).

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991); *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt; or
- It protects trade or business secrets.¹³

The OGSR also requires specified questions to be considered during the review process.¹⁴ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁵ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁶

Public-Private Partnerships

Section 287.05712, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. It authorizes a responsible public entity¹⁷ to enter into a P3 for specified qualifying projects¹⁸ if the responsible public entity determines the project is in the public's best interest.¹⁹

Responsible public entities may receive unsolicited proposals or solicit proposals for qualifying projects and, thereafter, may enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities. Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:²⁰

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(a), F.S. The six specified questions are: (1) What specific records or meetings are affected by the exemption? (2) Whom does the exemption uniquely affect, as opposed to the general public? (3) What is the identifiable public purpose or goal of the exemption? (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? (5) Is the record or meeting protected by another exemption? (6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ Section 119.15(7), F.S.

¹⁷ Section 287.05712(1)(j), F.S., defines "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

¹⁸ Section 287.05712(1)(i), F.S., defines the term "qualifying project" generally a "qualifying project" is a facility, project, or improvement, including equipment, to a service delivery system that serves a public purpose; or projects the governing board designates, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility. *See s. 287.05712(1)(i), F.S.*

¹⁹ Section 287.05712(4)(d)1., F.S.

²⁰ Section 287.05712(5), F.S.

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of the person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the project, the responsible public entity must publish a notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals. The responsible public entity must establish a timeframe in which to accept other proposals; however, the timeframe for allowing other proposals must be at least 21 days, but not more than 120 days after the initial date of publication.²¹

After the notification period has expired, the responsible public entity must rank the proposals received in order of preference. If negotiations with the first ranked firm are unsuccessful, the responsible public entity may begin negotiations with the second ranked firm. The responsible public entity may reject all proposals at any point in the process.²²

Public Record and Public Meeting Exemptions

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from public record requirements until the earlier of the time the agency provides notice of an intended decision or 30 days after opening the bids, proposals, or final replies.²³ If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.²⁴

²¹ Section 287.05712(4)(b), F.S.

²² Section 287.05712(6)(c), F.S.

²³ Section 119.071(1)(b)1., F.S.

²⁴ Section 119.071(1)(b)3., F.S.

Current law does not provide a public meeting exemption for meetings during which an unsolicited proposal is discussed. However, public meetings related to a competitive solicitation at which a negotiation with a vendor is conducted, a vendor makes an oral presentation, or a vendor answers questions are exempt from public meeting requirements.²⁵ A complete recording of the closed meeting must be made and no portion of the exempt meeting may be held off the record.²⁶

The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until the earlier of the time the agency provides notice of an intended decision or 30 days after opening the bids, proposals, or final replies.²⁷ If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from public record requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.²⁸ A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 287.05712(15), F.S., and transfers and renumbers it as s. 255.065(15), F.S., to create an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

The bill provides that the term “competitive solicitation” has the same meaning as provided in s. 119.071(1), F.S.

Under the bill, unsolicited proposals held by a responsible public entity are exempt until the responsible public entity provides notice of its intended decision. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals, the unsolicited proposal remains exempt until such time that the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or withdraws the reissued competitive solicitation for the project. An unsolicited proposal is not exempt for more than 90 days after the responsible public entity rejects all proposals received for the project described in the unsolicited proposal.

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal ceases to be exempt 180 days after it is received by the responsible public entity.

The bill creates a public meeting exemption for any portion of a meeting during which the exempt unsolicited proposal is discussed. A recording must be made of the closed portion of the

²⁵ Section 286.0113(2)(b)1., F.S.

²⁶ Section 286.0113(2)(c)1., F.S.

²⁷ Section 286.0113(2)(c)2., F.S.

²⁸ Section 286.0113(2)(c)3., F.S.

²⁹ Section 286.0113(2)(c)3., F.S.

meeting. The recording, and any records generated during the closed meeting, are exempt from public record requirements until such time as the underlying public record exemption expires.

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution for both the public record and public meeting exemptions.

Section 2 states the bill becomes effective on the same date that SB 824 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates new public record and public meeting exemptions. Therefore the following constitutional requirements apply.

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record and public meeting exemptions for unsolicited proposals for P3 projects that expire after a certain time. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may create a minimal fiscal impact on local governments that receive unsolicited proposals because staff responsible for responding to public record requests may require training related to the exemption. Local governments may incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the local government. In addition, local governments may incur minimal fiscal costs associated with recording that portion of a closed meeting during which an unsolicited proposal that is exempt is discussed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.05712 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 31, 2015:

Corrects a technical deficiency by including a reference to a linked bill, SB 824, in sections 1 and 3 of the legislation.

B. Amendments:

None.

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

585-03187-15

2015826c1

A bill to be entitled

An act relating to public records and public meetings; transferring, renumbering, and amending s. 287.05712, F.S., relating to qualifying public-private projects for public facilities and infrastructure; providing a definition; providing an exemption from public records requirements for unsolicited proposals received by a responsible public entity for a specified period; providing an exemption from public meeting requirements for any portion of a meeting of a responsible public entity during which exempt proposals are discussed; requiring that a recording be made of the closed meeting; providing an exemption from public records requirements for the recording of, and any records generated during, a closed meeting for a specified period; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (15) is added to section 287.05712, Florida Statutes, as transferred, renumbered, and amended by SB 824, to read:

255.065 287.05712 Public-private partnerships; public records and public meetings exemptions.-

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.-

(a) As used in this subsection, the term "competitive

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solicitation" has the same meaning as provided in s. 119.071(1).

(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.

3. An unsolicited proposal is not exempt for longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.

(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2.a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

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b. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the responsible public entity if such entity does not issue a competitive solicitation for the project.

c. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.

d. A recording and any records generated during an exempt meeting are not exempt for longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

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

Section 2. (1) The Legislature finds that it is a public necessity that an unsolicited proposal received by a responsible public entity pursuant to s. 287.05712, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until a time certain. Prohibiting the public release of unsolicited proposals until a

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time certain ensures the effective and efficient administration of the public-private partnership process established in s. 287.05712, Florida Statutes. Temporarily protecting unsolicited proposals protects the public-private partnership process by encouraging private entities to submit such proposals, which will facilitate the timely development and operation of a qualifying project. Protecting such information ensures that other private entities do not gain an unfair competitive advantage. The public records exemption preserves public oversight of the public-private partnership process by providing for disclosure of the unsolicited proposal when the responsible public entity provides notice of an intended decision; no longer than 90 days after the responsible public entity rejects all proposals received in a competitive solicitation for a qualifying project; or 180 days after receipt of an unsolicited proposal if such entity does not issue a competitive solicitation for a qualifying project related to the proposal.

(2) The Legislature further finds that it is a public necessity that any portion of a meeting of the responsible public entity during which an unsolicited proposal that is exempt from public records requirements is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature also finds that it is a public necessity that the recording of, and any records generated during, a closed meeting be made temporarily exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Failure to close any portion of a meeting during which such unsolicited proposal is discussed, and failure to protect the release of the recording and records

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117 generated during that closed meeting, would defeat the purpose
118 of the public records exemption. In addition, the Legislature
119 finds that public oversight is maintained because the public
120 records exemption for the recording and records generated during
121 any closed portion of a meeting of the responsible public entity
122 are subject to public disclosure when such entity provides
123 notice of an intended decision; no longer than 90 days after the
124 responsible public entity rejects all proposals received in a
125 competitive solicitation for a qualifying project; or 180 days
126 after receipt of an unsolicited proposal if the responsible
127 public entity does not issue a competitive solicitation for a
128 qualifying project related to the proposal.

129 Section 3. This act shall take effect on the same date that
130 SB 824 or similar legislation takes effect, if such legislation
131 is adopted in the same legislative session or an extension
132 thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

826

Bill Number (if applicable)

Topic

PPP

Name

Rick Watson

Job Title

Chief Lobbyist

Address

200 W college st

Street

Tallahassee, FL

City

State

32301

Zip

Phone

Email

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

ABC of Florida

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Flores
Chair, Fiscal Policy

Subject: Committee Agenda Request

Date: March 31, 2015

I respectfully request that **Senate Bill 826**, relating to Public Records and Public Meetings/Public-Private Partnerships 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

LYON.TAMRA

From: MURZIN.DAVE
Sent: Monday, April 20, 2015 11:59 AM
To: FLORES.ANITERE
Cc: HRDLICKA.JENNIFER; LYON.TAMRA
Subject: Presenting 824, 826 and 7080

Chair Flores,

Senator Evers may not make it here to Tallahassee in time to present SB 824 and 826 on Public Private Partnerships and 7080 on Body Cameras.

The recent bad weather has hampered his departure and travel plans.

I will be prepared to present the bills 824 and 826 on his behalf if he is not able to make it in time.

Senate Criminal Justice Staff will be prepared to present 7080 as well.

Thank you Madame Chairwoman,



Dave Murzin

Senator Greg Evers, District 2

209 E Zaragoza St.

Pensacola, FL 32502-6048

(850) 595-0213

or

308 Senate Office Bldg.

404 S. Monroe Street

Tallahassee, FL 32399-1100

(850) 487-5002

murzin.dave@flsenate.gov



536742

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 32
and insert:
each parcel, but no more than \$200 per parcel of real property;
and

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 780

INTRODUCER: Fiscal Policy Committee and Senator Smith

SUBJECT: Special Assessment for Law Enforcement Services

DATE: April 22, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Favorable
2.	Babin	Diez-Arguelles	FT	Favorable
3.	Pace	Hrdlicka	FP	Fav/CS

I. Summary:

CS/SB 780 authorizes municipalities to levy special assessments to fund law enforcement services. The bill requires a municipality that levies the special assessment to apportion the cost of law enforcement services among parcels in proportion to the benefits received by each parcel, but no more than \$200 per parcel of real property, and to reduce the municipal ad valorem taxes.

The Revenue Estimating Conference has not determined the fiscal impact of the bill.

II. Present Situation:

Ad Valorem Tax

The Florida Constitution provides that counties, municipalities, and special districts may levy ad valorem taxes as provided by law and subject to the following millage limitations:

- Ten mills for county purposes;
- Ten mills for municipal purposes;
- Ten mills for school purposes;
- A millage rate fixed by law for a county furnishing municipal services;
- A millage authorized by law and approved by the voters for special districts; and
- A millage of not more than 1 mill for water management purposes in all areas of the state except the northwest portion of the state which is limited to 1/20th of 1 mill (.05).¹

Municipal Millage

Municipal millages are composed of four millage rates:

- General millage is the non-voted millage rate set by the municipality's governing body;

¹ Section 9(a), Art. VII, Florida Constitution.

- Debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Art. VII, s. 12 of the Florida Constitution;
- Voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Art. VII, s. 9(b) of the Florida Constitution; and
- Dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., added to the municipal millage to which the district is dependent and included as municipal millage for the purpose of the ten-mill cap.²

Method of Fixing Millage

Upon the completion of the assessment of all property, the property appraiser certifies to each taxing authority the taxable value within each taxing authority's jurisdiction.³ Each taxing authority prepares a tentative budget and proposes a millage rate necessary to fund the tentative budget. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls.⁴ The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps.⁵ A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to the end of said hearing.⁶

Special Assessments

Special assessments are a revenue source that may be used by local governments to fund certain services and maintain capital facilities.⁷ Unlike taxes, these assessments are directly linked to a particular service or benefit. Examples of special assessments include fees for garbage disposal, sewer improvements, fire protection, and rescue services.⁸ Counties and municipalities have the authority to levy special assessments based on their home rule powers.⁹ Special districts derive their authority to levy these assessments through general law or special act.

As established in Florida case law, an assessment must meet two requirements in order to be classified as a valid special assessment:

- The assessed property must derive a special benefit from the service provided; and
- The assessment must be apportioned fairly and reasonably among the properties that receive the special benefit.¹⁰

² Office of Economic and Demographic Research, *2014 Local Government Financial Information Handbook*, p. 4 (Dec. 2014) available at <http://edr.state.fl.us/Content/local-government/reports/lghih14.pdf> (last visited April 15, 2015). See also s. 200.001(2), F.S.

³ Section 200.065(1), F.S.

⁴ Section 200.065(2)(a)1., F.S.

⁵ Section 20.21(2)(b), F.S.

⁶ Section 200.065(2)(c), F.S.

⁷ *Supra* 2 note at 15.

⁸ *Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 578 (Fla. 2d DCA 1977); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973); and *Sarasota County v. Sarasota Church of Christ*, 641 So. 2d 900 (Fla. 2d DCA 1994).

⁹ Section 1 and 9, Art. VII, Florida Constitution. See also s. 125.271(2), F.S.

¹⁰ *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

Local governments may collect these special assessments, or “non-ad valorem assessments,” on the annual ad valorem tax bills. Section 197.3632, F.S., provides procedures for including non-ad valorem assessments on annual ad valorem tax bills.

Supplemental Method of Making Local Improvements

Independent of a municipality’s authority to impose special assessments under its home rule powers, ch. 170, F. S., provides a supplemental and alternative method for making municipal improvements. Specifically, s. 170.201(1), F.S., provides that “the governing body of a municipality may levy and collect special assessments to fund capital improvements and municipal services including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement and parking facilities.” The governing body of a municipality may apportion costs of such special assessment on:

- The front or square footage of each parcel of land; or
- An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.

Although subsection (1) of s. 170.201, F.S., does not explicitly list law enforcement services, the language “including, but not limited to” indicates that this is not an exclusive list.

Municipal Service Taxing or Benefit Units

Counties may establish municipal service taxing or benefit units (MSTUs) for any part or all of the county’s unincorporated area in order to provide a number of county or municipal services. Such services can be funded, in whole or in part, from special assessments.¹¹ To the extent not inconsistent with general or special law, counties may also create special districts to include both incorporated and unincorporated areas, upon the approval of the affected municipality’s governing body, which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.¹²

Special Assessments for Law Enforcement Services

In 1998, the Attorney General’s Office issued Opinion 98-57, stating that “the imposition of special assessments to fund general law enforcement would not appear to be permissible in light of the” Florida Supreme Court decision, *Lake County v. Water Oak Management*.¹³

In *Lake County*, the Fifth District Court of Appeal struck down a special assessment for fire protection services provided by the county on the grounds that there was no special benefit to the properties on which the fire protection special assessment was imposed.

On appeal, the Florida Supreme Court stated that the “test is not whether the services confer a ‘unique’ benefit or are different in type or degree . . . rather the test is whether there is a logical

¹¹ Section 125.01(1)(q)-(r), F.S.

¹² Section 125.01(5), F.S.

¹³ Op. Atty. Gen. Fla. 98-57 (Sept. 18, 1998) citing 695 So. 2d 667 (Fla. 1997).

relationship between services provided and the benefit to real property.”¹⁴ In support of a previous 1969 Supreme Court decision, the court held that “fire protection services do, at a minimum, specifically benefit real property by providing for lower insurance premiums and enhancing the value of the property.”¹⁵ The Court further stated that the assessment still must meet the second prong of the test and be properly apportioned to the benefit received. Absent the proper apportionment, the assessment becomes an unauthorized tax.

In conclusion the court held that:

Clearly, services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property.¹⁶

In 2005, the First District Court of Appeal held that special assessments for law enforcement services in an MSTU that benefited leaseholds were a valid special assessment.¹⁷ In that case, the leaseholds subject to the special assessment were located on an island with “unique tourist and crowd control needs requiring specialized law enforcement services to protect the value of the leasehold property.” For these reasons, the court held that the “unique nature and needs of the subject leaseholds” made the special assessments valid.

Based on these court decisions and the 1998 Attorney General Opinion, it would appear that, absent a unique condition of the properties benefited, a municipality currently does not have the authority to levy assessments for general law enforcement services even if the assessment provides a special benefit to the property.

III. Effect of Proposed Changes:

Section 1 creates s. 166.212, F.S., to allow a municipality to levy a special assessment to fund the costs of providing law enforcement services. A municipality may adopt an ordinance levying a special assessment which apportions the cost of law enforcement services among the parcels of real property in the municipality in reasonable proportion to the benefit each parcel receives, but no more than \$200 per parcel.

The municipality must develop an apportionment methodology and reduce its ad valorem millage. The apportionment may be based on the following factors:

- The square footage of structures on the parcel;
- The location and use of the parcel;
- The projected amount of time that the municipal law enforcement agency will spend protecting the property, grouped by neighborhood, zone, or category of use;
- The value of the property (this factor may not be a sole or major factor); and
- Any other factor that reasonably may be used to determine the benefit of law enforcement services to a parcel of property.

¹⁴ *Lake County* 695 So. 2d at 669.

¹⁵ *Id.* citing *Fire Dist. No. 1 v. Jenkins*, 221 So. 2d 740, 741 (Fla. 1969).

¹⁶ *Id.* at 670.

¹⁷ *Quietwater Entertainment, Inc. v. Escambia County*, 890 So. 2d 525 (Fla. 1st DCA 2005).

The municipality must reduce its ad valorem millage as follows:

- In the first year the municipality levies the special assessment, it must reduce the ad valorem millage by the millage that would be required to collect revenue equal to the revenue that is forecast to be collected from the special assessment.
- When preparing the notice of proposed property taxes¹⁸ in the first year of the assessment, the governing body of the municipality must calculate the rolled-back millage rate¹⁹ and determine the preliminary proposed millage rate as if there were no law enforcement services assessment. The preliminary proposed millage rate must then be reduced by the amount of the law enforcement services assessment.
- After the first year of the assessment, the municipality's governing body will calculate the millage rate and rolled-back rate for the notice of proposed property taxes, based on the adopted millage rate from the previous year.
- A municipality is not required to reduce its millage, excluding millage approved by a vote of the electors and millage pledged to repay bonds:
 - By more than 75 percent; or
 - By more than 50 percent, if the resolution imposing the special assessment is approved by a two-thirds vote of the governing body of the municipality.

The bill requires the property appraiser to list the special assessment on the notice of property taxes. The bill provides authorization for the Department of Revenue to adopt rules and forms necessary to administer this section.

The authorization provided in the bill is to be construed to be general law authorizing a municipality to levy taxes under Art. VII, ss. 1 and 9 of the Florida Constitution.

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.

¹⁸ Pursuant to s. 200.069, F.S.

¹⁹ Pursuant to s. 200.065(5), F.S.

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

The Revenue Estimating Conference has not determined the fiscal impact of this bill.

B. Private Sector Impact:

Individuals that reside in municipalities that levy special assessments for law enforcement services as provided in this bill may be required to pay such special assessments for the law enforcement services they receive.

C. Government Sector Impact:

Municipalities will be permitted to levy special assessments for law enforcement services so long as they meet the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue notes that complications may arise because the bill provides no deadline for a municipality to pass its resolution to levy the law enforcement service assessment.²⁰ If a municipality passed a resolution during the later stages of the TRIM²¹ process, the collection of the assessment and adjustment to the millage rate could be problematic. Instead, a specific deadline could be established²² for a taxing authority to pass a non-ad valorem resolution to levy this assessment. Because the DOR would need to promulgate new forms and make programming changes before municipalities could implement the assessment and change their millage rate, the DOR advises that implementing any law enforcement assessments in 2015 would be difficult.

Additionally, the DOR notes that no consequences are provided for a taxing authority not calculating the rolled-back rate by reducing the amount of law enforcement services.

The DOR is authorized to adopt rules and forms necessary to administer the bill.

VIII. Statutes Affected:

This bill creates section 166.212 of the Florida Statutes.

²⁰ Department of Revenue, *Senate Bill 780 Legislative Bill Analysis at 6* (Mar. 3, 2015).

²¹ TRIM means Truth in Millage

²² Department of Revenue suggests April 1 for the deadline. *Id.*

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

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

CS by Fiscal Policy on April 20, 2015:

The committee substitute permits a municipality to adopt an ordinance levying a special assessment which apportions the cost of law enforcement services among the parcels of real property in the municipality in reasonable proportion to the benefit received by each parcel, *but no more than \$200 per parcel of real property.*

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 Smith

31-01021-15

2015780__

1 A bill to be entitled
 2 An act relating to a special assessment for law
 3 enforcement services; creating s. 166.212, F.S.;
 4 authorizing a municipality to levy a special
 5 assessment to fund the costs of providing law
 6 enforcement services; requiring a municipality to
 7 adopt an ordinance and reduce its ad valorem millage
 8 to levy the special assessment; providing a
 9 methodology for the apportionment of the special
 10 assessment and the reduction of the ad valorem
 11 millage; requiring the property appraiser to list the
 12 special assessment on the notice of property taxes;
 13 specifying exceptions to the reduction of the ad
 14 valorem millage by more than a certain percentage;
 15 authorizing the Department of Revenue to adopt rules
 16 and forms; providing for construction; providing an
 17 effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:
 20
 21 Section 1. Section 166.212, Florida Statutes, is created to
 22 read:
 23 166.212 Law enforcement services special assessment.—
 24 (1) GENERAL.—The governing body of a municipality may levy
 25 a law enforcement services special assessment to fund all or a
 26 portion of its costs of providing law enforcement services, if
 27 the governing body:
 28 (a) Adopts an ordinance levying the law enforcement
 29 services special assessment, which apportions the cost of law

Page 1 of 4

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30 enforcement services among the parcels of real property in the
 31 municipality in reasonable proportion to the benefit received by
 32 each parcel; and
 33 (b) Reduces its ad valorem millage pursuant to subsection
 34 (3).
 35 (2) APPORTIONMENT METHODOLOGY.—The methodology used to
 36 determine the benefit that a parcel of real property derives
 37 from law enforcement services may be based on the following:
 38 (a) The square footage of structures on the parcel.
 39 (b) The location of the parcel.
 40 (c) The use of the parcel.
 41 (d) The projected amount of time that the municipal law
 42 enforcement agency will spend serving and protecting the parcel,
 43 grouped by neighborhood, zone, or category of use, which may
 44 include the projected amount of time that will be spent
 45 responding to calls for law enforcement services and the
 46 projected amount of time that law enforcement officers will
 47 spend patrolling or regulating traffic on the streets that
 48 provide access to the parcel.
 49 (e) The value of the real property that is served or
 50 protected, including the value of each structure on the parcel
 51 and the structure's contents. However, this factor may not be
 52 used as the sole factor or as a major factor in determining the
 53 benefit of law enforcement services to a parcel of real
 54 property.
 55 (f) Any other factor that may reasonably be used to
 56 determine the benefit of law enforcement services to a parcel of
 57 real property.
 58 (3) REDUCTION IN AD VALOREM MILLAGE.—

Page 2 of 4

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

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(a) In the first year that the special assessment is levied, the governing body of the municipality must reduce its ad valorem millage, calculated as if there were no law enforcement services assessment, by the millage that would be required to collect revenue equal to the revenue that is forecast to be collected from the special assessment.

(b) When preparing the notice of proposed property taxes pursuant to s. 200.069 in the first year of the assessment, the governing body of the municipality shall calculate the rolled-back millage rate pursuant to s. 200.065(5) and shall determine the preliminary proposed millage rate as if there were no law enforcement services assessment. The governing body shall then adopt the proposed law enforcement services assessment and determine the equivalent millage rate pursuant to paragraph (a). The preliminary proposed millage rate shall then be reduced by the amount of the law enforcement services assessment equivalent millage rate and the resulting millage rate shall then be reported to the property appraiser, together with the amount of the law enforcement services assessment, pursuant to the notice requirements of ss. 200.065 and 200.069. The property appraiser shall list the law enforcement services assessment on the notice of proposed property taxes below the line in the columns reserved for non-ad valorem assessments. After the first year of the assessment, the millage rate and rolled-back rate for the notice of proposed property taxes shall be calculated pursuant to s. 200.065(5) and shall be based on the adopted millage rate from the previous year.

(c) Notwithstanding paragraph (a), the governing body of a municipality is not required to reduce its millage, excluding

31-01021-15

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millage approved by a vote of the electors and millage pledged to repay bonds, by more than 75 percent, or by more than 50 percent if the ordinance levying the law enforcement services assessment is approved by a two-thirds vote of the governing body of the municipality.

(4) RULES AND FORMS.—The Department of Revenue may adopt rules and forms necessary to administer this section.

(5) CONSTRUCTION.—The levy of a law enforcement services special assessment pursuant to this section shall be construed as being authorized by general law in accordance with ss. 1 and 9, Art. VII of the State Constitution.

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)

4/20/2015

Meeting Date

780

Bill Number (if applicable)

Topic Special Assessment for LE Services

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St
Street

Phone 850-222-3329

Tallahassee FL 32301
City State Zip

Email N/A

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Benevolent 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)

4/20/15
Meeting Date

780
Bill Number (if applicable)

Topic Law Enforcement Assessment

Amendment Barcode (if applicable)

Name Dave Ericks

Job Title Lobbyist

Address 205 S. Adams St

Phone 850-591-7550

Street

Tallahassee
City

FL
State

32301
Zip

Email Dave@ericksconsul/enfs.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CITY OF NORTH LAUDERDALE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/20/2015
Meeting Date

SB 780
Bill Number (if applicable)

Topic LE Services Assessment
Amendment Barcode (if applicable)

Name DAVID SIGERSON

Job Title

Address 2410 VAN BUREN ST
Street
Hwd FL 33020
City State Zip

Phone 954 336 3544

Email sigerson@law@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing City of Margate

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/20/2015

Meeting Date

Topic _____

Bill Number 780

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/15

Meeting Date

SB 780

Bill Number (if applicable)

Topic LAW enforcement Assessment

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Legislative Advocate

Address P.O. Box 1757

Phone _____

Street

Tallahassee FL 32302

City

State

Zip

Email A.Hughes@fpcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

780

Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____

Topic Special Assessments

Name Lisa Henning

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Traternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/20/15

Meeting Date

SB 780

Bill Number (if applicable)

Topic law enforcement services.

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise DR.
Street

Phone _____

Largo FL. 33773
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☒ Information

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

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 7, 2015

I respectfully request that **Senate Bill #780**, relating to Special Assessment For Law Enforcement Services , be placed on the:

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

A handwritten signature in black ink, appearing to read "Chris Smith", is written over a horizontal line.

Senator Christopher L. Smith
Florida Senate, District 31

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 464 (402202)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Joyner

SUBJECT: Controlled Substances

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Favorable
2. Harkness	Sadberry	ACJ	Fav/CS
3. Jones	Hrdlicka	FP	Pre-meeting
4. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 464 authorizes a court to grant a defendant's motion to depart from a 3-year mandatory minimum term and mandatory fine for trafficking in cocaine, hydrocodone, oxycodone, opiates or opioids, phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines, or lysergic acid diethylamide (LSD) if the court finds all of the following criteria are met:

- The defendant has not previously moved for a departure.
- The offense would be subject to a 3-year mandatory minimum term absent the departure.
- The offense involves possession of any of the noted controlled substances (or a mixture containing the substance) in a specified quantity.
- The offense does not involve use of a minor, a firearm, a deadly weapon, or the threat to use or use of physical force.
- The defendant does not have a previous conviction, adjudication of delinquency, or withhold or adjudication of guilt for certain specified offenses.
- The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

The state attorney may object to the motion to depart.

The bill has a positive fiscal impact on general revenue because it reduces the future need for state prison beds.

II. Present Situation:

Drug Trafficking

Unlawful activities involving controlled substances (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances), and s. 893.135, F.S. (drug trafficking). “Drug trafficking” is when a person knowingly sells, purchases, manufactures, delivers, or brings into this state, or is knowingly in actual or constructive possession¹ of, certain controlled substances in a statutorily-specified quantity.²

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are addressed in s. 893.135, F.S. Relevant to the bill, s. 893.135, F.S., addresses cocaine, hydrocodone, oxycodone, opiates³ or opioids,⁴ phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines,⁵ and lysergic acid diethylamide (LSD).

The quantity of a controlled substance must also meet a minimum weight threshold, and s. 893.135, F.S., provides escalating weight ranges. Most drug trafficking offenses are first degree felonies⁶ and subject to mandatory minimum sentencing terms.⁷ The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substance possessed, sold, etc. In some cases, possession, sale, etc., of a relatively small quantity of a covered controlled substance will trigger drug trafficking penalties.

The shortest mandatory minimum term available under s. 893.135, F.S., is a 3-year mandatory minimum term. Provided below are the threshold weights that trigger drug trafficking penalties and the weight ranges applicable to a 3-year mandatory minimum term for each of the controlled substances or controlled substance categories addressed in the bill.

¹ One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.

² See s. 893.135, F.S.

³ Examples of opiates are opium and morphine.

⁴ Examples of opioids are heroin, oxycodone, hydrocodone, and hydromorphone.

⁵ “Phenethylamines” is a broad category of “psychoactive substances.” Sanders, B., Lankenau S.E., Bloom, J.J. and, Hathazi, D., “Research chemicals”: *Tryptamine and Phenethylamine Use Among High Risk Youth*, Substance Use & Misuse (2008), Vol. 43, No. 3-4, Pages 389-402, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last viewed on April 15, 2015).

⁶ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. ss. 775.082 and 775.083, F.S.

⁷ Most drug offenses under s. 893.13, F.S., are not subject to mandatory minimum terms.

Statutory Reference	Covered Substance	Threshold Weight	Weight Range Applicable to Three-Year Mandatory Minimum Term
s. 893.135(1)(b), F.S.	Cocaine	28 grams	28 grams or more but less than 200 grams
s. 893.135(1)(c), F.S.	Hydrocodone, oxycodone, opiates and opioids	14 grams (hydrocodone), 7 grams (oxycodone), 4 grams opiates and opioids)	14 grams or more but less than 28 grams (hydrocodone), 7 grams or more but less than 14 grams (oxycodone), 4 grams or more but less than 14 grams (opiates and opioids)
s. 893.135(1)(d), F.S.	Phencyclidine	28 grams	28 grams or more but less than 200 grams
s. 893.135(1)(f), F.S.	Amphetamines	14 grams	14 grams or more but less than 28 grams
s. 893.135(1)(g), F.S.	Flunitrazepam	4 grams	4 grams or more but less than 14 grams
s. 893.135(1)(k), F.S.	Phenethylamines	10 grams	10 grams or more but less than 200 grams
s. 893.135(1)(l), F.S.	Lysergic acid diethylamide (LSD)	1 gram	1 gram or more but less than 5 grams

The Criminal Punishment Code and Mandatory Minimum Terms

The Criminal Punishment Code (code)⁸ is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors. For example, if the primary offense is drug trafficking, the subtotal sentence points are multiplied by 1.5, at the discretion of the court, for a Level 7 or Level 8 trafficking offense.⁹

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible prison sentence in months. The permissible sentencing range for the primary offense is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense.

The code includes a list of mitigating factors. Generally, if a mitigating factor is found by the sentencing court, the court may sentence an offender below the lowest permissible sentence (a "downward departure"). However, a mandatory minimum term is not subject to mitigation.¹⁰

⁸Sections 921.002-921.0027, F.S.

⁹ Section 921.0024(1)(b), F.S.

¹⁰ See *State v. Vanderhoff*, 14 So. 3d 1185 (Fla. 5th DCA 2009).

Most of the mandatory minimum terms found in Florida law involve drug trafficking offenses. Mandatory minimum terms impact code sentencing. “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”¹¹

A mandatory minimum sentence is often longer than a prison sentence scored as the lowest permissible sentence under the code, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term.¹²

III. Effect of Proposed Changes:

The bill amends s. 893.135, F.S., to provide that if a defendant is convicted of a violation of this section, the defendant may make a motion to the sentencing court to depart from the 3-year mandatory minimum term of imprisonment and mandatory fine that would apply to the conviction absent a downward departure. The state attorney may file an objection to the motion.

The court may grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence¹³ that all of the following criteria are met:

- The defendant has not previously benefited by a departure from the 3-year mandatory minimum term and mandatory fine.
- The defendant’s violation of s. 893.135, F.S., would be subject to a 3-year mandatory minimum term and mandatory fine absent a departure.
- The defendant’s violation of s. 893.135, F.S., involves possession of one of the following controlled substances or a mixture that contains one of the following controlled substances:
 - Not more than 34 grams of cocaine;
 - Not more than 17 grams of hydrocodone;
 - Not more than 8 grams of oxycodone;
 - Not more than 6 grams of a controlled substance opiates or opioids;
 - Not more than 34 grams of phencyclidine;
 - Not more than 17 grams of amphetamine or methamphetamine;
 - Not more than 6 grams of flunitrazepam;
 - Not more than 20 grams of a phenethylamine; or
 - Not more than 2 grams of LSD.
- The defendant did not possess the controlled substance or mixture containing the controlled substance with the intent to sell, manufacture, or deliver the substance or mixture.
- The defendant did not obtain the controlled substance or mixture containing the controlled substance by using a minor to obtain the substance or mixture.

¹¹ Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure.

¹² Staff is aware of two circumstances in which a sentencing court is authorized to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender. Section 958.04, F.S. *See Christian v. State*, 84 So. 3d 437 (Fla. 5th DCA 2012). The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. s. 893.135(4), F.S.

¹³ “Preponderance of the evidence” is the same level of proof necessary to establish facts supporting the mitigation of a sentence under the Criminal Punishment Code. s. 921.002(1)(f), F.S. Similarly, each of the findings required as the basis for a habitual offender sentence must be found to exist by a preponderance of the evidence. s. 775.084(3)(a)4., F.S.

- In committing the violation of s. 893.135, F.S., the defendant did not possess or threaten to use a firearm or deadly weapon, or threaten to use or use physical force against another person.
- The defendant does not have a previous conviction for or has not had adjudication withheld for a violation of s. 893.135, F.S. (drug trafficking).
- The defendant does not have a previous conviction, adjudication of delinquency, or withhold of adjudication of guilt for:
 - Sale, manufacture, or delivery of a controlled substance, or the possession with intent to sell, manufacture, or deliver a controlled substance;
 - Sexual misconduct with an individual with a developmental disability;
 - Sexual misconduct with a patient;
 - Kidnapping, false imprisonment, or luring or enticing a child, if the victim is a minor and the defendant is not the victim's parent or guardian;
 - Human trafficking;
 - Sexual battery;
 - Unlawful sexual activity with a 16 or 17-year-old;
 - The former offense of procuring a minor for prostitution;
 - The former offense of selling or buying a minor into prostitution;
 - A lewd or lascivious offenses committed against or in the presence of persons less than 16 years of age;
 - Video voyeurism;
 - A lewd or lascivious offenses committed against or in the presence of an elderly person or disabled person;
 - Sexual performance by a child;
 - Protection of minors; prohibition of certain acts in connection with obscenity;
 - Child pornography; prohibited computer usage; traveling to meet minor;
 - Exploited children's civil remedy;
 - Transmission of material harmful to minors to a minor by electronic device or equipment prohibited;
 - Selling or buying of minors;
 - Sexual misconduct with a forensic client;
 - Sexual misconduct with a juvenile offender; or
 - Any offense similar to an offense previously described which was committed in this state and which has been redesignated from a former statute number to one of the described offenses.
- The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

The court's decision on how to dispose of the motion is completely discretionary. Therefore, the bill does not compel the court to grant the motion to depart even if the court finds that all of the criteria are met.

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:

None.

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 negative indeterminate (unquantifiable) prison bed impact, meaning the bill will reduce the future need for prison beds.

According to the Office of the State Court Administrator, the bill will increase the judicial workload, however they the exact fiscal impact cannot be determined due to the unavailability of data.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.135 of the Florida Statutes.

¹⁴ Office of the State Courts Administrator 2015 Judicial Impact Statement, *Senate Bill 464*, (April 8, 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.)

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice
on April 7, 2015:**

The committee substitute makes technical and clarifying changes to the bill.

- B. **Amendments:**

None.



402202

594-03724-15

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 controlled substances; amending s.
893.135, F.S.; authorizing a defendant to move to
depart from the 3-year mandatory term of imprisonment
and from the mandatory fine for a drug trafficking
violation involving a specified quantity of a
specified controlled substance; authorizing the state
attorney to file an objection to the motion;
authorizing the sentencing court to grant the motion
if the court finds that the defendant has demonstrated
by a preponderance of the evidence that specified
criteria are met; providing an effective date.

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

Section 1. Present subsection (7) of section 893.135,
Florida Statutes, is redesignated as subsection (8), and a new
subsection (7) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or
reduction of sentences; conspiracy to engage in trafficking.—

(7) (a) If a defendant is convicted of a violation of this
section, the defendant may move the sentencing court to depart
from the 3-year mandatory minimum term of imprisonment and the
mandatory fine that would apply to the conviction absent a
departure. The state attorney may file an objection to the
motion.

(b) The court may grant the motion if the court finds that



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594-03724-15

the defendant has demonstrated by a preponderance of the
evidence that all of the following criteria are met:

1. The defendant has not previously benefited by a
departure from the 3-year mandatory minimum term and mandatory
fine pursuant to this subsection.

2. The defendant's violation of this section would be
subject to a 3-year mandatory minimum term and mandatory fine
absent a departure.

3. The defendant's violation of this section involves
possession of one of the following controlled substances or a
mixture that contains one of the following controlled
substances:

a. Not more than 34 grams of cocaine;

b. Not more than 17 grams of hydrocodone;

c. Not more than 8 grams of oxycodone;

d. Not more than 6 grams of any controlled substance as
described in subparagraph (1) (c) 1.;

e. Not more than 34 grams of phencyclidine;

f. Not more than 17 grams of amphetamine or
methamphetamine;

g. Not more than 6 grams of flunitrazepam;

h. Not more than 20 grams of a Phenethylamine as described
in subparagraph (1) (k) 1.; or

i. Not more than 2 grams of lysergic acid diethylamide
(LSD).

4. The defendant did not possess the controlled substance
or mixture containing the controlled substance with the intent
to sell, manufacture, or deliver the substance or mixture.

5. The defendant did not obtain the controlled substance or



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594-03724-15

mixture containing the controlled substance by using a minor to obtain the substance or mixture.

6. In committing the violation of this section, the defendant did not possess or threaten to use a firearm or deadly weapon, or threaten to use or use physical force against another person.

7. The defendant does not have a previous conviction for or has not had adjudication withheld for a violation of this section.

8. The defendant does not have a previous conviction for, does not have an adjudication of delinquency for, or has not had adjudication withheld for a violation of s. 893.13 which involved the sale, manufacture, or delivery of a controlled substance or the possession with intent to sell, manufacture, or deliver a controlled substance.

9. The defendant does not have a previous conviction for, does not have an adjudication of delinquency for, or has not had adjudication withheld for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:

a. Section 393.135(2);

b. Section 394.4593(2);

c. Section 787.01, s. 787.02, or s. 787.025(2)(c), if the victim is a minor and the defendant is not the victim's parent or guardian;

d. Section 787.06(3)(b), (d), (f), or (g);

e. Section 794.011, excluding s. 794.011(10);

f. Section 794.05;



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g. Former s. 796.03;

h. Former s. 796.035;

i. Section 800.04;

j. Section 810.145(8);

k. Section 825.1025;

l. Section 827.071;

m. Section 847.0133;

n. Section 847.0135, excluding s. 847.0135(6);

o. Section 847.0137;

p. Section 847.0138;

q. Section 847.0145;

r. Section 916.1075(2);

s. Section 985.701(1); or

t. Any offense similar to those listed in sub-subparagraphs a.-s. which was committed in this state and which has been redesignated from a former statute number to one of those listed in this subparagraph.

10. The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

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/SB 464

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Joyner

SUBJECT: Controlled Substances

DATE: April 21, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Favorable
2. Harkness	Sadberry	ACJ	Recommend: Fav/CS
3. Jones	Hrdlicka	FP	Fav/CS
4. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 464 authorizes a court to grant a defendant's motion to depart from a 3-year mandatory minimum term and mandatory fine for trafficking in cocaine, hydrocodone, oxycodone, opiates or opioids, phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines, or lysergic acid diethylamide (LSD) if the court finds all of the following criteria are met:

- The defendant has not previously moved for a departure.
- The offense would be subject to a 3-year mandatory minimum term absent the departure.
- The offense involves possession of any of the noted controlled substances (or a mixture containing the substance) in a specified quantity.
- The offense does not involve use of a minor, a firearm, a deadly weapon, or the threat to use or use of physical force.
- The defendant does not have a previous conviction, adjudication of delinquency, or withhold or adjudication of guilt for certain specified offenses.
- The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

The state attorney may object to the motion to depart.

The bill has a positive fiscal impact on general revenue because it reduces the future need for state prison beds.

II. Present Situation:

Drug Trafficking

Unlawful activities involving controlled substances (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances), and s. 893.135, F.S. (drug trafficking). “Drug trafficking” is when a person knowingly sells, purchases, manufactures, delivers, or brings into this state, or is knowingly in actual or constructive possession¹ of, certain controlled substances in a statutorily-specified quantity.²

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are addressed in s. 893.135, F.S. Relevant to the bill, s. 893.135, F.S., addresses cocaine, hydrocodone, oxycodone, opiates³ or opioids,⁴ phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines,⁵ and lysergic acid diethylamide (LSD).

The quantity of a controlled substance must also meet a minimum weight threshold, and s. 893.135, F.S., provides escalating weight ranges. Most drug trafficking offenses are first degree felonies⁶ and subject to mandatory minimum sentencing terms.⁷ The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substance possessed, sold, etc. In some cases, possession, sale, etc., of a relatively small quantity of a covered controlled substance will trigger drug trafficking penalties.

The shortest mandatory minimum term available under s. 893.135, F.S., is a 3-year mandatory minimum term. Provided below are the threshold weights that trigger drug trafficking penalties and the weight ranges applicable to a 3-year mandatory minimum term for each of the controlled substances or controlled substance categories addressed in the bill.

¹ One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.

² See s. 893.135, F.S.

³ Examples of opiates are opium and morphine.

⁴ Examples of opioids are heroin, oxycodone, hydrocodone, and hydromorphone.

⁵ “Phenethylamines” is a broad category of “psychoactive substances.” Sanders, B., Lankenau S.E., Bloom, J.J. and, Hathazi, D., “Research chemicals”: *Tryptamine and Phenethylamine Use Among High Risk Youth*, Substance Use & Misuse (2008), Vol. 43, No. 3-4, Pages 389-402, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last viewed on April 15, 2015).

⁶ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. ss. 775.082 and 775.083, F.S.

⁷ Most drug offenses under s. 893.13, F.S., are not subject to mandatory minimum terms.

Statutory Reference	Covered Substance	Threshold Weight	Weight Range Applicable to Three-Year Mandatory Minimum Term
s. 893.135(1)(b), F.S.	Cocaine	28 grams	28 grams or more but less than 200 grams
s. 893.135(1)(c), F.S.	Hydrocodone, oxycodone, opiates and opioids	14 grams (hydrocodone), 7 grams (oxycodone), 4 grams opiates and opioids)	14 grams or more but less than 28 grams (hydrocodone), 7 grams or more but less than 14 grams (oxycodone), 4 grams or more but less than 14 grams (opiates and opioids)
s. 893.135(1)(d), F.S.	Phencyclidine	28 grams	28 grams or more but less than 200 grams
s. 893.135(1)(f), F.S.	Amphetamines	14 grams	14 grams or more but less than 28 grams
s. 893.135(1)(g), F.S.	Flunitrazepam	4 grams	4 grams or more but less than 14 grams
s. 893.135(1)(k), F.S.	Phenethylamines	10 grams	10 grams or more but less than 200 grams
s. 893.135(1)(l), F.S.	Lysergic acid diethylamide (LSD)	1 gram	1 gram or more but less than 5 grams

The Criminal Punishment Code and Mandatory Minimum Terms

The Criminal Punishment Code (code)⁸ is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors. For example, if the primary offense is drug trafficking, the subtotal sentence points are multiplied by 1.5, at the discretion of the court, for a Level 7 or Level 8 trafficking offense.⁹

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible prison sentence in months. The permissible sentencing range for the primary offense is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense.

The code includes a list of mitigating factors. Generally, if a mitigating factor is found by the sentencing court, the court may sentence an offender below the lowest permissible sentence (a "downward departure"). However, a mandatory minimum term is not subject to mitigation.¹⁰

⁸Sections 921.002-921.0027, F.S.

⁹ Section 921.0024(1)(b), F.S.

¹⁰ See *State v. Vanderhoff*, 14 So. 3d 1185 (Fla. 5th DCA 2009).

Most of the mandatory minimum terms found in Florida law involve drug trafficking offenses. Mandatory minimum terms impact code sentencing. “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”¹¹

A mandatory minimum sentence is often longer than a prison sentence scored as the lowest permissible sentence under the code, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term.¹²

III. Effect of Proposed Changes:

The bill amends s. 893.135, F.S., to provide that if a defendant is convicted of a violation of this section, the defendant may make a motion to the sentencing court to depart from the 3-year mandatory minimum term of imprisonment and mandatory fine that would apply to the conviction absent a downward departure. The state attorney may file an objection to the motion.

The court may grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence¹³ that all of the following criteria are met:

- The defendant has not previously benefited by a departure from the 3-year mandatory minimum term and mandatory fine.
- The defendant’s violation of s. 893.135, F.S., would be subject to a 3-year mandatory minimum term and mandatory fine absent a departure.
- The defendant’s violation of s. 893.135, F.S., involves possession of one of the following controlled substances or a mixture that contains one of the following controlled substances:
 - Not more than 34 grams of cocaine;
 - Not more than 17 grams of hydrocodone;
 - Not more than 8 grams of oxycodone;
 - Not more than 6 grams of a controlled substance opiates or opioids;
 - Not more than 34 grams of phencyclidine;
 - Not more than 17 grams of amphetamine or methamphetamine;
 - Not more than 6 grams of flunitrazepam;
 - Not more than 20 grams of a phenethylamine; or
 - Not more than 2 grams of LSD.
- The defendant did not possess the controlled substance or mixture containing the controlled substance with the intent to sell, manufacture, or deliver the substance or mixture.
- The defendant did not obtain the controlled substance or mixture containing the controlled substance by using a minor to obtain the substance or mixture.

¹¹ Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure.

¹² Staff is aware of two circumstances in which a sentencing court is authorized to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender. Section 958.04, F.S. *See Christian v. State*, 84 So. 3d 437 (Fla. 5th DCA 2012). The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. s. 893.135(4), F.S.

¹³ “Preponderance of the evidence” is the same level of proof necessary to establish facts supporting the mitigation of a sentence under the Criminal Punishment Code. s. 921.002(1)(f), F.S. Similarly, each of the findings required as the basis for a habitual offender sentence must be found to exist by a preponderance of the evidence. s. 775.084(3)(a)4., F.S.

- In committing the violation of s. 893.135, F.S., the defendant did not possess or threaten to use a firearm or deadly weapon, or threaten to use or use physical force against another person.
- The defendant does not have a previous conviction for or has not had adjudication withheld for a violation of s. 893.135, F.S. (drug trafficking).
- The defendant does not have a previous conviction, adjudication of delinquency, or withhold of adjudication of guilt for:
 - Sale, manufacture, or delivery of a controlled substance, or the possession with intent to sell, manufacture, or deliver a controlled substance;
 - Sexual misconduct with an individual with a developmental disability;
 - Sexual misconduct with a patient;
 - Kidnapping, false imprisonment, or luring or enticing a child, if the victim is a minor and the defendant is not the victim's parent or guardian;
 - Human trafficking;
 - Sexual battery;
 - Unlawful sexual activity with a 16 or 17-year-old;
 - The former offense of procuring a minor for prostitution;
 - The former offense of selling or buying a minor into prostitution;
 - A lewd or lascivious offenses committed against or in the presence of persons less than 16 years of age;
 - Video voyeurism;
 - A lewd or lascivious offenses committed against or in the presence of an elderly person or disabled person;
 - Sexual performance by a child;
 - Protection of minors; prohibition of certain acts in connection with obscenity;
 - Child pornography; prohibited computer usage; traveling to meet minor;
 - Exploited children's civil remedy;
 - Transmission of material harmful to minors to a minor by electronic device or equipment prohibited;
 - Selling or buying of minors;
 - Sexual misconduct with a forensic client;
 - Sexual misconduct with a juvenile offender; or
 - Any offense similar to an offense previously described which was committed in this state and which has been redesignated from a former statute number to one of the described offenses.
- The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

The court's decision on how to dispose of the motion is completely discretionary. Therefore, the bill does not compel the court to grant the motion to depart even if the court finds that all of the criteria are met.

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:

None.

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 negative indeterminate (unquantifiable) prison bed impact, meaning the bill will reduce the future need for prison beds.

According to the Office of the State Court Administrator, the bill will increase the judicial workload, however they the exact fiscal impact cannot be determined due to the unavailability of data.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.135 of the Florida Statutes.

¹⁴ Office of the State Courts Administrator 2015 Judicial Impact Statement, *Senate Bill 464*, (April 8, 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 Fiscal Policy on April 20, 2015:

As recommended CS by Appropriations Subcommittee on Criminal and Civil Justice, the committee substitute makes technical and clarifying changes to the bill.

- B. **Amendments:**

None.

By Senator Joyner

19-00006A-15

2015464

A bill to be entitled

An act relating to controlled substances; amending s. 893.135, F.S.; authorizing a defendant to move to depart from the 3-year mandatory term of imprisonment and from the mandatory fine for a drug trafficking violation involving a specified quantity of a specified controlled substance; authorizing the state attorney to file an objection to the motion; authorizing the sentencing court to grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that specified criteria are met; providing an effective date.

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

Section 1. Present subsection (7) of section 893.135, Florida Statutes, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(7) (a) If a defendant is convicted of a violation of this section, the defendant may move the sentencing court to depart from the 3-year mandatory minimum term of imprisonment and the mandatory fine that would apply to the conviction absent a departure. The state attorney may file an objection to the motion.

(b) The court may grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that all of the following criteria are met:

Page 1 of 4

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

19-00006A-15

2015464

1. The defendant has not previously moved to depart from a 3-year mandatory minimum term and mandatory fine pursuant to this subsection.

2. The defendant's violation of this section would be subject to a 3-year mandatory minimum term and mandatory fine absent a departure.

3. The defendant's violation of this section involves possession of one of the following controlled substances or a mixture that contains one of the following controlled substances:

a. Not more than 34 grams of cocaine;

b. Not more than 17 grams of hydrocodone;

c. Not more than 8 grams of oxycodone;

d. Not more than 6 grams of any controlled substance as described in paragraph (1) (c);

e. Not more than 34 grams of phencyclidine;

f. Not more than 17 grams of amphetamine or methamphetamine;

g. Not more than 6 grams of flunitrazepam;

h. Not more than 20 grams of a Phenethylamine as described in subparagraph (1) (k) 1.; or

i. Not more than 2 grams of lysergic acid diethylamide (LSD).

4. The defendant did not possess the controlled substance or mixture containing the controlled substance with the intent to sell, manufacture, or deliver the substance or mixture.

5. The defendant did not obtain the controlled substance or mixture containing the controlled substance by using a minor to obtain the substance or mixture.

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

19-00006A-15

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59 6. In committing the violation of this section, the
 60 defendant did not possess or threaten to use a firearm or deadly
 61 weapon, or threaten to use or use physical force against another
 62 person.

63 7. The defendant does not have a previous conviction for,
 64 does not have an adjudication of delinquency for, or has not had
 65 adjudication withheld for a violation of this section.

66 8. The defendant does not have a previous conviction for,
 67 does not have an adjudication of delinquency for, or has not had
 68 adjudication withheld for a violation of s. 893.13 which
 69 involved the sale, manufacture, or delivery of a controlled
 70 substance or the possession with intent to sell, manufacture, or
 71 deliver a controlled substance.

72 9. The defendant does not have a previous conviction for,
 73 does not have an adjudication of delinquency for, or has not had
 74 adjudication withheld for committing, or attempting, soliciting,
 75 or conspiring to commit, any of the criminal offenses proscribed
 76 in the following statutes in this state or similar offenses in
 77 another jurisdiction:

78 a. Section 393.135(2);

79 b. Section 394.4593(2);

80 c. Section 787.01, s. 787.02, or s. 787.025(2)(c), if the
 81 victim is a minor and the defendant is not the victim's parent
 82 or guardian;

83 d. Section 787.06(3)(b), (d), (f), or (g);

84 e. Section 794.011, excluding s. 794.011(10);

85 f. Section 794.05;

86 g. Former s. 796.03;

87 h. Former s. 796.035;

19-00006A-15

2015464__

88 i. Section 800.04;

89 j. Section 810.145(8);

90 k. Section 825.1025;

91 l. Section 827.071;

92 m. Section 847.0133;

93 n. Section 847.0135, excluding s. 847.0135(6);

94 o. Section 847.0137;

95 p. Section 847.0138;

96 q. Section 847.0145;

97 r. Section 916.1075(2);

98 s. Section 985.701(1); or

99 t. Any offense similar to those listed in sub-subparagraphs
 100 a.-s. which was committed in this state and which has been
 101 redesignated from a former statute number to one of those listed
 102 in this subparagraph.

103 10. The defendant is amenable to substance abuse treatment
 104 if the court determines that he or she is in need of such
 105 treatment.

106 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 20, 2015

464

Meeting Date

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Robert Trammell

Job Title General Counsel

Address 103 North Gadsden Street

Phone 850.510.2187

Street

Tallahassee

Florida

32301

Email roberttrammell45@gmail.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 Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

April 8, 2015

Senator Anitere Flores, Chair
Senate Committee on Fiscal Policy
225 Knott
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Madame Chair:

This is to request that CS/Senate Bill 464, Controlled Substances, be placed on the agenda for the Committee on Fiscal Policy. There is projected to have a negative fiscal impact with regard to costs of imprisonment. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, reading "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- ☐ 608 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- ☐ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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 Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

April 20, 2015

Senator Anitere Flores , Chair
Senate Committee on Fiscal Policy
222 Knott Building
Tallahassee, FL 32399

Dear Madame Chair:

This is to request that my Legislative Assistant, Randi Rosete, be permitted to present Senate Bill 464, Controlled Substances. Allowing my assistant to present this bill will be greatly appreciated since I am not be able to personally present it due to my being in another committee meeting at that time.

Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner
Senator, District 19

REPLY TO:

- ☐ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- ☐ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



399254

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 499.0295, Florida Statutes, is created
to read:

499.0295 Experimental treatments for terminal conditions.—

(1) This section may be cited as the "Right to Try Act."

(2) As used in this section, the term:

(a) "Eligible patient" means a person who:

1. Has a terminal condition that is attested to by the



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patient's physician and confirmed by a second independent
evaluation by a board-certified physician in an appropriate
specialty for that condition;

2. Has considered all other treatment options for the
terminal condition currently approved by the United States Food
and Drug Administration;

3. Has given written informed consent for the use of an
investigational drug, biological product, or device; and

4. Has documentation from his or her treating physician
that the patient meets the requirements of this paragraph.

(b) "Investigational drug, biological product, or device"
means a drug, biological product, or device that has
successfully completed phase 1 of a clinical trial but has not
been approved for general use by the United States Food and Drug
Administration and remains under investigation in a clinical
trial approved by the United States Food and Drug
Administration.

(c) "Terminal condition" means a progressive disease or
medical or surgical condition that causes significant functional
impairment, is not considered by a treating physician to be
reversible even with the administration of available treatment
options currently approved by the United States Food and Drug
Administration, and, without the administration of life-
sustaining procedures, will result in death within 1 year after
diagnosis if the condition runs its normal course.

(d) "Written informed consent" means a document that is
signed by a patient, a parent of a minor patient, a court-
appointed guardian for a patient, or a health care surrogate
designated by a patient and includes:



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41 1. An explanation of the currently approved products and
42 treatments for the patient's terminal condition.

43 2. An attestation that the patient concurs with his or her
44 physician in believing that all currently approved products and
45 treatments are unlikely to prolong the patient's life.

46 3. Identification of the specific investigational drug,
47 biological product, or device that the patient is seeking to
48 use.

49 4. A realistic description of the most likely outcomes of
50 using the investigational drug, biological product, or device.
51 The description shall include the possibility that new,
52 unanticipated, different, or worse symptoms might result and
53 that death could be hastened by the proposed treatment. The
54 description shall be based on the physician's knowledge of the
55 efficacy of proposed treatment for the patient's terminal
56 condition.

57 5. A statement that the patient's health plan or third-
58 party administrator and physician are not obligated to pay for
59 care or treatment consequent to the use of the investigational
60 drug, biological product, or device unless required to do so by
61 law or contract.

62 6. A statement that the patient's eligibility for hospice
63 care may be withdrawn if the patient begins treatment with the
64 investigational drug, biological product, or device and that
65 hospice care may be reinstated if the treatment ends and the
66 patient meets hospice eligibility requirements.

67 7. A statement that the patient understands he or she is
68 liable for all expenses consequent to the use of the
69 investigational drug, biological product, or device and that



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liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the investigational drug, biological product, or device states otherwise.

(3) Upon the request of an eligible patient, a manufacturer may:

(a) Make its investigational drug, biological product, or device available under this section.

(b) Provide an investigational drug, biological product, or device to an eligible patient without receiving compensation.

(c) Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device.

(4) A health plan, third-party administrator, or governmental agency may provide coverage for the cost of, or the cost of services related to the use of, an investigational drug, biological product, or device.

(5) A hospital or health care facility licensed under chapter 395 is not required to provide new or additional services unless those services are approved by the hospital or health care facility.

(6) If an eligible patient dies while using an investigational drug, biological product, or device pursuant to this section, the patient's heirs are not liable for any outstanding debt related to the patient's use of the investigational drug, biological product, or device.

(7) A licensing board may not revoke, fail to renew, suspend, or take any action against a physician's license issued under chapter 458 or chapter 459 based solely on the physician's recommendations to an eligible patient regarding access to or



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treatment with an investigational drug, biological product, or device. A state entity responsible for Medicare certification may not take action against a physician's Medicare certification based solely on the physician's recommendation that an eligible patient have access to an investigational drug, biological product, or device.

(8) This section does not create a private cause of action against the manufacturer of an investigational drug, biological product, or device; against a person or entity involved in the care of an eligible patient who is using the investigational drug, biological product, or device; or for any harm to the eligible patient that is a result of the use of the investigational drug, biological product, or device if the manufacturer or other person or entity complies in good faith with the terms of this section and exercises reasonable care.

(9) This section does not expand the coverage an insurer must provide under the Florida Insurance Code and does not affect mandatory health coverage for participation in clinical trials.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to experimental treatments for
terminal conditions; creating s. 499.0295, F.S.;
providing a short title; providing definitions;



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providing conditions for a manufacturer to provide
certain drugs, products, or devices to an eligible
patient; specifying insurance coverage requirements
and exceptions; providing conditions for the provision
of certain services by a hospital or health care
facility; providing immunity from liability; providing
protection from disciplinary or legal action against a
physician who makes certain treatment recommendations;
providing that a cause of action may not be asserted
against the manufacturer of certain drugs, products,
or devices or a person or entity caring for a patient
using such drugs, products, or devices under certain
circumstances; providing applicability; 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: PCS/CS/SB 1052 (592332)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Brandes

SUBJECT: Florida Right to Try Act

DATE: April 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Fav/CS
2.	Brown	Pigott	AHS	Recommend: Fav/CS
3.	Pace	Hrdlicka	FP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1052 creates the “Florida Right to Try Act,” which provides a framework for an eligible patient with a terminal illness to access investigational drugs, biological products, and devices from the manufacturer after phase-one clinical trials.

The bill prohibits actions against a physician’s license based solely on his or her recommendation regarding access to or treatment with an investigational drug, product, or device or against a health care institution’s state license or its Medicare certification based on its participation in the treatment.

The bill establishes a Clearinghouse for Compassionate and Palliative Care Plans for state residents. The Agency for Health Care Administration (AHCA) is directed to establish and maintain the site, either independently or through a national or private clearinghouse. The AHCA is also directed to disseminate information about the clearinghouse once available.

Lastly, the bill recognizes a Physician Order for Life Sustaining Treatment in law and directs the Department of Health (DOH) to develop the form by rule.

Implementation of the clearinghouse is subject to a specific appropriation in the General Appropriations Act. The AHCA estimates the nonrecurring costs of the Clearinghouse for

Compassionate and Palliative Care Plans to be \$350,000 for FY 2015-2016, and the recurring cost to be \$140,000 from general revenue.

II. Present Situation:

The U.S. Food and Drug Administration (FDA) has wide regulatory authority over what drugs are marketed and sold within the United States. Prescription drugs and over-the-counter drugs are regulated by the FDA's Center for Drug Evaluation and Research.¹ If a drug company wants approval to sell a new prescription drug in the United States, it must be tested in several steps. The first step is testing in the laboratory and on animals.² Next, the drug is tested in humans for safety and efficacy when used to treat or diagnose a disease.³

Clinical research is medical research that involves humans. Clinical trials look at new ways to prevent, detect, or treat disease through new combinations of drugs, new surgical procedures or devices, or new ways to use existing treatments.⁴ Clinical trials are part of clinical research, which is conducted as part of a protocol. A protocol describes:

- Who is eligible to participate in the trial;
- Details about tests, procedures, medications, and dosages; and
- The length of the study and what information will be gathered.⁵

All clinical trials are conducted in phases. Before a clinical trial (human testing) can begin, the company must submit an investigational new drug (IND) application. The IND shows the FDA results of animal testing, the company's proposal for human testing, and the clinical trials protocol.⁶ At this time the FDA must decide if it is reasonably safe to begin testing the drug in humans.⁷ The table below describes the clinical trial phases:

¹ U.S. Food and Drug Administration, *FDA Basics: Drugs* (last updated August 12, 2013), available at <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm192696.htm> (last visited April 14, 2015).

² U.S. Food and Drug Administration, *What is the approval process for a new prescription drug?* (last updated April 11, 2014), available at <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194949.htm> (last visited April 14, 2015).

³ *Id.*

⁴ U.S. Department of Health and Human Services, National Institutes of Health, *NIH Clinical Research Trials and You* (last reviewed February 5, 2015), available at <http://www.nih.gov/health/clinicaltrials/basics.htm> (last visited April 14, 2015).

⁵ *Id.*

⁶ The clinical trials protocol is approved and monitored by an Institutional Review Board (IRB). The IRB is an independent committee of experts that help ensure the safety and rights of participants and periodically review the research. *See supra* note 4.

⁷ U.S. Food and Drug Administration, *The FDA's Drug Review Process: Ensuring Drugs are Safe and Effective* (last updated November 6, 2014), available at <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm> (last visited April 14, 2015).

Clinical Trial Phases⁸			
Phase	Activities	Approx. Time⁹	# of Participants
One	Test drug with healthy human volunteers. Determine drug's most frequent side effects. Determine how the drug is metabolized and excreted. Determine the correct dosing. Move to Phase Two if drug does not show unacceptable toxicity.	1 year	20-80
Two	Test drug with small number of targeted patients. Test drug is compared with those receiving a placebo, or a different drug (if a controlled trial). Evaluate safety and short-term side effects. Decide scope of Phase Three with FDA; drug must have shown effectiveness to move to Phase Three.	2 years	100-300
Three	Implement large scale study for effectiveness and safety. Study different populations and different dosages and using the drug in combination with other drugs. Review logistics of creating a large supply. Once complete, can complete New Drug Application (NDA).	3 years	300-3,000
Four	Post-market requirement and commitment studies must be agreed to by the sponsoring organization and are conducted after a product has been approved for sale. Information used to gather additional data about product's safety, efficacy, or optimal use.	n/a	n/a

When testing is complete, the company sends an application to the FDA describing:

- The drug's test results;
- Manufacturing information to demonstrate that the company can properly manufacture the drug; and
- The company's proposed label for the drug, which must provide necessary information about the drug, including the conditions for which it has shown to be useful.¹⁰

The FDA has 60 days to decide whether to file the application to be reviewed.¹¹ If the FDA determines that the drug's benefits outweigh its risks and the drug can be manufactured in a manner that ensures a quality product, the drug can be approved for marketing in the United States.¹² The company receiving approval must continue, under Phase Four, to monitor short-

⁸ Id.

⁹ FierceBiotech, *FDA Approval Process*, available at http://www.fiercebiotech.com/topics/fda_approval_process.asp (last visited April 14, 2015).

¹⁰ Supra note 2.

¹¹ Supra note 7.

¹² Id.

term and long-term results of the drug and submit those findings to the FDA. If the company wants the drug approved for another purpose, it must also receive FDA approval.¹³

Accelerated approval is granted by the FDA to some new drugs for serious and life-threatening illnesses that lack other treatment options.¹⁴ This option allows drugs to be approved without measures of effectiveness.

The FDA established regulations allowing expanded access to, or “compassionate use” of, experimental drugs, biological products, or devices in 1987, and individual patient “emergency use” expanded access in 1997. These regulations provide access to:

- Individuals on a case-by-case basis, known as “individual patient access”;¹⁵
- Intermediate-sized groups of patients with similar treatment needs who otherwise do not qualify to participate in a clinical trial;¹⁶ and
- Large groups of patients who do not have other treatment options available.¹⁷

Compassionate Use

“Expanded access” or “compassionate use” refers to the use of an investigational medical product outside of a clinical trial, meaning that the medical product has not yet been approved by the FDA.¹⁸ The FDA prefers that patients seek out the use of an investigational medical product through clinical trials.¹⁹ Clinical trials help generate the necessary data to support approval or disapproval of medical products, investigational drugs, and devices. However, under the federal Food, Drug, and Cosmetic Act, an individual may seek individual patient access to investigational products if the following conditions are met:

- The individual’s physician determines that there is no comparable or satisfactory alternative therapy available to diagnose, monitor, or treat the person’s disease or condition, and the probable risk to the person from the investigational product is not greater than the risk from the disease or condition;
- The FDA determines that there is sufficient evidence of the safety and effectiveness of the investigational product to support its use in the particular circumstance;
- The FDA determines that providing the investigational product will not interfere with the initiation, conduct, or completion of clinical investigations to support marketing approval;
- The sponsor or the clinical investigator submits a clinical protocol that is consistent with FDA’s statute and applicable regulations for INDs or investigational device exemption applications, describing the use of the investigational product.²⁰

¹³ Supra note 9.

¹⁴ U.S. Food and Drug Administration, *FDA’s Drug Review Process: Continued, Accelerated Approval* (updated November 6, 2014), available at <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/ucm289601.htm#accelerated> (last visited April 15, 2015).

¹⁵ 21 C.F.R. 312.310.

¹⁶ 21 C.F.R. 312.315.

¹⁷ 21 C.F.R. 312.320.

¹⁸ U.S. Food and Drug Administration, *Expanded Access (Compassionate Use)* (last updated February 18, 2015), available at <http://www.fda.gov/newsevents/publichealthfocus/expandedaccesscompassionateuse/default.htm> (last visited April 15, 2015).

¹⁹ Id.

²⁰ Id.

Additionally, in order for the expanded access or compassionate use request to move forward:

- Both the patient and his or her licensed physician must be willing to participate;
- The patient must have a serious or immediately life-threatening disease or condition;
- The patient must have no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition; and
- The patient must be unable to obtain the investigational drug under another IND or to participate in a clinical trial.²¹

To apply for expanded access or compassionate use under a single patient IND, the application must be made by the physician.²² The physician must also have his patient's informed consent. If applicable, the physician should also ask the medical product company for a Letter of Authorization (LOA). The LOA allows the physician to satisfy some of the requirements for submission by relying on information that the medical product company has already submitted to the FDA.

For non-emergency requests, treatment may begin 30 days after the FDA receives the request if the treating physician fails to hear from the FDA. For emergencies, once authorization is received from the FDA, the physician may begin treatment within 5 working days.²³

On February 10, 2015, the FDA released draft guidance for comment that would revise the expanded access process. The federal Office of Management and Budget (OMB) estimates that the current process takes physician approximately 8 hours to request for non-emergency situations and 16 hours for emergency cases. For the new process, OMB estimates the process for both emergency and non-emergency situations will take 45 minutes.²⁴

Once the FDA has approved a patient for expanded access, the drug manufacturer must still agree to provide the product. There may be only a limited amount of a drug available under a company's expanded access programs.²⁵ Generally, under expanded access, the drug is provided free of charge, but not always. However, the other costs associated with care related to the patient's disease and condition would be the responsibility of the patient and any available insurance.

Right to Try

Several states have implemented "Right to Try" laws that allow terminally ill patients access to investigational drugs that have completed basic safety testing. More than 60 percent of

²¹ Id.

²² The form's questions include whether the request is an emergency, the patient's clinical history, a proposed treatment plan, the informed consent form. See U.S. Food and Drug Administration, *How to Complete Form FDA 1571 and Form FDA 1572* (last updated February 3, 2015), available at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ExpandedAccessCompassionateUse/ucm432757.htm> (last visited April 15, 2015).

²³ *Supra* note 18.

²⁴ Individual Patient Expanded Access Applications: Form FDA 3926; Draft Guidance for Industry; Availability, 80 Fed. Reg. 7318 (proposed Feb. 10, 2015) (to be codified at 21 CFR pt. 312).

²⁵ American Cancer Society, *Compassionate Drug Use* (last medical review July 9, 2013), available at <http://www.cancer.org/treatment/treatmentsandsideeffects/clinicaltrials/compassionate-drug-use> (last visited April 15, 2015).

investigational drugs in Phase I testing are deemed safe enough to move on to Phase II.²⁶ More than 30 percent then move on from Phase II testing to Phase III. As of March 31, 2015, 12 states have Right to Try laws.²⁷ Federal legislation to change the expanded access policy has been proposed, but no bill has passed yet. For example, the “Andrea Sloan Compassionate Use Reform and Enhancement Act” would:

require the sponsor of a ‘breakthrough drug’ (which is a drug that qualifies for expedited approval, is an infectious disease product, or qualifies the sponsor for a priority review voucher) to submit to the Secretary of Health and Human Services (HHS) and make available to the public a policy on requests for access to the drug for compassionate use, including the minimum criteria for consideration or approval of requests and the time needed to make a decision.²⁸

Other bills filed have permitted terminally ill patients to access investigational medication before the medication has passed basic safety tests under certain conditions.

End of Life Decision-Making

There are a number of different advanced decision making documents an individual may use to express his or her end of life health care decisions. In Florida, state law defines advance directives as witnessed, oral statements or written instructions that express a person’s desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.²⁹

Resuscitation may also be withheld from an individual if a “do not resuscitate” order (DNRO) by the patient’s physician is presented to the health care professional treating the patient. For the DNRO to be valid, it must be on the form adopted by the DOH, signed by the patient’s physician and the patient, or if the patient is incapacitated, the patient’s health care surrogate or proxy, court-appointed guardian, or attorney in fact under a durable power of attorney.³⁰ It is the responsibility of the Emergency Medical Services provider to ensure that the DNRO form or the patient identification device, which is a miniature version of the form, accompanies the patient.³¹ A DNRO may be revoked by the patient at any time, if signed by the patient, or the patient’s health care surrogate, proxy, court appointed guardian, or a person acting under a durable power of attorney.³²

²⁶ Michael Hay, et al, *Clinical development success rates for investigational drugs* (January 2014), Nature Biotechnology (see Figure 1- Phase success and LOA rates), available at <http://www.nature.com/nbt/journal/v32/n1/abs/nbt.2786.html> (last visited April 15, 2015).

²⁷ National Conference of State Legislatures, “*Right to Try*” *Experimental Prescription Drugs, State Laws and Legislation for 2014 & 2015* (March 31, 2015), available at <http://www.ncsl.org/documents/health/RighttoTry2015.pdf> (last visited April 16, 2015).

²⁸ H.R. 5805 (113th Congress).

²⁹ See s. 765.101, F.S.

³⁰ See ss. 395.1041, F.S., 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, 765.205, F.S., and Rule 64J-2.018, F.A.C.

³¹ Id.

³² Id.

A Physician Order for Life-Sustaining Treatment (POLST) documents a patient's health care wishes in the form of a physician order for a variety of end of life measures, including cardiopulmonary resuscitation (CPR). A DNRO is limited to the withholding of CPR. The POLST form can only be completed by a physician and is then provided to the patient to be kept secured in a visible location for emergency personnel.³³ It is suggested that the form be completed when an individual has a serious illness, regardless of age, as the POLST serves as a medical order for a current illness.³⁴

Some questions asked on other states' POLST forms include what level of care is wanted for CPR (attempt or do not attempt); medical intervention (comfort only, limited additional intervention, or full treatment); and artificially administered nutrition (none, trial, or long-term).

III. Effect of Proposed Changes:

Florida Right to Try Act (Sections 1 and 2)

This bill creates the "Florida Right to Try Act" under s. 385.213, F.S., and provides definitions.

Compassionate Treatment and Access to Experimental Treatments

An *eligible patient* is defined as an individual who:

- Has a terminal illness³⁵ determined by the individual's physician and consulting physician;
- Does not have any comparable or satisfactory FDA-approved options available and the probable risk from an investigational drug, biological product, or device is not greater than the disease or condition, as determined by his or her physician;
- Has received a prescription or recommendation from his or her physician for an investigational drug, biological product, or device;
- Has provided written, informed consent for the use of the investigational drug, biological product, or device, or if a minor or lacks the capacity to provide informed consent, a parent's or legal guardian's written, informed consent on the individual's behalf; and
- Has documentation from the individual's physician indicating that the individual has met all of the applicable requirements.

An *investigational drug, biological product, or device* is defined as a drug, biological product, or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the FDA.

Availability of Investigational Drugs, Biological Products, or Devices

A manufacturer of an investigational drug, biological product, or device has the option to make an investigational drug, biological product, or device available to an eligible patient. Relating to the investigational drug, biological product, or device, a manufacturer may also:

³³ POLST.ORG, FAQ, available at <http://www.polst.org/advance-care-planning/faq/> (last visited April 14, 2015).

³⁴ POLST.ORG, *POLST v. Advance Directives*, available at <http://www.polst.org/advance-care-planning/polst-and-advance-directives/> (last visited April 14, 2015).

³⁵ The bill defines terminal illness as a disease or condition that, without life-sustaining procedures, will result in the patient's death in the near future or a state of permanent unconsciousness from which recovery is unlikely.

- Provide without charge or require the eligible patient to pay the cost of, or the costs associated with, its manufacture; and
- Require an eligible patient to participate in data collection relating to the eligible patient's use.

The bill does not require an insurer, health plan, or government health care program to provide coverage for the cost of an investigational drug, biological product, or device, or the care or treatment that may be needed as result of an eligible patient's participation, unless it is part of a clinical trial. However, an insurer, health plan, or government health care program may elect to provide such coverage, if not part of a clinical trial.

The Department of Corrections and the Department of Juvenile Justice are not required to provide coverage for an investigational drug, biological product, or device for individuals in their custody.

Actions Against a Health Care Provider License

Notwithstanding any other law, a state regulatory board or agency may not take any action against a physician's license based solely on the practitioner's recommendation regarding access to or treatment with an investigational drug, biological product, or device.

For health care institutions licensed in this state, a state regulatory board or agency may not take any action against an institution's license or its Medicare certification based solely on the institution's participation in or any other use or treatment with an investigational drug, biological product, or device.

Clinical Trials

If a clinical trial of an investigational drug, biological product, or device is not effective for a certain patient or condition and the trial is closed due to lack of efficacy, the manufacturer may continue to offer the investigational drug, biological product, or device for a different condition to the same patient or to new patients.

If the FDA or the safety committee for a clinical trial provides notice of information for an investigational drug, biological product, or device that is being taken by a patient outside of a clinical trial, the manufacturer or the patient's physician is required to notify the patient about the information. For example, the FDA may advise the public of a previously unknown side effect or hidden ingredient of a particular drug that is on the market for another condition or disease, but the drug is also part of a clinical trial for another purpose. The side effect or hidden ingredient could affect those patients taking the drug for another condition outside of a clinical trial.

No Cause of Action

The bill does not create a private cause of action against a manufacturer of an investigational drug, biological product, or device or against an entity or individual involved in the care of an eligible patient for any harm to the patient resulting from use of the investigational drug, biological product, or device, if the manufacturer, entity, or individual complied with the

requirements of the bill in good faith, unless the manufacturer, entity or individual failed to exercise reasonable care.

Penalty

An official, employee, or agent of the state may not block an eligible patient's access to an investigational drug, biological product, or device that has been recommended by his or her physician unless it has been banned or removed from a clinical trial as unsafe by the FDA. If a person does block access, he or she commits a misdemeanor of the second degree.

Clearinghouse for Compassionate and Palliative Care Plans (Section 3)

The bill creates s. 408.064, F.S., and the Clearinghouse for Compassionate and Palliative Care Plans. The AHCA is responsible for establishing and maintaining a reliable and secure database that will allow Florida residents to electronically submit their individual plans for compassionate and palliative care. This database is a clearinghouse of plan information that may be accessed by a health care provider who is treating the resident.

The AHCA is directed to seek input on the clearinghouse from state residents, compassionate and palliative care providers, and health care facilities for its development and implementation. The AHCA may also subscribe to or participate in a national or private clearinghouse that will accomplish the same goals in lieu of establishing an independent clearinghouse. Once clearinghouse information is available, the AHCA is required to publish and disseminate information regarding the availability of the clearinghouse to Floridians. The AHCA must also provide training to health care providers and health care facilities on how to access plans.

The bill provides that implementation of the clearinghouse is subject to a specific appropriation provided to the AHCA under the General Appropriations Act.

Physician Orders for Life-Sustaining Treatment (POLST)

Sections 4 - 13 make conforming changes to reflect the provisions in statute that require health professional staff to honor "do not resuscitate" orders (DNROs) and recognition of a POLST document. Under s. 404.45, F.S., a valid POLST is described as one completed on the form adopted by the Department of Health by rule, signed by the patient's physician, and based on a consultation with the patient's guardian or legally authorized proxy or surrogate.

The table below reflects the statutes impacted by these revisions.

Statutory Revisions - Addition of POLTS Language	
F.S. Citation	Description
s. 395.1041	Hospital Licensing and Regulation: Access to emergency services and care
s. 400.142	Nursing Homes; Emergency medication kits; DNROs
s. 400.487	Home Health Service Agreements; DNROs
s. 400.605	Hospices; Administration; forms; fees

s. 400.6095	Hospice; patient admission; assessment; plan of care; discharge; death
s. 401.35	Medical Transportation Services: Rules
s. 401.45	Denial of emergency treatment; civil liability
s. 429.255	Assisted Living Facilities; Use of personnel; emergency care
s. 429.73	Rules and standards relating to adult family-care homes
s. 765.205	Responsibility of the Surrogate

Effective Date

The effective date of the bill is July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A separate public records exemption may be needed to keep the Compassionate and Palliative Care plans held by the AHCA Administration exempt from public records requests under ch. 119, F.S.³⁶

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may increase the number of Floridians who have access to investigational drugs, biological products, and devices, but, under the bill, insurers are not required to cover these products or the treatment resulting from an insured's participation, unless the patient is part of a clinical trial.

C. Government Sector Impact:

The AHCA estimates the costs for the Clearinghouse for Compassionate and Palliative Care Plans to be \$350,000 of General Revenue for the first year of implementation and \$140,000 per year for maintenance costs to participate in a national or private

³⁶ See SB 1626 (2015)

clearinghouse.³⁷ Under the bill, costs relating to the clearinghouse will not be incurred without a specific appropriation provided to the AHCA under the General Appropriations Act.

The Department of Health will incur nonrecurring costs for rulemaking but reports it has sufficient current budget authority to absorb those expected costs. Additionally, indeterminate costs may be incurred for an increase in workload related to additional complaints, but these costs are likely to be absorbed within existing resources.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The AHCA notes a potential conflict with federal law and regulations. The bill prohibits the AHCA from taking action against a health care institution's Medicare certification based solely on a health care provider's recommendation to an eligible patient regarding access to an investigational drug, biological product, or device; however, the federal Centers for Medicare & Medicaid Services (CMS) could direct the AHCA to conduct a complaint investigation regarding such as an issue. The AHCA would be required to report its finding to federal CMS.³⁹

The Department of Health (DOH) observed that the bill extends regulatory protection to a physician's *recommendation* of an investigational drug, biological product, or device, but not to the health care provider's *administration* of an investigational drug, biological product, or device. The DOH also advises that while the bill may provide protections to physicians and health care institutions from state regulatory actions, the bill cannot shield such providers from federal regulatory actions, even though such federal actions are unlikely under the bill's constructs.⁴⁰

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 385.213 and 408.064.

This bill substantially amends the following sections of the Florida Statutes: 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, and 765.205.

³⁷ Agency for Health Care Administration, *Senate Bill 1052 Analysis* (February 20, 2015), pg. 4 (on file with the Senate Committee on Health Policy).

³⁸ Department of Health, Florida Board of Medicine, *Senate Bill 1052 Analysis* (February 25, 2015), pg. 5 (on file with the Senate Committee on Health Policy).

³⁹ *Supra* note 37.

⁴⁰ *Supra* note 38.

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 by Appropriations Subcommittee on Health and Human Services on April 2, 2015:

The proposed committee substitute provides that implementation of the Clearinghouse for Compassionate and Palliative Care Plans is subject to a specific appropriation under the General Appropriations Act.

CS by Health Policy - March 17, 2015

The committee substitute:

- Recognizes Physician Orders for Life Sustaining Treatment (POLST) as evidence of a patient's health care wishes in the same circumstances as "do not resuscitate" orders when presented to a health care professional; and
- Requires a POLST document, in order to be considered valid, to be on a form adopted by the Department of Health and signed by the patient's physician based on a consultation with the patient, the patient's guardian, or a legally authorized proxy or surrogate.

- B. **Amendments:**

None.



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Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to the Florida Right to Try Act;
providing a short title; creating s. 385.213, F.S.;
defining terms; authorizing a manufacturer of an
investigational drug, biological product, or device to
make such drug, product, or device available to
certain eligible patients with a terminal illness
without charge or for a specified cost; authorizing
the manufacturer to require eligible patients to
participate in certain data collection; specifying
that an insurer, a health plan, or a government health
care program is not required to provide coverage for
the cost of such drug, product, or device; authorizing
such entities to provide coverage under specified
circumstances; specifying that such entities are not
required to cover care or treatment needed as the
result of the use of such drug, product, or device
except under certain circumstances; specifying that
the Department of Corrections and the Department of
Juvenile Justice are not required to provide coverage
for such drugs, products, or devices for individuals
in the departments' custody; prohibiting a state
regulatory board or agency from taking action against
the licenses of certain health care providers or
against the licenses or Medicare certifications of
certain health care institutions for specified actions
with respect to an eligible patient's access to,



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treatment with, or use of investigational drugs,
biological products, or devices; specifying when an
investigational drug, biological product, or device
may continue to be offered by the manufacturer if the
drug, product, or device is found to be ineffective
under certain circumstances; requiring certain
information relating to clinical trials to be provided
to a patient taking an investigational drug,
biological product, or device outside of the clinical
trial; providing that the section does not create a
private cause of action against certain manufacturers,
entities, and individuals for any harm to an eligible
patient which results from the use of an
investigational drug, biological product, or device
under certain circumstances; providing a criminal
penalty for an official, employee, or agent of the
state who blocks or attempts to block the access of an
eligible patient to certain investigational drugs,
biological products, or devices; creating s. 408.064,
F.S.; requiring the Agency for Health Care
Administration to establish and maintain a database
that allows a state resident to electronically submit
a plan that indicates his or her directives for
compassionate and palliative care; requiring the
database to serve as a clearinghouse of plan
information that is accessible by certain health care
providers; authorizing the agency to subscribe to or
participate in a national or private clearinghouse in
lieu of establishing and maintaining an independent



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57 clearinghouse; requiring the agency to publish and
58 disseminate certain information and provide certain
59 training relating to the clearinghouse; providing that
60 implementation is subject to specific appropriation;
61 amending ss. 395.1041, 400.142, and 400.487, F.S.;
62 authorizing hospital personnel, nursing home facility
63 staff, and home health agency personnel, respectively,
64 to withhold or withdraw cardiopulmonary resuscitation
65 if an individual has a Physician Order for Life-
66 Sustaining Treatment (POLST); amending s. 400.605,
67 F.S.; requiring the Department of Elder Affairs in
68 consultation with the Agency for Health Care
69 Administration to adopt by rule procedures for the
70 implementation of POLSTs in hospice care; amending s.
71 400.6095, F.S.; authorizing a hospice care team to
72 withhold or withdraw cardiopulmonary resuscitation if
73 an individual has a POLST; amending s. 401.35, F.S.;
74 requiring the Department of Health to establish
75 circumstances and procedures for honoring a POLST;
76 amending s. 401.45, F.S.; authorizing emergency
77 medical transportation providers to withhold or
78 withdraw cardiopulmonary resuscitation or other
79 medical interventions if an individual has a POLST;
80 providing requirements for a POLST to be valid;
81 amending s. 429.255, F.S.; authorizing assisted living
82 facility staff to withhold or withdraw cardiopulmonary
83 resuscitation if an individual has a POLST; amending
84 s. 429.73, F.S.; requiring the Department of Elder
85 Affairs to adopt rules for the implementation of



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86 POLSTs in adult family-care homes; authorizing a
87 provider of such home to withhold or withdraw
88 cardiopulmonary resuscitation if an individual has a
89 POLST; providing immunity from civil and criminal
90 liability to a provider for such actions; amending s.
91 765.205, F.S.; authorizing a health care surrogate to
92 provide written consent for a POLST; providing an
93 effective date.
94
95 Be It Enacted by the Legislature of the State of Florida:
96
97 Section 1. This act may be cited as the "Florida Right to
98 Try Act."
99 Section 2. Section 385.213, Florida Statutes, is created to
100 read:
101 385.213 Compassionate treatment; access to experimental
102 treatments.—
103 (1) DEFINITIONS.—As used in this section, the term:
104 (a) "Eligible patient" means an individual who:
105 1. Has a terminal illness, as determined by the
106 individual's physician and consulting physician;
107 2. As determined by the individual's physician, does not
108 have any comparable or satisfactory United States Food and Drug
109 Administration-approved option available to be diagnosed,
110 monitored, or treated for the individual's disease or condition,
111 and the probable risk to the individual from the investigational
112 drug, biological product, or device is not greater than the risk
113 from the disease or condition;
114 3. Has received a prescription or recommendation from the



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115 individual's physician for an investigational drug, biological
116 product, or device;

117 4. Has provided written, informed consent in accordance
118 with s. 766.103 for the use of an investigational drug,
119 biological product, or device or, if the individual is a minor
120 or lacks the mental capacity to provide informed consent, a
121 parent's or legal guardian's written, informed consent on the
122 individual's behalf; and

123 5. Has documentation from the individual's physician
124 indicating that the individual has met all the requirements of
125 this section.

126 (b) "Investigational drug, biological product, or device"
127 means a drug, biological product, or device that has
128 successfully completed phase one of a clinical trial but has not
129 yet been approved for general use by the United States Food and
130 Drug Administration.

131 (c) "Physician" means the physician licensed under chapter
132 458 or chapter 459 who provides medical care or treatment to the
133 eligible patient for the terminal illness.

134 (d) "Terminal illness" means a disease or condition that,
135 without life-sustaining procedures, will result in the patient's
136 death in the near future or a state of permanent unconsciousness
137 from which recovery is unlikely.

138 (2) AVAILABILITY OF INVESTIGATIONAL DRUGS, BIOLOGICAL
139 PRODUCTS, OR DEVICES.-

140 (a) A manufacturer of an investigational drug, biological
141 product, or device may make the investigational drug, biological
142 product, or device, available to an eligible patient. A
143 manufacturer may:



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144 1. Provide the investigational drug, biological product, or
145 device to an eligible patient without charge or require the
146 eligible patient to pay the cost of, or the cost associated
147 with, the manufacture of the investigational drug, biological
148 product, or device.

149 2. Require an eligible patient to participate in data
150 collection relating to the eligible patient's use of the
151 investigational drug, biological product, or device.

152 (b) This section does not require:

153 1. An insurer, a health plan, or a government health care
154 program to provide coverage for:

155 a. The cost of an investigational drug, biological product,
156 or device provided to an eligible patient. An insurer, a health
157 plan, or a government health care program may elect to provide
158 coverage for an investigational drug, biological product, or
159 device that is not part of a clinical trial.

160 b. Care or treatment needed as a result of an eligible
161 patient's use of an investigational drug, biological product, or
162 device unless the use is part of an approved clinical trial.

163 2. The Department of Corrections or the Department of
164 Juvenile Justice to provide coverage for an investigational
165 drug, biological product, or device for individuals in the
166 custody of the Department of Corrections or the Department of
167 Juvenile Justice.

168 (3) ACTION AGAINST PROVIDER LICENSURE PROHIBITED.-
169 Notwithstanding any other law, a state regulatory board or
170 agency:

171 (a) May not take any action against a health care
172 provider's license issued under chapter 458 or chapter 459 based



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solely on the health care provider's recommendation to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device.

(b) May not, with respect to a health care institution licensed in this state, take any action against the institution's:

1. License based solely on the institution's participation in the treatment with, or in any other use of, an investigational drug, biological product, or device.

2. Medicare certification based solely on a health care provider's recommendation to an eligible patient regarding access to an investigational drug, biological product, or device.

(4) CLINICAL TRIALS.-

(a) If a clinical trial of an investigational drug, biological product, or device is not effective for a certain patient or condition and the trial is closed due to lack of efficacy, the manufacturer or health care provider may continue to offer the investigational drug, biological product, or device for a different condition to the patient or to new patients.

(b) If the United States Food and Drug Administration or the safety committee for a clinical trial provides notice of information for an investigational drug, biological product, or device that is being taken by a patient outside of the clinical trial, the manufacturer of such drug, product, or device or the patient's physician shall notify the patient of the information.

(5) NO CAUSE OF ACTION.-This section does not create a private cause of action against a manufacturer of an investigational drug, biological product, or device or against



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an entity or individual involved in the care of an eligible patient for any harm to the eligible patient which results from the use of the investigational drug, biological product, or device if the manufacturer, entity, or individual is complying in good faith with this section, unless the manufacturer, entity, or individual failed to exercise reasonable care.

(6) PENALTY.-An official, employee, or agent of the state who blocks or attempts to block the access of an eligible patient to an investigational drug, biological product, or device that has been recommended to the eligible patient by his or her physician and that has not been banned or removed from a clinical trial as unsafe by the United States Food and Drug Administration commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 408.064, Florida Statutes, is created to read:

408.064 Clearinghouse for compassionate and palliative care plans.-

(1) The agency shall establish and maintain a reliable and secure database that allows a resident of this state to electronically submit a plan that indicates his or her directives for compassionate and palliative care. The database shall serve as a clearinghouse of plan information that may be accessed by a health care provider who is treating the resident. The agency shall seek advice from residents, compassionate and palliative care providers, and health care facilities for the development and implementation of the clearinghouse.

(2) The agency may subscribe to or otherwise participate in a national or private clearinghouse that will accomplish the



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231 requirements under subsection (1) in lieu of establishing and
232 maintaining an independent clearinghouse for this state's
233 residents.

234 (3) The agency shall publish and disseminate information to
235 the residents of this state regarding the availability of the
236 clearinghouse. The agency must also provide training to health
237 care providers and health care facilities in this state on how
238 to access plans through the clearinghouse.

239 (4) Implementation of this section is subject to a specific
240 appropriation provided to the agency under the General
241 Appropriations Act.

242 Section 4. Paragraph (1) of subsection (3) of section
243 395.1041, Florida Statutes, is amended to read:

244 395.1041 Access to emergency services and care.—

245 (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF
246 FACILITY OR HEALTH CARE PERSONNEL.—

247 (1) Hospital personnel may withhold or withdraw
248 cardiopulmonary resuscitation if presented with an order not to
249 resuscitate executed pursuant to s. 401.45 or a Physician Order
250 for Life-Sustaining Treatment (POLST). Facility staff and
251 facilities shall not be subject to criminal prosecution or civil
252 liability, nor be considered to have engaged in negligent or
253 unprofessional conduct, for withholding or withdrawing
254 cardiopulmonary resuscitation pursuant to either such an order.
255 The absence of an order not to resuscitate executed pursuant to
256 s. 401.45 or a POLST does not preclude a physician from
257 withholding or withdrawing cardiopulmonary resuscitation as
258 otherwise permitted by law.

259 Section 5. Subsection (3) of section 400.142, Florida



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260 Statutes, is amended to read

261 400.142 Emergency medication kits; orders not to
262 resuscitate.—

263 (3) Facility staff may withhold or withdraw cardiopulmonary
264 resuscitation if presented with an order not to resuscitate
265 executed pursuant to s. 401.45 or a Physician Order for Life-
266 Sustaining Treatment (POLST). Facility staff and facilities are
267 not subject to criminal prosecution or civil liability, or
268 considered to have engaged in negligent or unprofessional
269 conduct, for withholding or withdrawing cardiopulmonary
270 resuscitation pursuant to either such order. The absence of an
271 order not to resuscitate executed pursuant to s. 401.45 or a
272 POLST does not preclude a physician from withholding or
273 withdrawing cardiopulmonary resuscitation as otherwise permitted
274 by law.

275 Section 6. Section 400.487, Florida Statutes, is amended to
276 read:

277 400.487 Home health service agreements; physician's,
278 physician assistant's, and advanced registered nurse
279 practitioner's treatment orders; patient assessment;
280 establishment and review of plan of care; provision of services;
281 orders not to resuscitate; physician orders for life-sustaining
282 treatment.—

283 (1) Services provided by a home health agency must be
284 covered by an agreement between the home health agency and the
285 patient or the patient's legal representative specifying the
286 home health services to be provided, the rates or charges for
287 services paid with private funds, and the sources of payment,
288 which may include Medicare, Medicaid, private insurance,



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personal funds, or a combination thereof. A home health agency providing skilled care must make an assessment of the patient's needs within 48 hours after the start of services.

(2) ~~If when~~ required by the provisions of chapter 464, ~~+~~ part I, part III, or part V of chapter 468, ~~+~~ or chapter 486, the attending physician, physician assistant, or advanced registered nurse practitioner, acting within his or her respective scope of practice, shall establish treatment orders for a patient who is to receive skilled care. The treatment orders must be signed by the physician, physician assistant, or advanced registered nurse practitioner before a claim for payment for the skilled services is submitted by the home health agency. If the claim is submitted to a managed care organization, the treatment orders must be signed within the time allowed under the provider agreement. The treatment orders shall be reviewed, as frequently as the patient's illness requires, by the physician, physician assistant, or advanced registered nurse practitioner in consultation with the home health agency.

(3) A home health agency shall arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services in accordance with the patient's direction, approval, and agreement to pay the charge for the visits.

(4) Each patient has the right to be informed of and to participate in the planning of his or her care. Each patient must be provided, upon request, a copy of the plan of care established and maintained for that patient by the home health agency.

(5) ~~If when~~ nursing services are ordered, the home health



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agency to which a patient has been admitted for care must provide the initial admission visit, all service evaluation visits, and the discharge visit by a direct employee. Services provided by others under contractual arrangements to a home health agency must be monitored and managed by the admitting home health agency. The admitting home health agency is fully responsible for ensuring that all care provided through its employees or contract staff is delivered in accordance with this part and applicable rules.

(6) The skilled care services provided by a home health agency, directly or under contract, must be supervised and coordinated in accordance with the plan of care.

(7) Home health agency personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a Physician Order for Life-Sustaining Treatment (POLST). The agency shall adopt rules providing for the implementation of such orders. Home health personnel and agencies shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such orders ~~an order~~ and rules adopted by the agency.

Section 7. Paragraph (e) of subsection (1) of section 400.605, Florida Statutes, is amended to read:

400.605 Administration; forms; fees; rules; inspections; fines.-

(1) The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. The department, in consultation with the agency, shall by



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rule establish minimum standards and procedures for a hospice pursuant to this part. The rules must include:

(e) Procedures relating to the implementation of advanced directives; physician orders for life-sustaining treatment; and do-not-resuscitate orders.

Section 8. Subsection (8) of section 400.6095, Florida Statutes, is amended to read:

400.6095 Patient admission; assessment; plan of care; discharge; death.—

(8) The hospice care team may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a Physician Order for Life-Sustaining Treatment (POLST). The department shall adopt rules providing for the implementation of such orders. Hospice staff shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and applicable rules. The absence of an order to resuscitate executed pursuant to s. 401.45 or a POLST does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 9. Subsection (4) of section 401.35, Florida Statutes, is amended to read:

401.35 Rules.—The department shall adopt rules, including definitions of terms, necessary to carry out the purposes of this part.

(4) The rules must establish circumstances and procedures under which emergency medical technicians and paramedics may



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honor orders by the patient's physician not to resuscitate and a Physician Order for Life-Sustaining Treatment (POLST) and the documentation and reporting requirements for handling such requests.

Section 10. Paragraph (a) of subsection (3) of section 401.45, Florida Statutes, are amended to read:

401.45 Denial of emergency treatment; civil liability.—

(3) (a) Resuscitation or other forms of medical intervention may be withheld or withdrawn from a patient by an emergency medical technician, ~~or~~ paramedic, or other health care professional if evidence of a Physician Order for Life-Sustaining Treatment (POLST) or an order not to resuscitate is presented to that professional. To be valid, a POLST must be on the form adopted by rule of the department and signed by the patient's physician after consultation with the patient, patient's guardian, or legally authorized proxy or surrogate by the patient's physician is presented to the emergency medical technician or paramedic. To be valid, an order not to resuscitate, ~~to be valid,~~ must be on the form adopted by rule of the department. The form must be signed by the patient's physician and by the patient or, if the patient is incapacitated, the patient's health care surrogate or proxy as provided in chapter 765, court-appointed guardian as provided in chapter 744, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

Section 11. Subsection (4) of section 429.255, Florida Statutes, is amended to read:



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405 429.255 Use of personnel; emergency care.-
406 (4) Facility staff may withhold or withdraw cardiopulmonary
407 resuscitation or the use of an automated external defibrillator
408 if presented with an order not to resuscitate executed pursuant
409 to s. 401.45 or a Physician Order for Life-Sustaining Treatment
410 (POLST). The department shall adopt rules providing for the
411 implementation of such orders. Facility staff and facilities
412 shall not be subject to criminal prosecution or civil liability,
413 nor be considered to have engaged in negligent or unprofessional
414 conduct, for withholding or withdrawing cardiopulmonary
415 resuscitation or use of an automated external defibrillator
416 pursuant to such orders ~~an order~~ and rules adopted by the
417 department. The absence of an order to resuscitate executed
418 pursuant to s. 401.45 or a POLST does not preclude a physician
419 from withholding or withdrawing cardiopulmonary resuscitation or
420 use of an automated external defibrillator as otherwise
421 permitted by law.
422 Section 12. Subsection (3) of section 429.73, Florida
423 Statutes, is amended to read:
424 429.73 Rules and standards relating to adult family-care
425 homes.-
426 (3) The department shall adopt rules providing for the
427 implementation of orders not to resuscitate and Physician Orders
428 for Life-Sustaining Treatment (POLST). The provider may withhold
429 or withdraw cardiopulmonary resuscitation if presented with an
430 order not to resuscitate executed pursuant to s. 401.45 or a
431 POLST. The provider shall not be subject to criminal prosecution
432 or civil liability, nor be considered to have engaged in
433 negligent or unprofessional conduct, for withholding or



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434 withdrawing cardiopulmonary resuscitation pursuant to such
435 orders ~~an order~~ and applicable rules.
436 Section 13. Paragraph (c) of subsection (1) of section
437 765.205, Florida Statutes, is amended to read:
438 765.205 Responsibility of the surrogate.-
439 (1) The surrogate, in accordance with the principal's
440 instructions, unless such authority has been expressly limited
441 by the principal, shall:
442 (c) Provide written consent using an appropriate form
443 whenever consent is required, including a physician's order not
444 to resuscitate or a Physician Order for Life-Sustaining
445 Treatment (POLST).
446 Section 14. 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 1052

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee of Health and Human Services); Health Policy Committee; and Senator Brandes

SUBJECT: Florida Right to Try Act

DATE: April 22, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Fav/CS
2.	Brown	Pigott	AHS	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 1052 creates the “Florida Right to Try Act,” which provides a framework for an eligible patient with a terminal condition to access investigational drugs, biological products, and devices from the manufacturer.

The bill has no known fiscal impact.

II. Present Situation:

The U.S. Food and Drug Administration (FDA) has wide regulatory authority over what drugs are marketed and sold within the United States. Prescription drugs and over-the-counter drugs are regulated by the FDA’s Center for Drug Evaluation and Research.¹ If a drug company wants approval to sell a new prescription drug in the United States, it must be tested in several steps. The first step is testing in the laboratory and on animals.² Next, the drug is tested in humans for safety and efficacy when used to treat or diagnose a disease.³

¹ U.S. Food and Drug Administration, *FDA Basics: Drugs* (last updated August 12, 2013), available at <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm192696.htm> (last visited April 14, 2015).

² U.S. Food and Drug Administration, *What is the approval process for a new prescription drug?* (last updated April 11, 2014), available at <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194949.htm> (last visited April 14, 2015).

³ Id.

Clinical research is medical research that involves humans. Clinical trials look at new ways to prevent, detect, or treat disease through new combinations of drugs, new surgical procedures or devices, or new ways to use existing treatments.⁴ Clinical trials are part of clinical research, which is conducted as part of a protocol. A protocol describes:

- Who is eligible to participate in the trial;
- Details about tests, procedures, medications, and dosages; and
- The length of the study and what information will be gathered.⁵

All clinical trials are conducted in phases. Before a clinical trial (human testing) can begin, the company must submit an investigational new drug (IND) application. The IND shows the FDA results of animal testing, the company's proposal for human testing, and the clinical trials protocol.⁶ At this time the FDA must decide if it is reasonably safe to begin testing the drug in humans.⁷ The table below describes the clinical trial phases:

Clinical Trial Phases⁸			
Phase	Activities	Approx. Time⁹	# of Participants
One	Test drug with healthy human volunteers. Determine drug's most frequent side effects. Determine how the drug is metabolized and excreted. Determine the correct dosing. Move to Phase Two if drug does not show unacceptable toxicity.	1 year	20-80
Two	Test drug with small number of targeted patients. Test drug is compared with those receiving a placebo, or a different drug (if a controlled trial). Evaluate safety and short-term side effects. Decide scope of Phase Three with FDA; drug must have shown effectiveness to move to Phase Three.	2 years	100-300
Three	Implement large scale study for effectiveness and safety. Study different populations and different dosages and using the drug in combination with other drugs. Review logistics of creating a large supply.	3 years	300-3,000

⁴ U.S. Department of Health and Human Services, National Institutes of Health, *NIH Clinical Research Trials and You* (last reviewed February 5, 2015), available at <http://www.nih.gov/health/clinicaltrials/basics.htm> (last visited April 14, 2015).

⁵ Id.

⁶ The clinical trials protocol is approved and monitored by an Institutional Review Board (IRB). The IRB is an independent committee of experts that help ensure the safety and rights of participants and periodically review the research. See *supra* note 4.

⁷ U.S. Food and Drug Administration, *The FDA's Drug Review Process: Ensuring Drugs are Safe and Effective* (last updated November 6, 2014), available at <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm> (last visited April 14, 2015).

⁸ Id.

⁹ FierceBiotech, *FDA Approval Process*, available at http://www.fiercebiotech.com/topics/fda_approval_process.asp (last visited April 14, 2015).

	Once complete, can complete New Drug Application (NDA).		
Four	Post-market requirement and commitment studies must be agreed to by the sponsoring organization and are conducted after a product has been approved for sale. Information used to gather additional data about product's safety, efficacy, or optimal use.	n/a	n/a

When testing is complete, the company sends an application to the FDA describing:

- The drug's test results;
- Manufacturing information to demonstrate that the company can properly manufacture the drug; and
- The company's proposed label for the drug, which must provide necessary information about the drug, including the conditions for which it has shown to be useful.¹⁰

The FDA has 60 days to decide whether to file the application to be reviewed.¹¹ If the FDA determines that the drug's benefits outweigh its risks and the drug can be manufactured in a manner that ensures a quality product, the drug can be approved for marketing in the United States.¹² The company receiving approval must continue, under Phase Four, to monitor short-term and long-term results of the drug and submit those findings to the FDA. If the company wants the drug approved for another purpose, it must also receive FDA approval.¹³

Accelerated approval is granted by the FDA to some new drugs for serious and life-threatening illnesses that lack other treatment options.¹⁴ This option allows drugs to be approved without measures of effectiveness.

The FDA established regulations allowing expanded access to, or "compassionate use" of, experimental drugs, biological products, or devices in 1987, and individual patient "emergency use" expanded access in 1997. These regulations provide access to:

- Individuals on a case-by-case basis, known as "individual patient access";¹⁵
- Intermediate-sized groups of patients with similar treatment needs who otherwise do not qualify to participate in a clinical trial;¹⁶ and
- Large groups of patients who do not have other treatment options available.¹⁷

¹⁰ Supra note 2.

¹¹ Supra note 7.

¹² Id.

¹³ Supra note 9.

¹⁴ U.S. Food and Drug Administration, *FDA's Drug Review Process: Continued, Accelerated Approval* (updated November 6, 2014), available at <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/ucm289601.htm#accelerated> (last visited April 15, 2015).

¹⁵ 21 C.F.R. 312.310.

¹⁶ 21 C.F.R. 312.315.

¹⁷ 21 C.F.R. 312.320.

Compassionate Use

“Expanded access” or “compassionate use” refers to the use of an investigational medical product outside of a clinical trial, meaning that the medical product has not yet been approved by the FDA.¹⁸ The FDA prefers that patients seek out the use of an investigational medical product through clinical trials.¹⁹ Clinical trials help generate the necessary data to support approval or disapproval of medical products, investigational drugs, and devices. However, under the federal Food, Drug, and Cosmetic Act, an individual may seek individual patient access to investigational products if the following conditions are met:

- The individual’s physician determines that there is no comparable or satisfactory alternative therapy available to diagnose, monitor, or treat the person’s disease or condition, and the probable risk to the person from the investigational product is not greater than the risk from the disease or condition;
- The FDA determines that there is sufficient evidence of the safety and effectiveness of the investigational product to support its use in the particular circumstance;
- The FDA determines that providing the investigational product will not interfere with the initiation, conduct, or completion of clinical investigations to support marketing approval;
- The sponsor or the clinical investigator submits a clinical protocol that is consistent with FDA’s statute and applicable regulations for INDs or investigational device exemption applications, describing the use of the investigational product.²⁰

Additionally, in order for the expanded access or compassionate use request to move forward:

- Both the patient and his or her licensed physician must be willing to participate;
- The patient must have a serious or immediately life-threatening disease or condition;
- The patient must have no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition; and
- The patient must be unable to obtain the investigational drug under another IND or to participate in a clinical trial.²¹

To apply for expanded access or compassionate use under a single patient IND, the application must be made by the physician.²² The physician must also have his patient’s informed consent. If applicable, the physician should also ask the medical product company for a Letter of Authorization (LOA). The LOA allows the physician to satisfy some of the requirements for submission by relying on information that the medical product company has already submitted to the FDA.

¹⁸ U.S. Food and Drug Administration, *Expanded Access (Compassionate Use)* (last updated February 18, 2015), available at <http://www.fda.gov/newsevents/publichealthfocus/expandedaccesscompassionateuse/default.htm> (last visited April 15, 2015).

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² The form’s questions include whether the request is an emergency, the patient’s clinical history, a proposed treatment plan, the informed consent form. See U.S. Food and Drug Administration, *How to Complete Form FDA 1571 and Form FDA 1572* (last updated February 3, 2015), available at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ExpandedAccessCompassionateUse/ucm432757.htm> (last visited April 15, 2015).

For non-emergency requests, treatment may begin 30 days after the FDA receives the request if the treating physician fails to hear from the FDA. For emergencies, once authorization is received from the FDA, the physician may begin treatment within 5 working days.²³

On February 10, 2015, the FDA released draft guidance for comment that would revise the expanded access process. The federal Office of Management and Budget (OMB) estimates that the current process takes physician approximately 8 hours to request for non-emergency situations and 16 hours for emergency cases. For the new process, OMB estimates the process for both emergency and non-emergency situations will take 45 minutes.²⁴

Once the FDA has approved a patient for expanded access, the drug manufacturer must still agree to provide the product. There may be only a limited amount of a drug available under a company's expanded access programs.²⁵ Generally, under expanded access, the drug is provided free of charge, but not always. However, the other costs associated with care related to the patient's disease and condition would be the responsibility of the patient and any available insurance.

Right to Try

Several states have implemented "Right to Try" laws that allow terminally ill patients access to investigational drugs that have completed basic safety testing. More than 60 percent of investigational drugs in Phase I testing are deemed safe enough to move on to Phase II.²⁶ More than 30 percent then move on from Phase II testing to Phase III. As of March 31, 2015, 12 states have Right to Try laws.²⁷ Federal legislation to change the expanded access policy has been proposed, but no bill has passed yet. For example, the "Andrea Sloan Compassionate Use Reform and Enhancement Act" would:

require the sponsor of a 'breakthrough drug' (which is a drug that qualifies for expedited approval, is an infectious disease product, or qualifies the sponsor for a priority review voucher) to submit to the Secretary of Health and Human Services (HHS) and make available to the public a policy on requests for access to the drug for compassionate use, including the minimum criteria for consideration or approval of requests and the time needed to make a decision.²⁸

²³ *Supra* note 18.

²⁴ Individual Patient Expanded Access Applications: Form FDA 3926; Draft Guidance for Industry; Availability, 80 Fed. Reg. 7318 (proposed Feb. 10, 2015) (to be codified at 21 CFR pt. 312).

²⁵ American Cancer Society, *Compassionate Drug Use* (last medical review July 9, 2013), available at <http://www.cancer.org/treatment/treatmentsandsideeffects/clinicaltrials/compassionate-drug-use> (last visited April 15, 2015).

²⁶ Michael Hay, et al, *Clinical development success rates for investigational drugs* (January 2014), *Nature Biotechnology* (see Figure 1- Phase success and LOA rates), available at <http://www.nature.com/nbt/journal/v32/n1/abs/nbt.2786.html> (last visited April 15, 2015).

²⁷ National Conference of State Legislatures, *"Right to Try" Experimental Prescription Drugs, State Laws and Legislation for 2014 & 2015* (March 31, 2015), available at <http://www.ncsl.org/documents/health/RighttoTry2015.pdf> (last visited April 16, 2015).

²⁸ H.R. 5805 (113th Congress).

Other bills filed have permitted terminally ill patients to access investigational medication before the medication has passed basic safety tests under certain conditions.

III. Effect of Proposed Changes:

This bill creates the “Florida Right to Try Act” under s. 499.0295, F.S.

The bill provides the following definitions:

- An *eligible patient* is defined as an individual who:
 - Has a terminal condition that is attested to by the patient’s physician and confirmed by a second independent evaluation by a board-certified physician in an appropriate specialty for that condition;
 - Has considered all other treatment options for the terminal condition currently approved by the FDA;
 - Has given written informed consent for the use of an investigational drug, biological product, or device; and
 - Has documentation from his or her treating physician that the individual has met all of the applicable requirements.
- An *investigational drug, biological product, or device* is defined as a drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the FDA and remains under investigation in a clinical trial approved by the FDA.
- A *terminal condition* is a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible even with the administration of available treatment options currently approved by the FDA, and, without life-sustaining procedures, will result in death within 1-year after diagnosis if the condition runs its normal course.
- *Written informed consent* is a document that is signed by a patient, a parent of a minor patient, a court-appointed guardian for a patient, or a health care surrogate designated by a patient and includes:
 - An explanation of the currently approved products and treatments for the patient’s terminal condition;
 - An attestation that the patient concurs with his or her physician in believing that all currently approved products and treatments are unlikely to prolong the patient’s life;
 - Identification of the specific investigational drug, biological product, or device that the patient is seeking to use;
 - A realistic description of the most likely outcomes of using the investigational drug, biological product, or device. The description must include the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by the proposed treatment and must be based on the physician’s knowledge of the efficacy of proposed treatment for the patient’s terminal condition;
 - A statement that the patient’s health plan or third-party administrator and physician are not obligated to pay for care or treatment consequent to the use of the investigational drug, biological product, or device unless required to do so by law or contract;

- A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins treatment with the investigational drug, biological product, or device and that hospice care may be reinstated if the treatment ends and the patient meets hospice eligibility requirements; and
- A statement that the patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the investigational drug, biological product, or device states otherwise.

The bill provides that upon the request of an eligible patient a manufacturer may:

- Make an investigational drug, biological product, or device available to an eligible patient;
- Provide an investigational drug, biological product, or device without charge; or
- Require the eligible patient to pay the cost of, or the costs associated with, the manufacture of the investigational drug, biological product, or device.

The bill provides that an insurer, third party administrator, or governmental agency may provide coverage for the cost of, or the costs of services related to the use of, an investigational drug, biological product, or device. However, the bill does not expand coverage an insurer must provide under the Florida Insurance Code and does not affect mandatory health coverage for participation in clinical trials. Additionally, a hospital or health care facility licensed under ch. 395, F.S. is not required to provide new or additional services unless those services are approved by the hospital or health care facility.

If an eligible patient dies while using an investigational drug, biological product, or device pursuant to this section, the patient's heirs are not liable for any outstanding debt related to the patient's use of the investigational drug, biological product, or device.

A licensing board may not revoke, fail to renew, suspend, or take any action against a physician's license issued under chs. 458 or 459, F.S., based solely on the physician's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device. A state entity responsible for Medicare certification may not take action against a physician's Medicare certification based solely on the physician's recommendation that an eligible patient have access to an investigational drug, biological product, or device.

The bill does not create a private cause of action against the manufacturer of an investigational drug, biological product, or device; against a person or entity involved in the care of an eligible patient who is using the investigational drug, biological product, or device; or for any harm to the eligible patient that is a result of the use of the investigational drug, biological product, or device if the manufacturer or other person or entity complies in good faith with the terms of this section and exercises reasonable care.

The effective date of the bill is 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 increase the number of Floridians who have access to investigational drugs, biological products, and devices.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The AHCA notes a potential conflict with federal law and regulations. The bill prohibits the AHCA from taking action against a health care institution's Medicare certification based solely on a health care provider's recommendation to an eligible patient regarding access to an investigational drug, biological product, or device; however, the federal Centers for Medicare & Medicaid Services (CMS) could direct the AHCA to conduct a complaint investigation regarding such as an issue. The AHCA would be required to report its finding to federal CMS.²⁹

The Department of Health (DOH) observed that the bill extends regulatory protection to a physician's *recommendation* of an investigational drug, biological product, or device, but not to the health care provider's *administration* of an investigational drug, biological product, or device. The DOH also advises that while the bill may provide protections to physicians and health care institutions from state regulatory actions, the bill cannot shield such providers from

²⁹ *Supra* note 37.

federal regulatory actions, even though such federal actions are unlikely under the bill's constructs.³⁰

VIII. Statutes Affected:

This bill creates the section 499.0295 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Fiscal Policy on April 20, 2015:

The committee substitute revises the provisions of the “Right to Try Act,” including revising definitions and removing provisions related to requiring a patient to participate in data collection, clinical trials, that the bill does not require the Department of Corrections or the Department of Juvenile Justice to provide coverage, and the creation of the misdemeanor penalty for blocking access. The CS also removes provisions related to Physical Orders for Life Sustaining Treatment and the creation of a clearinghouse for compassionate and palliative care plans at the ACHA.

CS by Health Policy on March 17, 2015:

The committee substitute:

- Recognizes Physician Orders for Life Sustaining Treatment (POLST) as evidence of a patient’s health care wishes in the same circumstances as “do not resuscitate” orders when presented to a health care professional; and
- Requires a POLST document, in order to be considered valid, to be on a form adopted by the Department of Health and signed by the patient’s physician based on a consultation with the patient, the patient’s guardian, or a legally authorized proxy or surrogate.

- B. **Amendments:**

None.

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

³⁰ *Supra* note 38.

By the Committee on Health Policy; and Senator Brandes

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1 A bill to be entitled
 2 An act relating to the Florida Right to Try Act;
 3 providing a short title; creating s. 385.213, F.S.;
 4 defining terms; authorizing a manufacturer of an
 5 investigational drug, biological product, or device to
 6 make such drug, product, or device available to
 7 certain eligible patients with a terminal illness
 8 without charge or for a specified cost; authorizing
 9 the manufacturer to require eligible patients to
 10 participate in certain data collection; specifying
 11 that an insurer, a health plan, or a government health
 12 care program is not required to provide coverage for
 13 the cost of such drug, product, or device; authorizing
 14 such entities to provide coverage under specified
 15 circumstances; specifying that such entities are not
 16 required to cover care or treatment needed as the
 17 result of the use of such drug, product, or device
 18 except under certain circumstances; specifying that
 19 the Department of Corrections and the Department of
 20 Juvenile Justice are not required to provide coverage
 21 for such drugs, products, or devices for individuals
 22 in the departments' custody; prohibiting a state
 23 regulatory board or agency from taking action against
 24 the licenses of certain health care providers or
 25 against the licenses or Medicare certifications of
 26 certain health care institutions for specified actions
 27 with respect to an eligible patient's access to,
 28 treatment with, or use of investigational drugs,
 29 biological products, or devices; specifying when an

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30 investigational drug, biological product, or device
 31 may continue to be offered by the manufacturer if the
 32 drug, product, or device is found to be ineffective
 33 under certain circumstances; requiring certain
 34 information relating to clinical trials to be provided
 35 to a patient taking an investigational drug,
 36 biological product, or device outside of the clinical
 37 trial; providing that the section does not create a
 38 private cause of action against certain manufacturers,
 39 entities, and individuals for any harm to an eligible
 40 patient which results from the use of an
 41 investigational drug, biological product, or device
 42 under certain circumstances; providing a criminal
 43 penalty for an official, employee, or agent of the
 44 state who blocks or attempts to block the access of an
 45 eligible patient to certain investigational drugs,
 46 biological products, or devices; creating s. 408.064,
 47 F.S.; requiring the Agency for Health Care
 48 Administration to establish and maintain a database
 49 that allows a state resident to electronically submit
 50 a plan that indicates his or her directives for
 51 compassionate and palliative care; requiring the
 52 database to serve as a clearinghouse of plan
 53 information that is accessible by certain health care
 54 providers; authorizing the agency to subscribe to or
 55 participate in a national or private clearinghouse in
 56 lieu of establishing and maintaining an independent
 57 clearinghouse; requiring the agency to publish and
 58 disseminate certain information and provide certain

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59 training relating to the clearinghouse; amending ss.
 60 395.1041, 400.142, and 400.487, F.S.; authorizing
 61 hospital personnel, nursing home facility staff, and
 62 home health agency personnel, respectively, to
 63 withhold or withdraw cardiopulmonary resuscitation if
 64 an individual has a Physician Order for Life-
 65 Sustaining Treatment (POLST); amending s. 400.605,
 66 F.S.; requiring the Department of Elder Affairs in
 67 consultation with the Agency for Health Care
 68 Administration to adopt by rule procedures for the
 69 implementation of POLSTs in hospice care; amending s.
 70 400.6095, F.S.; authorizing a hospice care team to
 71 withhold or withdraw cardiopulmonary resuscitation if
 72 an individual has a POLST; amending s. 401.35, F.S.;
 73 requiring the Department of Health to establish
 74 circumstances and procedures for honoring a POLST;
 75 amending s. 401.45, F.S.; authorizing emergency
 76 medical transportation providers to withhold or
 77 withdraw cardiopulmonary resuscitation or other
 78 medical interventions if an individual has a POLST;
 79 providing requirements for a POLST to be valid;
 80 amending s. 429.255, F.S.; authorizing assisted living
 81 facility staff to withhold or withdraw cardiopulmonary
 82 resuscitation if an individual has a POLST; amending
 83 s. 429.73, F.S.; requiring the Department of Elder
 84 Affairs to adopt rules for the implementation of
 85 POLSTs in adult family-care homes; authorizing a
 86 provider of such home to withhold or withdraw
 87 cardiopulmonary resuscitation if an individual has a

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88 POLST; providing immunity from civil and criminal
 89 liability to a provider for such actions; amending s.
 90 765.205, F.S.; authorizing a health care surrogate to
 91 provide written consent for a POLST; providing an
 92 effective date.
 93
 94 Be It Enacted by the Legislature of the State of Florida:
 95
 96 Section 1. This act may be cited as the "Florida Right to
 97 Try Act."
 98 Section 2. Section 385.213, Florida Statutes, is created to
 99 read:
 100 385.213 Compassionate treatment; access to experimental
 101 treatments.—
 102 (1) DEFINITIONS.—As used in this section, the term:
 103 (a) "Eligible patient" means an individual who:
 104 1. Has a terminal illness, as determined by the
 105 individual's physician and consulting physician;
 106 2. As determined by the individual's physician, does not
 107 have any comparable or satisfactory United States Food and Drug
 108 Administration-approved option available to be diagnosed,
 109 monitored, or treated for the individual's disease or condition,
 110 and the probable risk to the individual from the investigational
 111 drug, biological product, or device is not greater than the risk
 112 from the disease or condition;
 113 3. Has received a prescription or recommendation from the
 114 individual's physician for an investigational drug, biological
 115 product, or device;
 116 4. Has provided written, informed consent in accordance

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with s. 766.103 for the use of an investigational drug, biological product, or device or, if the individual is a minor or lacks the mental capacity to provide informed consent, a parent's or legal guardian's written, informed consent on the individual's behalf; and

5. Has documentation from the individual's physician indicating that the individual has met all the requirements of this section.

(b) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration.

(c) "Physician" means the physician licensed under chapter 458 or chapter 459 who provides medical care or treatment to the eligible patient for the terminal illness.

(d) "Terminal illness" means a disease or condition that, without life-sustaining procedures, will result in the patient's death in the near future or a state of permanent unconsciousness from which recovery is unlikely.

(2) AVAILABILITY OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES.—

(a) A manufacturer of an investigational drug, biological product, or device may make the investigational drug, biological product, or device, available to an eligible patient. A manufacturer may:

1. Provide the investigational drug, biological product, or device to an eligible patient without charge or require the eligible patient to pay the cost of, or the cost associated

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with, the manufacture of the investigational drug, biological product, or device.

2. Require an eligible patient to participate in data collection relating to the eligible patient's use of the investigational drug, biological product, or device.

(b) This section does not require:

1. An insurer, a health plan, or a government health care program to provide coverage for:

a. The cost of an investigational drug, biological product, or device provided to an eligible patient. An insurer, a health plan, or a government health care program may elect to provide coverage for an investigational drug, biological product, or device that is not part of a clinical trial.

b. Care or treatment needed as a result of an eligible patient's use of an investigational drug, biological product, or device unless the use is part of an approved clinical trial.

2. The Department of Corrections or the Department of Juvenile Justice to provide coverage for an investigational drug, biological product, or device for individuals in the custody of the Department of Corrections or the Department of Juvenile Justice.

(3) ACTION AGAINST PROVIDER LICENSURE PROHIBITED.—
Notwithstanding any other law, a state regulatory board or agency:

(a) May not take any action against a health care provider's license issued under chapter 458 or chapter 459 based solely on the health care provider's recommendation to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device.

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175 (b) May not, with respect to a health care institution
 176 licensed in this state, take any action against the
 177 institution's:
 178 1. License based solely on the institution's participation
 179 in the treatment with, or in any other use of, an
 180 investigational drug, biological product, or device.
 181 2. Medicare certification based solely on a health care
 182 provider's recommendation to an eligible patient regarding
 183 access to an investigational drug, biological product, or
 184 device.
 185 (4) CLINICAL TRIALS.-
 186 (a) If a clinical trial of an investigational drug,
 187 biological product, or device is not effective for a certain
 188 patient or condition and the trial is closed due to lack of
 189 efficacy, the manufacturer or health care provider may continue
 190 to offer the investigational drug, biological product, or device
 191 for a different condition to the patient or to new patients.
 192 (b) If the United States Food and Drug Administration or
 193 the safety committee for a clinical trial provides notice of
 194 information for an investigational drug, biological product, or
 195 device that is being taken by a patient outside of the clinical
 196 trial, the manufacturer of such drug, product, or device or the
 197 patient's physician shall notify the patient of the information.
 198 (5) NO CAUSE OF ACTION.-This section does not create a
 199 private cause of action against a manufacturer of an
 200 investigational drug, biological product, or device or against
 201 an entity or individual involved in the care of an eligible
 202 patient for any harm to the eligible patient which results from
 203 the use of the investigational drug, biological product, or

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204 device if the manufacturer, entity, or individual is complying
 205 in good faith with this section, unless the manufacturer,
 206 entity, or individual failed to exercise reasonable care.
 207 (6) PENALTY.-An official, employee, or agent of the state
 208 who blocks or attempts to block the access of an eligible
 209 patient to an investigational drug, biological product, or
 210 device that has been recommended to the eligible patient by his
 211 or her physician and that has not been banned or removed from a
 212 clinical trial as unsafe by the United States Food and Drug
 213 Administration commits a misdemeanor of the second degree,
 214 punishable as provided in s. 775.082 or s. 775.083.
 215 Section 3. Section 408.064, Florida Statutes, is created to
 216 read:
 217 408.064 Clearinghouse for compassionate and palliative care
 218 plans.-
 219 (1) The agency shall establish and maintain a reliable and
 220 secure database that allows a resident of this state to
 221 electronically submit a plan that indicates his or her
 222 directives for compassionate and palliative care. The database
 223 shall serve as a clearinghouse of plan information that may be
 224 accessed by a health care provider who is treating the resident.
 225 The agency shall seek advice from residents, compassionate and
 226 palliative care providers, and health care facilities for the
 227 development and implementation of the clearinghouse.
 228 (2) The agency may subscribe to or otherwise participate in
 229 a national or private clearinghouse that will accomplish the
 230 requirements under subsection (1) in lieu of establishing and
 231 maintaining an independent clearinghouse for this state's
 232 residents.

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(3) The agency shall publish and disseminate information to the residents of this state regarding the availability of the clearinghouse. The agency must also provide training to health care providers and health care facilities in this state on how to access plans through the clearinghouse.

Section 4. Paragraph (1) of subsection (3) of section 395.1041, Florida Statutes, is amended to read:

395.1041 Access to emergency services and care.—

(3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF FACILITY OR HEALTH CARE PERSONNEL.—

(1) Hospital personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a Physician Order for Life-Sustaining Treatment (POLST). Facility staff and facilities shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to either such an order. The absence of an order not to resuscitate executed pursuant to s. 401.45 or a POLST does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 5. Subsection (3) of section 400.142, Florida Statutes, is amended to read

400.142 Emergency medication kits; orders not to resuscitate.—

(3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a Physician Order for Life-

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Sustaining Treatment (POLST). Facility staff and facilities are not subject to criminal prosecution or civil liability, or considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to either such order. The absence of an order not to resuscitate executed pursuant to s. 401.45 or a POLST does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 6. Section 400.487, Florida Statutes, is amended to read:

400.487 Home health service agreements; physician's, physician assistant's, and advanced registered nurse practitioner's treatment orders; patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate; physician orders for life-sustaining treatment.—

(1) Services provided by a home health agency must be covered by an agreement between the home health agency and the patient or the patient's legal representative specifying the home health services to be provided, the rates or charges for services paid with private funds, and the sources of payment, which may include Medicare, Medicaid, private insurance, personal funds, or a combination thereof. A home health agency providing skilled care must make an assessment of the patient's needs within 48 hours after the start of services.

(2) ~~If when~~ required by ~~the provisions of~~ chapter 464, ~~part I, part III, or part V of chapter 468,~~ part I, part III, or part V of chapter 468, or chapter 486, the attending physician, physician assistant, or advanced registered

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nurse practitioner, acting within his or her respective scope of practice, shall establish treatment orders for a patient who is to receive skilled care. The treatment orders must be signed by the physician, physician assistant, or advanced registered nurse practitioner before a claim for payment for the skilled services is submitted by the home health agency. If the claim is submitted to a managed care organization, the treatment orders must be signed within the time allowed under the provider agreement. The treatment orders shall be reviewed, as frequently as the patient's illness requires, by the physician, physician assistant, or advanced registered nurse practitioner in consultation with the home health agency.

(3) A home health agency shall arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services in accordance with the patient's direction, approval, and agreement to pay the charge for the visits.

(4) Each patient has the right to be informed of and to participate in the planning of his or her care. Each patient must be provided, upon request, a copy of the plan of care established and maintained for that patient by the home health agency.

(5) ~~If when~~ nursing services are ordered, the home health agency to which a patient has been admitted for care must provide the initial admission visit, all service evaluation visits, and the discharge visit by a direct employee. Services provided by others under contractual arrangements to a home health agency must be monitored and managed by the admitting home health agency. The admitting home health agency is fully

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responsible for ensuring that all care provided through its employees or contract staff is delivered in accordance with this part and applicable rules.

(6) The skilled care services provided by a home health agency, directly or under contract, must be supervised and coordinated in accordance with the plan of care.

(7) Home health agency personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a Physician Order for Life-Sustaining Treatment (POLST). The agency shall adopt rules providing for the implementation of such orders. Home health personnel and agencies shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such orders ~~an order~~ and rules adopted by the agency.

Section 7. Paragraph (e) of subsection (1) of section 400.605, Florida Statutes, is amended to read:

400.605 Administration; forms; fees; rules; inspections; fines.—

(1) The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. The department, in consultation with the agency, shall by rule establish minimum standards and procedures for a hospice pursuant to this part. The rules must include:

(e) Procedures relating to the implementation of advanced directives; physician orders for life-sustaining treatment; and do-not-resuscitate orders.

Section 8. Subsection (8) of section 400.6095, Florida

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Statutes, is amended to read:

400.6095 Patient admission; assessment; plan of care; discharge; death.—

(8) The hospice care team may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a Physician Order for Life-Sustaining Treatment (POLST). The department shall adopt rules providing for the implementation of such orders. Hospice staff shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and applicable rules. The absence of an order to resuscitate executed pursuant to s. 401.45 or a POLST does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 9. Subsection (4) of section 401.35, Florida Statutes, is amended to read:

401.35 Rules.—The department shall adopt rules, including definitions of terms, necessary to carry out the purposes of this part.

(4) The rules must establish circumstances and procedures under which emergency medical technicians and paramedics may honor orders by the patient's physician not to resuscitate and a Physician Order for Life-Sustaining Treatment (POLST) and the documentation and reporting requirements for handling such requests.

Section 10. Paragraph (a) of subsection (3) of section 401.45, Florida Statutes, are amended to read:

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401.45 Denial of emergency treatment; civil liability.—

(3) (a) Resuscitation or other forms of medical intervention may be withheld or withdrawn from a patient by an emergency medical technician, ~~or~~ paramedic, or other health care professional if evidence of a Physician Order for Life-Sustaining Treatment (POLST) or an order not to resuscitate is presented to that professional. To be valid, a POLST must be on the form adopted by rule of the department and signed by the patient's physician after consultation with the patient, patient's guardian, or legally authorized proxy or surrogate by the patient's physician is presented to the emergency medical technician or paramedic. To be valid, an order not to resuscitate, ~~to be valid,~~ must be on the form adopted by rule of the department. The form must be signed by the patient's physician and by the patient or, if the patient is incapacitated, the patient's health care surrogate or proxy as provided in chapter 765, court-appointed guardian as provided in chapter 744, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

Section 11. Subsection (4) of section 429.255, Florida Statutes, is amended to read:

429.255 Use of personnel; emergency care.—

(4) Facility staff may withhold or withdraw cardiopulmonary resuscitation or the use of an automated external defibrillator if presented with an order not to resuscitate executed pursuant to s. 401.45 or a Physician Order for Life-Sustaining Treatment (POLST). The department shall adopt rules providing for the

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implementation of such orders. Facility staff and facilities shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation or use of an automated external defibrillator pursuant to such orders ~~an order~~ and rules adopted by the department. The absence of an order to resuscitate executed pursuant to s. 401.45 or a POLST does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation or use of an automated external defibrillator as otherwise permitted by law.

Section 12. Subsection (3) of section 429.73, Florida Statutes, is amended to read:

429.73 Rules and standards relating to adult family-care homes.—

(3) The department shall adopt rules providing for the implementation of orders not to resuscitate and Physician Orders for Life-Sustaining Treatment (POLST). The provider may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a POLST. The provider shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such orders ~~an order~~ and applicable rules.

Section 13. Paragraph (c) of subsection (1) of section 765.205, Florida Statutes, is amended to read:

765.205 Responsibility of the surrogate.—

(1) The surrogate, in accordance with the principal's

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instructions, unless such authority has been expressly limited by the principal, shall:

(c) Provide written consent using an appropriate form whenever consent is required, including a physician's order not to resuscitate or a Physician Order for Life-Sustaining Treatment (POLST).

Section 14. This act shall take effect July 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)

4/20/2015

Meeting Date

Topic _____

Bill Number 1052

(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)

* AMENDED

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2015

Meeting Date

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

SB 1052

Bill Number (if applicable)

Topic Right to Try Experimental Treatment

Name Teresa Ward

Job Title attorney

Address 230 N. Jefferson

Street

Monticello

City

FL

State

32349

Zip

Phone 850-544-5171

Email teresacward@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Right to Life

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)



The Florida Senate

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 #1052**, relating to **Florida Right to Try Act**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 22

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 1526

INTRODUCER: Health Policy Committee and Senator Legg

SUBJECT: Athletic Trainers

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Lloyd	Stovall	HP	Fav/CS
2. Brown	Pigott	AHS	Recommend: Favorable
3. Pace	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1526 revises several provisions related to athletic trainers. Specifically, the bill:

- Repeals the Governor's authority to appoint initial members of the Board of Athletic Training;
- Requires the board to adopt rules pursuant communication between an athletic trainer and a supervising physician;
- Revises the licensure and licensure renewal requirements for athletic trainers;
- Requires athletic trainers to practice under the supervision of a licensed physician; and
- Revises the background screening requirements for athletic trainers

The bill has no fiscal impact for FY 2015-2016. However, the Florida Department of Law Enforcement (FDLE) estimates a positive fiscal impact of \$92,880 to the Operating Trust Fund in FY 2016-2017 due to the anticipated collection of additional fees for level 2 background checks.

II. Present Situation:

Athletic trainers are regulated by the Department of Health (DOH) and the Board of Athletic Training (board) within the DOH pursuant to part XIII of ch. 468, F.S. The Legislature created part XIII of ch. 468, F.S., in 1994.¹ The stated legislative intent was for athletes to be assisted by

¹ Chapter 94-119, L.O.F., and s. 468.70, F.S.

persons who are adequately trained to recognize, prevent, and treat physical injuries suffered during athletic activities, and to protect the public by licensing and fully regulating these trainers.²

The board consists of 9 members appointed by the Governor and confirmed by the Senate. Five of the members must be licensed athletic trainers, 1 must be a physician licensed under ch. 458, F.S., or ch. 459, F.S., 1 must be a physician licensed under ch. 460, F.S., and the remaining 2 members must be consumers who have never worked or had a financial interest in athletic training or been licensed health care practitioners.³

Services provided by athletic trainers include injury prevention, emergency care, clinical diagnosis, therapeutic intervention, and rehabilitation of injuries and medical conditions.⁴ State law defines athletic training to mean the recognition, prevention, and treatment of athletic injuries.⁵ An athletic injury is defined as an injury that is sustained which affects the athlete's ability to participate or perform in an athletic activity.⁶ An athletic activity means participation in an activity conducted by an educational institution, a professional athletic organization, or an amateur athletic organization, involving exercises, sports, games, or recreation, requiring any of the physical attributes of strength, agility, range of motion, speed, and stamina.⁷

Licensing Process

To be licensed as an athletic trainer in Florida today, an applicant must:

- Be at least 21 years of age;
- Have a bachelor's degree from a college or university accredited by a specified accrediting agency;
- If graduated after 2004, have completed an approved athletic training curriculum from a college or university accredited by a program recognized by the Board of Certification (BOC);
- Have a current certification in cardiovascular pulmonary resuscitation (CPR) with an automated external defibrillator (AED) from the American Red Cross, the American Heart Association, American Safety and Health Institute, the National Safety Council, or an entity approved by the board as equivalent;
- Have passed the BOC Entry Level Certification examination and submit a certified copy of certificate;
- Submit proof of taking a two-hour course on the prevention of medical errors; and
- If licensed in another state, territory or jurisdiction of the United States, have a license verification form sent directly to the board from the state that issued the license or certification.⁸

² Id.

³ Section 468.703(2), F.S.

⁴ Board of Certification for the Athletic Trainer, *Defining Athletic Training*, (January 2013) available at <http://www.bocatc.org/about-us/defining-athletic-training> (last visited April 14, 2015).

⁵ Section 468.701(5), F.S.

⁶ Section 468.701(3), F.S.

⁷ Section 468.701(2), F.S.

⁸ Section 468.707, F.S., and Department of Health, Board of Athletic Training, *Licensing and Regulation*, (updated July 23, 2014) available at <http://floridasathletictraining.gov/licensing/> (last visited April 14, 2015).

The biennial licensure fee is \$230 for new applicants if the applicant is applying in the first year of the biennium, or \$180 if the applicant is applying in the second year of the biennium. The fees include a \$100 application fee and an initial licensure fee of \$125 for a 2-year license or \$75 for a 1-year license.⁹

Currently there are 1,935 in-state athletic trainers in Florida.¹⁰ There are an additional 196 active, out-of-state licensees and three active-military licensees.¹¹ During fiscal year 2013-2014, the DOH reports that 356 initial applications were received and 324 initial licenses were issued.¹²

Exemptions from licensure are made for those individuals who are acting within the professional scope of their DOH-issued license; an athletic training student under the direct supervision of a licensed athletic director; a person administering standard first aid to an athlete; a person licensed under ch. 548, F.S.,¹³ if acting within the scope of such license; and a person providing personal training instructions for exercise, aerobics, or weightlifting, if the person does not represent himself or herself as an “athletic trainer.”¹⁴

All licenses expire on September 30 of even-numbered years. To renew, a licensee must complete a renewal application, pay the renewal fees and show proof of current certification from the BOC.¹⁵ The cost to renew an active license for each biennium is \$130.¹⁶

Continuing education requirements may not exceed 24 hours biennially and must include a current certification in CPR with an AED from the American Red Cross or the American Heart Association or an equivalent training as determined by the board.¹⁷

Board of Certification

To become a certified athletic trainer, a student must earn a degree from a school with an athletic training curriculum accredited by the Commission on Accreditation of Athletic Training Education (CAATE).¹⁸ The curriculum includes both formal instruction in injury/illness prevention, first aid and emergency care, assessment of injury/illness, human anatomy, and

⁹ Department of Health, Board of Athletic Training, *Licensing and Registration - Fees*, available at <http://floridasathletictraining.gov/licensing/> (last visited April 14, 2015), Rule 64B33-3.001, F.A.C., and 468.709, F.S. The fees listed in the statute and the administrative rule do not match the fees on the board’s website.

¹⁰ Department of Health, *Senate Bill 1526 Analysis*, pg. 2 (February 26, 2015), (on file with the Senate Committee on Health Policy).

¹¹ Department of Health, *2013-14 Annual Report and Long Range Plan*, pg. 13, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited April 14, 2015).

¹² *Id.* at pg. 17.

¹³ Chapter 548 regulates pugilistic exhibitions, including the attendance of a physician who serves as an agent of the Florida State Boxing Commission for each event.

¹⁴ Section 468.723, F.S.

¹⁵ Department of Health, Board of Athletic Training, *Renewal Information - Requirements*, available at <http://floridasathletictraining.gov/renewals/#tab-requirements> (last visited April 14, 2015).

¹⁶ *Id.* at note 9. *See also* Rule 64B33-3.001, F.A.C., which shows the biennial renewal fee as \$125.

¹⁷ Rule 64B33-2.003, F.A.C.

¹⁸ *Id.* at note 4.

physiology, therapeutic modalities and nutrition, as well as clinical education in practice settings.¹⁹

The BOC was incorporated in 1989 to provide a certification program for entry-level athletic trainers. The BOC has been certifying athletic trainers since 1969 and is the only accredited certification program for athletic trainers.²⁰ The program is accredited through the National Commission for Certifying Agencies and undergoes reaccreditation by that agency every 5 years.²¹

The exam fee through the BOC is \$300 for first-time candidates and registration occurs through the BOC directly.²²

Athletic Trainer Responsibilities

An athletic trainer practices under a written protocol with a licensed supervising physician or, if at an athletic event, under the direction of a licensed physician. A physician is defined as a provider licensed under chapters 458 (medical), 459 (osteopathic), 460 (chiropractic), F.S., or an individual otherwise authorized to practice medicine.²³

The written protocol must require the athletic trainer to notify the supervising physician of new injuries as soon as practicable.

Violations, Penalties, and Discipline

Sexual misconduct between an athletic trainer and an athlete is a violation of the mutual trust needed for an athletic trainer-athlete relationship and is prohibited.²⁴

An athletic trainer is guilty of a first degree misdemeanor if any of the following occur:

- The practice of athletic training for compensation without holding an active license;
- The use or attempted use of an athletic trainer license that has been suspended or revoked;
- The act of knowingly employing an unlicensed person in the practice of athletic training;
- The act of obtaining or attempting to obtain an athletic trainer license by misleading statements or knowing misrepresentation; and
- The use of the title “athletic trainer” without being licensed.²⁵

¹⁹ National Athletic Trainers’ Association, *Athletic Training*, available at http://www.nata.org/about_AT/docs/GuideToAthleticTrainingServices.pdf (last visited April 14, 2015).

²⁰ Board of Certification, *BOC Vision and Mission*, available at <http://www.bocatc.org/about-us/boc-vision-mission> (last visited: April 14, 2015).

²¹ Id.

²² Board of Certification, *Register for Exam*, available at <http://www.bocatc.org/candidates/register-for-exam> (last visited April 14, 2015).

²³ Section 468.713, F.S.

²⁴ Section 468.715, F.S.

²⁵ Section 468.717, F.S.

Disciplinary measures covered under current law provide actions which constitute grounds for denial of a license, imposition of a penalty, or disciplinary action. Examples of such acts in the practice of athletic training include:

- Failing to follow advertising guidelines;
- Committing incompetency or misconduct;
- Committing fraud or deceit;
- Committing negligence, gross negligence, or repeated negligence;
- Showing an inability to practice with reasonable skill and safety by reason of illness or use of alcohol or drugs, or as a result of any mental or physical condition;
- Violating any provision of ch. 468, F.S., or adopted rules; or
- Violating any provision of s. 456.072, F.S.²⁶

The rules promulgated under ch. 468, F.S., provide more detail as to the recommended penalties for the violations and the discipline a licensee can expect on a first through third offense.²⁷

Recommended penalties can range from a letter of concern, to large fines, to revocation of a license, depending on the nature of the violation or how many times the licensee has offended on the same type of violation.

III. Effect of Proposed Changes:

Section 1 modifies legislative intent to provide that athletic trainers meet minimum requirements for the safe practice of athletic training, and that the Legislative intent is to protect the public by ensuring that athletic trainers who fall below the minimum standards are prohibited from practicing in this state.

Section 2 modifies the definitions to reference current accrediting entities and repeals the definitions of “athlete,” “athlete activity,” “athletic injury,” “direct supervision,” and “supervision.” Focus is shifted from an athlete to a physically active person.

The definition of “athletic trainer” is amended to include a licensed athletic trainer who has met the education requirements of the CAATE and the BOC. A licensed athletic trainer is also expressly prohibited from offering to provide any care or services for which he or she lacks the education, training, or experience to provide or that he or she is prohibited by law from providing.

The definition of “athletic training” is amended to mean the service and care provided under the direction of a licensed physician. Such service and care must be related to the prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition while involved in exercise, sport, recreation, or another physical activity. An athletic trainer may use physical modalities, including but not limited to, heat, light, sound, cold, electricity, and mechanical devices. Currently, the definition of “athletic training” is limited to the recognition, prevention, and treatment of athletic injuries.

²⁶ Sections 468.717 and 468.719, F.S.; and Rule 64B33-5.001, F.A.C.

²⁷ Rule 64B33-5.001, F.A.C.

Section 3 repeals an obsolete provision relating to the appointment of initial members of the Board of Athletic Training (board).

Section 4 repeals a requirement for a written protocol between the athletic trainer and a supervising physician. The bill authorizes the DOH to develop rules for requirements and guidelines addressing communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions. Currently, an athletic trainer must notify the supervising physician of new injuries as soon as practicable.

Section 5 amends the requirements for licensure under s. 468.707, F.S. In addition to current licensing requirements, the DOH must license each applicant who:

- Submits to a background screening under s. 456.0135, F.S., if the applicant applied after July 1, 2016. The board may require a background screening for an applicant whose license has expired or who is undergoing disciplinary action;
- Obtains a bachelor's degree or higher from a college or university professional athletic training degree program accredited by CAATE or its successor recognized and approved by the U.S. Department of Education or the Commission on Recognition of Postsecondary Accreditation;
- Passes the national examination to be certified by the BOC;
- Is certified by the BOC, if graduated before 2004;
- Is certified in CPR and the use of an AED as set forth in the continuing education requirements as determined by the board;
- Completes any other requirements as determined by the DOH and approved by the board; and
- Provides records or other evidence as determined by the board.

The bill repeals the requirement that an applicant be at least 21 years of age.

Section 6 repeals the examination fee. The BOC administers the required examination.

Section 7 repeals the requirement that a CPR and AED certification be provided by the American Red Cross or the American Heart Association or an equivalent training.

Section 8 revises the responsibilities of athletic trainers. Currently, an athletic trainer can practice within a written protocol established between the athletic trainer and the supervising physician and must notify the supervising physician of new injuries as soon as practicable, are deleted. The bill requires athletic trainers to practice under the direction of a licensed physician. The physician may communicate his or her direction to the athletic trainer through an oral or written prescription or protocol, as deemed appropriate by the physician. The athletic trainer is to provide care and service in the manner dictated by the physician.

Section 9 repeals the description of sexual misconduct and prohibits sexual misconduct in the practice of athletic training pursuant to s. 456.063, F.S. (general prohibition for DOH-licensed persons).

Section 10 clarifies the violations for practicing athletic training without a license. The bill prohibits the practice of athletic training, representing oneself as an athletic trainer, or providing athletic training services to a patient without being licensed. Currently, it is a violation to use the title “athletic trainer” without a license. The bill also prohibits using the title “licensed athletic trainer,” the abbreviation “AT” or “LAT,” or similar title or abbreviation that suggests licensure as an athletic trainer.

Section 11 repeals as grounds for denial of a license or disciplinary action, the failure to adhere to certain advertising guidelines. Current law requires that an athletic trainer’s name and license number be included in any advertising, including letterhead and business cards, but not clothing or novelty items.

The bill adds reasons related to the licensee’s mental or physical condition, use of controlled substances, or any other substance that impair one’s ability to practice to the list of acts that constitute grounds for denial of a license or disciplinary action.

Section 12 clarifies that a person licensed in this state under another chapter is not prohibited from engaging in the practice for which he or she is licensed.

Related to the exemption from licensure for an athletic training student, the bill defines “direct supervision” as the physical presence of an athletic trainer who is immediately available to an athletic trainer student and able to intervene in accordance with the standards set by CAATE.

The bill exempts from licensure persons authorized to practice athletic training in another state when employed by, or a volunteer for, an out-of-state secondary or post-secondary educational institution, or a recreational, competitive, or professional organization that is temporarily present in this state. The bill repeals an exemption specific only to pugilistic exhibitions.

An exemption is also provided to third party payers to permit such organizations to reimburse employers of athletic trainers for covered services rendered by licensed athletic trainers.

Section 13 amends the general background screening provisions of s. 456.0135, F.S., to include athletic trainers. Fingerprinting will be handled by the FDLE for state processing and then by the Federal Bureau of Investigation (FBI) for national processing.²⁸ The cost for fingerprint processing is borne by the applicant under s. 456.0135, F.S.

Section 14 provides an effective date of January 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ Section 456.0135, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Lines 177 and 178 of the bill give broad authority the Department of Health, which must be approved by the board, to determine additional licensure requirements. This authority may raise the issue of unlawful delegation of legislative authority to an entity of the executive branch.

Article II, s. 3 of the Florida Constitution, establishes a doctrine of separation of powers, providing that no branch may exercise powers pertaining to the other branches. Interpreting this doctrine in the context of the Legislature delegating authority to the executive branch, the Florida Supreme Court has stated that, “where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine.”²⁹ However, “[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.”³⁰

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

None.

B. Private Sector Impact:

A person who applies for licensure after July 1, 2016, will be required to submit a background screening through the FDLE. According to the FDLE, the costs for all aspects of the screening amount to \$75.75, which is borne by the applicant. The FDLE estimates that 1,935 record checks will be requested in Fiscal Year 2016-2017.³¹

Each applicant and licensee is also required to have CPR and AED certification. The fiscal impact to the applicants is unknown.

²⁹ *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

³⁰ *Conner v. Joe Hatton, Inc.* 216 So.2d 209 (Fla. 1968).

³¹ Florida Department of Law Enforcement, *2015 FDLE Legislative Bill Analysis of SB 1526*, March 23, 2015, (on file with staff of the Appropriations Subcommittee on Health and Human Services). The cost for a state background check is \$24, and the cost of the 5-year up-front inclusion in the state fingerprint retention program is \$24. The cost for a national background check is \$14.75, and inclusion in the national fingerprint retention program is \$13. Total cost for initial background check and retention per applicant is \$75.75.

Similarly, the applicant may be required to provide records or other evidence or complete any other requirements as determined by the DOH and approved by the board for licensing. The fiscal impact to applicants and renewing licensees is indeterminate since such requirements are unknown at present.

C. Government Sector Impact:

The DOH will incur non-recurring costs for rulemaking and modification of the application and forms which current budget authority is adequate to absorb. The DOH may incur a recurring increase in workload associated with additional complaints which current resources are adequate to absorb.³²

The FDLE anticipates no fiscal impact for fiscal year 2015-2016, but estimates an increase in fees collected in fiscal year 2016-2017 of \$92,880 if 1,935 applicants pay the \$48 combined cost of a state background check and 5-year up-front inclusion in the state fingerprint retention program. Such fees are deposited into the FDLE's Operating Trust Fund.³³

No other needs for additional FTEs or other resources are anticipated for this bill. However, the FDLE advises that the combined effect of this bill and other legislation being considered in the 2015 Regular Session that require the FDLE to perform additional background screenings could cause the FDLE to need additional human resources to meet the cumulative demand over time.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill adds as a first degree misdemeanor for the use of the title "licensed athletic trainer," the abbreviation "AT," or "LAT," or a similar title or abbreviation that suggests licensure as an athletic trainer. It is unclear how it could be known what similar title or abbreviation, now or in the future, might suggest to an individual that someone is a licensed athletic trainer.

To better facilitate level 2 background checks, fingerprint retention, and inclusion in the clearinghouse, the FDLE recommends inserting language acknowledging that:

- The applicant is to submit a full set of fingerprints to the FDLE or to an authorized vendor;
- Costs for the screening shall be borne by the applicant;
- The FDLE will handle fingerprints for state processing and forward them to the FBI for national processing;

³² Department of Health, Board of Athletic Trainers, *Senate Bill 1526 Analysis*, pg. 5 (February 27, 2015) (on file with the Senate Committee on Health Policy).

³³ Department of Law Enforcement, *Senate Bill 1526 Analysis*, (March 13, 2015) (on file with the Senate Fiscal Policy Committee).

³⁴ *Id.*

- Fingerprints shall be retained by the FDLE in accordance with state law and, when enrolled with the national program, the FBI;
- Any arrest record identified will be reported to the FDLE; and
- All fingerprints received shall be entered into the Care Provider Background Screening Clearinghouse.³⁵

The bill authorizes the DOH to adopt rules related to mandatory guidelines for communication between the athletic trainer and a physician.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.70, 468.701, 468.703, 468.705, 468.707, 468.709, 468.711, 468.713, 468.715, 468.717, 468.719, 468.723, and 456.0135.

IX. Additional Information:

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

CS by Health Policy on March 23, 2015:

The committee substitute includes two technical amendments to provide clarity relating to care and services. No substantive changes were included.

- B. **Amendments:**

None.

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

³⁵ Id.

By the Committee on Health Policy; and Senator Legg

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1 A bill to be entitled
 2 An act relating to athletic trainers; amending s.
 3 468.70, F.S.; revising legislative intent; amending s.
 4 468.701, F.S.; revising definitions; amending s.
 5 468.703, F.S.; deleting the requirement for the
 6 Governor to appoint the initial members of the Board
 7 of Athletic Training; amending s. 468.705, F.S.;
 8 revising the board's authorization to adopt certain
 9 rules relating to communication between an athletic
 10 trainer and a supervising physician; amending s.
 11 468.707, F.S.; requiring certain applicants for
 12 licensure to submit fingerprints; revising
 13 requirements for licensure; authorizing the board to
 14 require a background screening for an applicant in
 15 certain circumstances; amending s. 468.709, F.S.;
 16 deleting the requirement for the board to establish an
 17 examination fee; amending s. 468.711, F.S.; revising
 18 continuing education requirements for license renewal;
 19 amending s. 468.713, F.S.; revising responsibilities
 20 of athletic trainers to include requirements that a
 21 trainer must practice under the direction of a
 22 physician; amending s. 468.715, F.S.; prohibiting
 23 sexual misconduct by an athletic trainer; amending s.
 24 468.717, F.S.; prohibiting unlicensed persons from
 25 practicing athletic training or representing
 26 themselves as athletic trainers; prohibiting an
 27 unlicensed person from using specified titles;
 28 amending s. 468.719, F.S.; revising grounds for
 29 disciplinary action; amending s. 468.723, F.S.;

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30 providing exemptions; amending s. 456.0135, F.S.;
 31 revising general background screening provisions to
 32 include athletic trainers; providing an effective
 33 date.

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

36
 37 Section 1. Section 468.70, Florida Statutes, is amended to
 38 read:

39 468.70 Legislative intent.—It is the intent of the
 40 Legislature that athletic trainers practicing in this state meet
 41 minimum requirements for safe practice and that an athletic
 42 trainer who falls below minimum competency or who otherwise
 43 presents a danger to the public be prohibited from practicing in
 44 this state athletes be assisted by persons adequately trained to
 45 recognize, prevent, and treat physical injuries sustained during
 46 athletic activities. Therefore, It is the further intent of the
 47 Legislature to protect the public by licensing and fully
 48 regulating athletic trainers.

49 Section 2. Section 468.701, Florida Statutes, is amended to
 50 read:

51 468.701 Definitions.—As used in this part, the term:

52 ~~(1) "Athlete" means a person who participates in an~~
 53 ~~athletic activity.~~

54 ~~(2) "Athletic activity" means the participation in an~~
 55 ~~activity, conducted by an educational institution, a~~
 56 ~~professional athletic organization, or an amateur athletic~~
 57 ~~organization, involving exercises, sports, games, or recreation~~
 58 ~~requiring any of the physical attributes of strength, agility,~~

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flexibility, range of motion, speed, and stamina.

~~(3) "Athletic injury" means an injury sustained which affects the athlete's ability to participate or perform in athletic activity.~~

~~(1)(4)~~ "Athletic trainer" means a person licensed under this part who has met the requirements under this part, including education requirements as set forth by the Commission on Accreditation of Athletic Training Education or its successor and necessary credentials from the Board of Certification. An individual who is licensed as an athletic trainer may not provide, offer to provide, or represent that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.

~~(2)(5)~~ "Athletic training" means service and care provided by an athletic trainer under the direction of a physician licensed as specified in s. 468.713. Such service and care must relate to the prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition involving exercise, sport, recreation, or related physical activity. For the provision of such care and services, an athletic trainer may use physical modalities, including, but not limited to, heat, light, sound, cold, electricity, and mechanical devices the recognition, prevention, and treatment of athletic injuries.

~~(3)(6)~~ "Board" means the Board of Athletic Training.

~~(4)(7)~~ "Board of Certification" means the nationally accredited certifying body for athletic trainers or its

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successor agency.

~~(5)(8)~~ "Department" means the Department of Health.

~~(9) "Direct supervision" means the physical presence of the supervisor on the premises so that the supervisor is immediately available to the trainee when needed.~~

~~(10) "Supervision" means the easy availability of the supervisor to the athletic trainer, which includes the ability to communicate by telecommunications.~~

Section 3. Section 468.703, Florida Statutes, is amended to read:

468.703 Board of Athletic Training.—

(1) The Board of Athletic Training is created within the department and shall consist of nine members appointed by the Governor and confirmed by the Senate.

(2) Five members of the board must be licensed athletic trainers, certified by the Board of Certification. One member of the board must be a physician licensed under chapter 458 or chapter 459. One member of the board must be a physician licensed under chapter 460. Two members of the board shall be consumer members, each of whom must be a resident of this state who has never worked as an athletic trainer, who has no financial interest in the practice of athletic training, and who has never been a licensed health care practitioner as defined in s. 456.001(4).

~~(3) For the purpose of staggering terms, the Governor shall appoint the initial members of the board as follows:~~

~~(a) Three members for terms of 2 years each.~~

~~(b) Three members for terms of 3 years each.~~

~~(c) Three members for terms of 4 years each.~~

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(3)(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years and such members shall serve until their successors are appointed.

(4)(5) All provisions of chapter 456 relating to activities of the board shall apply.

(5)(6) The board shall maintain its official headquarters in Tallahassee.

Section 4. Section 468.705, Florida Statutes, is amended to read:

468.705 Rulemaking authority.— The board is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this part conferring duties upon it. The provisions of s. 456.011(5) shall apply to the board's activity. Such rules shall include, but not be limited to, the allowable scope of practice regarding the use of equipment, procedures, and medication; mandatory requirements and guidelines for communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions; ~~requirements for a written protocol between the athletic trainer and a supervising physician,~~ licensure requirements; ~~licensure examination;~~ continuing education requirements; ~~fees;~~ records, and reports to be filed by licensees; ~~protocols;~~ and any other requirements necessary to regulate the practice of athletic training.

Section 5. Section 468.707, Florida Statutes, is amended to read:

468.707 Licensure ~~by examination;~~ requirements.—Any person desiring to be licensed as an athletic trainer shall apply to the department on a form approved by the department. An

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applicant shall also provide records or other evidence, as determined by the board, to prove he or she has met the requirements of this section. The department shall license each applicant who:

(1) Has completed the application form and remitted the required fees.

(2) For a person who applies on or after July 1, 2016, has submitted to background screening pursuant to s. 456.0135. The board may require a background screening for an applicant whose license has expired or who is undergoing disciplinary action is at least 21 years of age.

(3) Has obtained a baccalaureate degree or higher from a college or university professional athletic training degree program accredited by the Commission on Accreditation of Athletic Training Education or its successor an accrediting agency recognized and approved by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation, approved by the board, or recognized by the Board of Certification, and has passed the national examination to be certified by the Board of Certification.

(4) If graduated before ~~after~~ 2004, has a current certification from ~~has completed an approved athletic training curriculum from a college or university accredited by a program recognized by~~ the Board of Certification.

(5) Has current certification in both cardiopulmonary cardiovascular-pulmonary resuscitation and the use of an automated external defibrillator set forth in the continuing education requirements ~~with an automated external defibrillator from the American Red Cross or the American Heart Association,~~

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or an equivalent certification as determined by the board pursuant to s. 468.711.

(6) Has completed any other requirements as determined by the department and approved by the board passed the examination and is certified by the Board of Certification.

Section 6. Paragraph (b) of subsection (1) of section 468.709, Florida Statutes, is amended to read:

468.709 Fees.—

(1) The board shall, by rule, establish fees for the following purposes:

~~(b) An examination fee, not to exceed \$200.~~

Section 7. Subsection (2) of section 468.711, Florida Statutes, is amended to read:

468.711 Renewal of license; continuing education.—

(2) The board may, by rule, prescribe continuing education requirements, not to exceed 24 hours biennially. The criteria for continuing education shall be approved by the board and must include a current certification certificate in both cardiopulmonary cardiovascular pulmonary resuscitation and the use of with an automated external defibrillator as set forth in the continuing education requirements from the American Red Cross or the American Heart Association or an equivalent training as determined by the board.

Section 8. Section 468.713, Florida Statutes, is amended to read:

468.713 Responsibilities of athletic trainers.—An athletic trainer shall practice under the direction of within a written protocol established between the athletic trainer and a supervising physician licensed under chapter 458, chapter 459,

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chapter 460, or otherwise authorized by Florida law to practice medicine. The physician shall communicate his or her direction through oral or written prescription or protocols as deemed appropriate by the physician for the provision of services and care by the athletic trainer. An athletic trainer shall provide service or care in the manner dictated by the physician or, at an athletic event, pursuant to direction from a physician licensed under chapter 458, chapter 459, chapter 460, or otherwise authorized by Florida law to practice medicine. A written protocol shall require that the athletic trainer notify the supervising physician of new injuries as soon as practicable.

Section 9. Section 468.715, Florida Statutes, is amended to read:

468.715 Sexual misconduct.—The athletic trainer-patient ~~trainer-athlete~~ relationship is founded on mutual trust. ~~Sexual misconduct in the practice of athletic training means violation of the athletic trainer-athlete relationship through which the athletic trainer uses such relationship to induce or attempt to induce the athlete to engage, or to engage or attempt to engage the athlete, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the athlete. Sexual misconduct in the practice of athletic training is prohibited under s. 456.063.~~

Section 10. Subsections (1) and (5) of section 468.717, Florida Statutes, are amended to read:

468.717 Violations and penalties.—Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

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(1) Practicing athletic training, representing oneself as an athletic trainer, or providing athletic trainer services to a patient without being licensed under this part ~~Practicing athletic training for compensation without holding an active license under this part.~~

(5) Using the title "athletic trainer" or "licensed athletic trainer," the abbreviation "AT" or "LAT," or a similar title or abbreviation that suggests licensure as an athletic trainer without being licensed under this part.

Section 11. Subsection (1) of section 468.719, Florida Statutes, is amended to read:

468.719 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

~~(a) Failing to include the athletic trainer's name and license number in any advertising, including, but not limited to, business cards and letterhead, related to the practice of athletic training. Advertising shall not include clothing or other novelty items.~~

(a) ~~(b)~~ Committing incompetency or misconduct in the practice of athletic training.

(b) ~~(c)~~ Committing fraud or deceit in the practice of athletic training.

(c) ~~(d)~~ Committing negligence, gross negligence, or repeated negligence in the practice of athletic training.

(d) ~~(e)~~ ~~While practicing athletic training,~~ Being unable to practice athletic training with reasonable skill and safety because of a mental or physical condition or to athletes by reason of illness, or the use of alcohol, controlled substances,

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20151526c1

~~or any other substance that impairs one's ability to practice or drugs or as a result of any mental or physical condition.~~

(e) ~~(f)~~ Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

Section 12. Section 468.723, Florida Statutes, is amended to read:

468.723 Exemptions.—This part does not prevent or restrict:

(1) A person licensed in this state under another chapter from engaging in the practice for which he or she is licensed and ~~The professional practice of a licensee of the department who is acting within the scope of such practice.~~

(2) An athletic training student acting under the direct supervision of a licensed athletic trainer. For purposes of this subsection, "direct supervision" means the physical presence of an athletic trainer so that the athletic trainer is immediately available to the athletic training student and able to intervene on behalf of the athletic training student in accordance with the standards set forth by the Commission on Accreditation of Athletic Training Education or its successor.

(3) A person from administering standard first aid treatment to another person ~~an athlete.~~

(4) A person authorized to practice athletic training in another state when such person is employed by or a volunteer for an out-of-state secondary or postsecondary educational institution, or a recreational, competitive, or professional organization that is temporarily present in this state ~~A person licensed under chapter 548, provided such person is acting within the scope of such license.~~

(5) A person providing personal training instruction for

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291 exercise, aerobics, or weightlifting, if the person does not
 292 represent himself or herself as an athletic trainer or as able
 293 to provide "athletic trainer" services and if any recognition or
 294 treatment of injuries is limited to the provision of first aid.

295 (6) Third-party payors from reimbursing employers of
 296 athletic trainers for covered services rendered by a licensed
 297 athletic trainer.

298 Section 13. Subsection (1) of section 456.0135, Florida
 299 Statutes, is amended to read:

300 456.0135 General background screening provisions.—

301 (1) An application for initial licensure received on or
 302 after January 1, 2013, under chapter 458, chapter 459, chapter
 303 460, chapter 461, chapter 464, s. 465.022, part XIII of chapter
 304 468, or chapter 480 shall include fingerprints pursuant to
 305 procedures established by the department through a vendor
 306 approved by the Department of Law Enforcement and fees imposed
 307 for the initial screening and retention of fingerprints.
 308 Fingerprints must be submitted electronically to the Department
 309 of Law Enforcement for state processing, and the Department of
 310 Law Enforcement shall forward the fingerprints to the Federal
 311 Bureau of Investigation for national processing. Each board, or
 312 the department if there is no board, shall screen the results to
 313 determine if an applicant meets licensure requirements. For any
 314 subsequent renewal of the applicant's license that requires a
 315 national criminal history check, the department shall request
 316 the Department of Law Enforcement to forward the retained
 317 fingerprints of the applicant to the Federal Bureau of
 318 Investigation unless the fingerprints are enrolled in the
 319 national retained print arrest notification program.

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

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320 Section 14. This act shall take effect January 1, 2016.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

SB 1526
Bill Number (if applicable)

Topic Athletic Trainers

Amendment Barcode (if applicable) _____

Name Jerry Stevens

Job Title Athletic Trainer

Address 4396 Allanwood Ct
Street

Phone (904) 208-0713

Jacksonville FL 32258
City State Zip

Email gasetc428@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Athletic Trainers' Assoc. of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

March 5, 2015

The Honorable Anitere Flores
Committee on Fiscal Policy Chair
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

RE: SB 1526 - Athletic Trainers

Dear Chair Flores:

SB 1526 - Athletic Trainers has been referred to your committee. I respectfully request that it be placed on the Committee on Fiscal Policy Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

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

John Legg
State Senator, District 17

cc: Jennifer Hrdlicka, Staff Director

JL/jb

REPLY TO:

- ☐ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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 732

INTRODUCER: Senator Abruzzo

SUBJECT: Sentencing

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger	Cannon	CJ	Favorable
2. Brown	Cibula	JU	Favorable
3. Jones	Hrdlicka	FP	Favorable

I. Summary:

SB 732 expands the class of victims who are entitled to restitution resulting from a defendant's criminal conduct. Under the bill, governmental entities and political subdivisions can be victims that are entitled to restitution to the extent that they are a direct victim of the defendant's offense or criminal episode and not merely providing public services in response to the offense or criminal episode.

The bill requires the court to order a person convicted of bribery or misuse of public office under ch. 838, F.S., or a crime committed by public officers and employees under ch. 839, F.S., to provide restitution to the victim and perform 250 hours of community service work. The court must order restitution if the court finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode.

The bill may have a negative indeterminate fiscal impact on the Department of Corrections and local governments, however any impact will likely be insignificant.

II. Present Situation:

Restitution

Section 775.089, F.S., requires a judge to order a defendant convicted of a criminal offense to provide monetary or non-monetary restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense or criminal episode. Restitution must be ordered unless the judge finds clear and compelling reasons not to do so.¹ The trial court must first conduct a

¹ Section 775.089(1)(a), F.S.

restitution hearing to determine by competent evidence the amount owed to the victim and the defendant's ability to pay.²

The restitution statute defines "victim," in part, as "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode."³ The statute does not define "person." A person, however, is defined in s. 1.01(3), F.S., to include "individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Read together, it appears that governmental entities and political subdivisions could be "victims" for purposes of restitution. However, several of Florida's district courts of appeal are split on the issue.

Some courts have held that governmental entities are barred from obtaining an order of restitution because they are not considered "victims" for purposes of restitution.⁴ These cases involved restitution requests by police departments, sheriff's agencies, and a probation office. As such, the entities likely requested restitution for conducting investigations or performing other public services within the normal scope of their duties, rather than for actual damages suffered.⁵

Other district courts of appeal have held that governmental entities are "victims" for losses other than investigative costs, such as travel expenses incurred for trial, when the losses are a direct result of the defendant's criminal episode.⁶ In *Childers v. State*, the First District Court held that because the definition of "person" included a list of individuals and entities, the Legislature did not intend the list to be limiting and exclusive, but rather illustrative.⁷

Offenses by Public Officials

Chapter 838, F.S., relating to bribery and misuse of public office, and ch. 839, F.S., relating to offenses by public officers and employees, create numerous criminal offenses involving public officials or employees in the performance of their official duties. Chapter 838, F.S., authorizes felony penalties for the following crimes:

- Bribery involving a public servant;⁸
- Unlawful compensation or reward for official behavior;⁹
- Corruption by threat against a public servant;¹⁰
- Official misconduct;¹¹
- Bribery in athletic contests;¹²

² *Exilorme v. State*, 857 So. 2d 339, 340 (Fla. 2d DCA 2003) and *Graham v. State*, 720 So. 2d 294, 294 (Fla. 5th DCA 1998).

³ The definition also includes the victim's estate if the victim is deceased, the victim's next of kin if the victim is deceased as a result of the offense, as well as the victim's trade association in certain instances. s. 775.089(1)(c), F.S.

⁴ See *Sims v. State*, 746 So. 2d 546, 547 (Fla. 2d DCA 1999); *Bain v. State*, 559 So. 2d 106, 106 (Fla. 4th DCA 1990); *T.H. Taylor v. State*, 672 So. 2d 605, 606 (Fla. 4th DCA 1996); and *Rodriguez v. State*, 691 So. 2d 568, 569 (Fla. 2d DCA 1997).

⁵ *Id.*

⁶ *Smith v. State*, 801 So. 2d 1043, 1046 (Fla. 5th DCA 2001); *Childers v. State*, 936 So. 2d 585, 597 (Fla. 1st DCA 2006).

⁷ *Childers*, at 597-599.

⁸ Section 838.015, F.S., 2nd degree felony.

⁹ Section 838.016, F.S., 2nd degree felony.

¹⁰ Section 838.021, F.S., 2nd and 3rd degree felonies.

¹¹ Section 838.022, F.S., 3rd degree felony.

¹² Section 838.12, F.S., 3rd degree felony.

- Soliciting, accepting, or agreeing to accept a commercial bribe;¹³
- Conferring, offering to confer, or agreeing to confer a commercial bribe;¹⁴
- Disclosure or use of confidential criminal justice information;¹⁵ and
- Bid tampering.¹⁶

Chapter 839, F.S., authorizes misdemeanor and felony penalties for the following:

- County officers speculating in county warrants or certificates;¹⁷
- Municipal officers speculating in municipal scrip;¹⁸
- Tax collectors buying or receiving a lesser than face value amount of warrant or order;¹⁹
- Extortion by officers of the state;²⁰
- Clerk of court, sheriff, or county judge failing to keep records of costs;²¹
- Public official or employee falsifying records;²²
- Officer withholding records from successor;²³
- Judicial officer withholding records;²⁴
- Fraud of clerk in drawing a jury;²⁵
- Misappropriation of moneys by commissioners to make sales;²⁶
- Officer assuming to perform duties of office prior to qualification;²⁷
- Sheriff or officer willfully or corruptly refusing or neglecting to execute process;²⁸
- Officer refusing to execute criminal process;²⁹
- Jailer or officer refusing to receive prisoner;³⁰
- Officer taking insufficient bail;³¹
- Willful failure of officer to perform any duty required under criminal procedure law;³² and
- Misuse of confidential information.³³

As previously discussed, under s. 775.089, F.S., courts generally must order defendants to make restitution for damages or losses caused by criminal conduct. However, some criminal statutes contain restitution and community service requirements that are specific to those particular

¹³ Section 838.15, F.S., 3rd degree felony.

¹⁴ Section 838.16, F.S., 3rd degree felony.

¹⁵ Section 838.21, F.S., 3rd degree felony offense.

¹⁶ Section 838.22, F.S., 2nd degree felony offense.

¹⁷ Section 839.04, F.S., 2nd degree misdemeanor offense.

¹⁸ Section 839.05, F.S., 2nd degree misdemeanor offense.

¹⁹ Section 839.06, F.S., 1st degree misdemeanor offense.

²⁰ Section 839.11, F.S., 1st degree misdemeanor offense.

²¹ Section 839.12, F.S., 2nd degree misdemeanor offense.

²² Section 839.13, F.S., 2nd degree felony, 3rd degree felony, and 1st degree misdemeanor offenses.

²³ Section 839.14, F.S., 2nd degree misdemeanor offense.

²⁴ Section 839.15, F.S., 1st degree misdemeanor offense.

²⁵ Section 839.16, F.S., 2nd degree misdemeanor offense.

²⁶ Section 839.17, F.S., 2nd degree felony offense.

²⁷ Section 839.18, F.S., 2nd degree misdemeanor offense.

²⁸ Section 839.19, F.S., 1st degree misdemeanor offense.

²⁹ Section 839.20, F.S., 1st degree misdemeanor offense.

³⁰ Section 839.21, F.S., 1st degree misdemeanor offense.

³¹ Section 839.23, F.S., 2nd degree misdemeanor offense.

³² Section 839.24, F.S., 2nd degree misdemeanor offense.

³³ Section 839.26, F.S., 1st degree misdemeanor offense.

offenses. Chapters 838 and 839, F.S., do not currently have specific restitution or community service requirements.

III. Effect of Proposed Changes:

Restitution

The bill amends the definition of “victim” in s. 775.089(1)(c), F.S., to include governmental entities and political subdivisions. The entities must have been a direct victim of the defendant’s offense or criminal episode and not merely providing public services in response to the offense or criminal episode. “Governmental entities” and “political subdivisions” are defined under the bill as they are currently defined in s. 11.45, F.S.³⁴ By expanding the definition of victim to include governmental entities and political subdivisions, these entities are entitled to compensation for damages or losses caused by a defendant’s criminal conduct.

Offenses by Public Officials

The bill creates ss. 838.23 and 839.27, F.S., to require a court to order a public official or employee convicted of any offense in chs. 838 or 839, F.S., to make restitution to the victim and perform 250 hours of community service work. Restitution must be ordered if the court finds that the victim suffered an actual financial loss caused directly or indirectly by the person’s offense or an actual financial loss related to the person’s criminal episode.

Restitution and community service required in the bill are in addition to any fine or sentence that may be imposed.

The bill is effective October 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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁴ “Governmental entity” means a state agency, county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function. “Political subdivision” means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill enables state and local governmental entities to recover restitution under the bill, resulting in a positive fiscal impact.

According to the Department of Corrections (DOC), the bill's new requirement that an offender perform 250 hours of community service work could be enforced by a DOC probation officer if the offender is placed on community supervision. In Fiscal Year 2013-14, the court sentenced 64 offenders to community supervision for violations of chs. 838 and 839, F.S.³⁵

This requirement could also be enforced by a DOC probation officer if the length of supervision provides enough time to complete community service for an offender released from prison to post release supervision. According to the DOC, any fiscal impact as a result of this requirement is also indeterminate at this time. In Fiscal Year 2013-14, there were 13 offenders sentenced to state prison for a violation of chs. 838 and 839, F.S.³⁶

Any negative fiscal impact to the DOC as a result of this bill is indeterminate, but likely insignificant.³⁷

The bill's restitution and community service requirements may have an insignificant negative fiscal impact on local governments that are required to supervise the community service hours and restitution payments. In FY 2013-14, there were 77 offenders sentenced statewide for a violation of chs. 838 and 839, F.S.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁵ Department of Corrections, *2015 Bill Analysis for HB115* (2015) (on file with the Senate Judiciary Committee). HB 115 is the identical companion to SB 732.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 775.089 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 838.23 and 839.27.

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

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

None.

B. Amendments:

None.

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

By Senator Abruzzo

25-00666-15

2015732__

A bill to be entitled

An act relating to sentencing; amending s. 775.089, F.S.; revising the definition of the term "victim" to include governmental entities and political subdivisions in certain instances; creating ss. 838.23 and 839.27, F.S.; requiring the sentencing judge to order restitution and a specified number of community service work hours for violations of chapter 838, F.S., relating to bribery and misuse of public office, or chapter 839, F.S., relating to offenses by public officers and employees; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(1)

(c) The term "victim" as used in this section and in any provision of law relating to restitution means:

1. Each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense. The term includes governmental entities and political subdivisions, as those terms are defined in s. 11.45, when such entities are a direct victim of the defendant's offense or criminal episode and not merely providing public

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services in response to the offense or criminal episode.

2. The term also includes ~~and~~ the victim's trade association if the offense is a violation of s. 540.11(3)(a)3. involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf. The restitution obligation in this ~~subparagraph~~ ~~paragraph~~ relating to violations of s. 540.11(3)(a)3. applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online. As used in this ~~subparagraph~~ ~~paragraph~~, the term "trade association" means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.

Section 2. Section 838.23, Florida Statutes, is created to read:

838.23 Restitution and community service.—A person who is convicted of any offense in this chapter shall be ordered by the sentencing judge to make restitution to the victim of the offense if, after conducting a hearing, the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode. A person who is convicted of any offense in this chapter shall also be ordered to perform 250 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence that may be imposed and may not be in lieu thereof.

Section 3. Section 839.27, Florida Statutes, is created to

Page 2 of 3

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59 read:

60 839.27 Restitution and community service.—A person who is
61 convicted of any offense in this chapter shall be ordered by the
62 sentencing judge to make restitution to the victim of the
63 offense if, after conducting a hearing, the judge finds that the
64 victim suffered an actual financial loss caused directly or
65 indirectly by the person's offense or an actual financial loss
66 related to the person's criminal episode. A person who is
67 convicted of any offense in this chapter shall also be ordered
68 to perform 250 hours of community service work. Restitution and
69 community service work shall be in addition to any fine or
70 sentence that may be imposed and may not be in lieu thereof.

71 Section 4. This act shall take effect October 1, 2015.

CourtSmart Tag Report

Room: KN 412

Caption: Senate Fiscal Policy Committee

Case:

Judge:

Type:

Started: 4/20/2015 1:02:04 PM

Ends: 4/20/2015 4:55:08 PM

Length: 03:53:05

1:02:06 PM	Call to order
1:03:25 PM	Tab 2 SB 876 Senator Dean
1:04:01 PM	Senator Dean LA Chase Daniels
1:04:32 PM	PCS Barcode 742686
1:04:53 PM	PCS Barcode 525050
1:05:54 PM	Brian Pitts, Justice-2-Jesus
1:07:40 PM	PCS adopted
1:08:12 PM	PCS adopted
1:08:17 PM	Roll call on SB 876
1:08:26 PM	Bill reported favorably
1:08:40 PM	Tab 3 SB 634 Senator Stargel
1:09:49 PM	Brian Pitts, Justice-2-Jesus
1:10:52 PM	Roll call on SB 634
1:11:00 PM	Bill reported favorably
1:11:23 PM	Tab 4 SB 932 Senator Stargel
1:11:44 PM	Amendment Barcode 862930
1:12:44 PM	Amendment adopted
1:13:43 PM	Amendment Barcode 726268
1:13:54 PM	Amendment adopted
1:14:03 PM	Amendment Barcode 439174
1:14:16 PM	Amendment adopted
1:14:32 PM	Roll call on SB 932
1:14:58 PM	Bill reported favorably
1:15:19 PM	Tab 5 SB 7072 Senator Brandes
1:15:48 PM	PCS Barcode 340976
1:16:31 PM	Senator Margolis
1:17:10 PM	Senator Brandes
1:18:03 PM	Senator Hays
1:18:29 PM	Senator Brandes
1:19:42 PM	Amendment Barcode 453372 withdrawn
1:19:54 PM	Amendment Barcode 969762
1:20:29 PM	Amendment to the Amendment Barcode 702840
1:20:55 PM	Amendment to the Amendment adopted
1:22:00 PM	Amendment adopted
1:22:26 PM	Amendment Barcode 293048
1:23:16 PM	Amendment adopted
1:24:08 PM	Amendment Barcode 946600
1:25:36 PM	Amendment adopted
1:26:03 PM	Amendment Barcode 656544
1:26:45 PM	Amendment adopted
1:27:52 PM	Greg Pound, Pinellas County Florida Government Corruption
1:29:12 PM	PCS adopted
1:29:16 PM	Roll call on SB 7072
1:29:26 PM	Bill reported favorably
1:29:37 PM	Tab 6 SB 1172 Senator Latvala
1:30:22 PM	Senator Latvala LA Tracy Caddell
1:30:57 PM	Amendment Barcode 656416
1:31:10 PM	Amendment adopted
1:31:43 PM	Roll call on SB 1172
1:31:52 PM	Bill reported favorably
1:32:14 PM	Tab 7 SB 1180 Senator Latvala
1:32:27 PM	Tracy Caddell

1:33:30 PM Roll call on SB 1180
1:34:30 PM Bill reported favorably
1:34:58 PM Tab 8 SB 888 Senator Detert
1:36:04 PM Amendment Barcode 573064
1:37:36 PM Amendment adopted
1:38:06 PM Amendment Barcode 906706
1:39:37 PM Senator Legg
1:40:32 PM Dylan Harvey
1:40:51 PM Brandy Harvey
1:43:03 PM Senator Margolis
1:44:39 PM Theresa Bulger, Florida Association of Audiologists
1:47:21 PM Senator Detert close
1:47:28 PM Amendment adopted
1:47:45 PM Brian Pitts, Justice-2-Jesus
1:49:16 PM Roll call on SB 888
1:49:25 PM Bill reported favorably
1:49:50 PM Tab 9 SB 1226 Senator Detert
1:50:18 PM Amendment Barcode 547070 withdrawn
1:50:55 PM Amendment Barcode 366026
1:56:39 PM Bill TP'd
1:56:53 PM Tab 10 SB 36 Senator Diaz de la Portilla
1:57:17 PM Senator Diaz de la Portilla LA Pat Gosney
2:00:18 PM Roll call on SB 36
2:00:29 PM Bill reported favorably
2:00:55 PM Tab 11 SB 42 Senator Braynon
2:01:17 PM Senator Braynon LA Katia SaintFleur
2:01:53 PM Roll call on SB 42
2:01:57 PM Bill reported favorably
2:02:20 PM Tab 12 SB 44 Senator Grimsley
2:02:42 PM Senator Grimsley LA Ann Bell
2:03:48 PM Roll call on SB 44
2:03:53 PM Bill reported favorably
2:04:17 PM Tab 13 SB 64 Senator Legg
2:05:16 PM Brian Pitts, Justice-2-Jesus
2:06:01 PM Roll call on SB 64
2:07:02 PM Bill reported favorably
2:07:21 PM Tab 14 SB 66 Senator Legg
2:08:53 PM Brian Pitts, Justice-2-Jesus
2:09:45 PM Roll call on SB 66
2:09:57 PM Bill reported favorably
2:10:22 PM Tab 15 SB 78 Senator Flores
2:10:51 PM Senator Flores LA Will McRea
2:13:02 PM Brian Pitts, Justice-2-Jesus
2:14:25 PM Roll call on SB 78
2:14:32 PM Bill reported favorably
2:14:49 PM Tab 17 SB 1262 Senator Legg
2:15:37 PM Bill TP'd
2:16:25 PM Tab 18 SB 1486 Senator Brandes
2:17:11 PM Brian Pitts, Justice-2-Jesus
2:18:23 PM Roll call on SB 1486
2:18:34 PM Bill reported favorably
2:18:52 PM Tab 19 SB 572 Senator Montford
2:19:19 PM Senator Montford LA Melissa Durm
2:20:52 PM Roll call on SB 572
2:21:01 PM Bill reported favorably
2:21:24 PM Tab 20 SB 530 Senator Ring
2:21:52 PM Senator Ring LA Joel Ramos
2:22:16 PM Amendment Barcode 207316
2:25:39 PM Senator Clemens
2:27:08 PM Senator Hukill
2:27:46 PM Bill TP'd
2:27:56 PM Senator Clemens motion

2:28:12 PM	Senator Abruzzo motion
2:28:30 PM	Senator Bean motion
2:28:47 PM	Senator Hukill motion
2:30:03 PM	Tab 24 SB 7078 Senator Sobel
2:33:16 PM	Amendment Barcode 247066
2:35:29 PM	Amendment adopted
2:35:34 PM	Amendment Barcode 234884
2:37:06 PM	Amendment adopted
2:37:28 PM	Greg Pound, Pinellas County Florida Government Corruption
2:38:51 PM	Roll call on SB 7078
2:38:57 PM	Bill reported favorably
2:39:16 PM	Tab 9 SB 1226 Senator Detert
2:39:49 PM	Amendment Barcode 366026
2:40:21 PM	Senator Bean
2:40:41 PM	Senator Detert
2:42:42 PM	Senator Hukill
2:44:12 PM	Senator Stargel
2:45:19 PM	Senator Hukill
2:46:09 PM	Senator Detert
2:47:16 PM	Senator Detert close
2:49:02 PM	Senator Abruzzo
2:49:29 PM	Senator Detert
2:50:04 PM	Amendment adopted
2:50:14 PM	Senator Stargel
2:50:53 PM	Roll call on SB 1226
2:50:56 PM	Bill reported favorably
2:51:53 PM	Tab 20 SB 530 Senator Ring
2:52:20 PM	Joel Ramos
2:53:02 PM	Senator Hukill
2:54:02 PM	Senator Legg
2:54:36 PM	Amendment Barcode 207316
2:54:54 PM	Senator Clemens
2:55:36 PM	Amendment adopted
2:55:41 PM	Roll call on SB 530
2:55:59 PM	Bill reported favorably
2:56:17 PM	Tab 21 SB 726 Senator Ring
2:56:37 PM	Joel Ramos
2:57:35 PM	Amendment Barcode 567610
2:59:17 PM	Amendment adopted
3:00:18 PM	Senator Hukill
3:00:59 PM	Roll call on SB 726
3:01:10 PM	Bill reported favorably
3:01:35 PM	Tab 22 SB 748 Senator Ring
3:01:49 PM	Joel Ramos
3:02:59 PM	Amendment Barcode 842882
3:03:59 PM	Amendment to the Amendment Barcode 330410
3:04:21 PM	Amendment to the Amendment adopted
3:04:59 PM	Amendment adopted
3:05:17 PM	Roll call on SB 748
3:05:40 PM	Bill reported favorably
3:06:03 PM	Tab 23 SB 1212 Senator Ring
3:06:12 PM	Joel Ramos
3:06:46 PM	Senator Bradley
3:09:15 PM	Roll call on SB 1212
3:09:27 PM	Bill reported favorably
3:09:55 PM	Tab 25 SB 1170 Senator Bradley
3:11:27 PM	PCS Barcode 308648
3:12:16 PM	Brian Pitts, Justice-2-Jesus
3:13:39 PM	PCS adopted
3:13:46 PM	Roll call on SB 1170
3:13:51 PM	Bill reported favorably
3:14:31 PM	Tab 17 SB 1262 Senator Legg

3:15:14 PM Amendment Barcode 666312
3:16:11 PM Amendment adopted
3:16:30 PM Amendment Barcode 534278
3:17:19 PM Senator Clemens
3:17:23 PM Senator Flores
3:18:20 PM Amendment adopted
3:19:23 PM Roll call on SB 1262
3:19:40 PM Bill reported favorably
3:20:00 PM Tab 26 SB 118 Senator Hays
3:20:18 PM PCS Barcode 454494
3:22:02 PM Amendment to the PCS Barcode 128966 withdrawn
3:22:18 PM Amendment to the PCS Barcode 402642 withdrawn
3:22:33 PM Amendment to the PCS Barcode 479116
3:22:49 PM Amendment to the PCS adopted
3:22:57 PM Amendment to the PCS Barcode 537222
3:23:10 PM Amendment to the PCS adopted
3:23:16 PM Amendment to the PCS Barcode 951052
3:23:31 PM Amendment to the PCS adopted
3:23:38 PM Brian Pitts, Justice-2-Jesus
3:24:22 PM Roll call on SB 118
3:24:27 PM Bill reported favorably
3:24:44 PM Tab 27 SB 7080 Senator Evers
3:25:10 PM Mike Erickson
3:26:10 PM Brian Pitts, Justice-2-Jesus
3:28:08 PM Roll call on SB 7080
3:28:12 PM Bill reported favorably
3:28:30 PM Tab 28 SB 824 Senator Evers
3:28:39 PM Senator Evers LA Dave Murzin
3:28:57 PM Amendment Barcode 523542
3:29:07 PM Amendment adopted
3:29:31 PM Amendment Barcode 497608
3:29:56 PM Amendment adopted
3:30:33 PM Roll call on SB 824
3:30:41 PM Bill reported favorably
3:31:00 PM Tab 29 SB 826 Senator Evers
3:31:11 PM Dave Murzin
3:31:17 PM Roll call on SB 826
3:31:43 PM Bill reported favorably
3:32:00 PM Tab 30 SB 780 Senator Smith
3:32:28 PM Brian Pitts, Justice-2-Jesus
3:33:55 PM Greg Pound, Pinellas County Florida Government Corruption
3:35:03 PM Senator Stargel
3:35:32 PM Senator Smith
3:36:41 PM Roll call on SB 780
3:36:58 PM Bill reported unfavorably
3:37:30 PM Senator Stargel motion to reconsider
3:37:39 PM Bill TP'd
3:37:45 PM Tab 16 SB 7076 Senator Altman
3:38:06 PM PCS Barcode 123208
3:38:53 PM PCS adopted
3:39:53 PM Roll call on SB 7076
3:39:59 PM Bill reported favorably
3:40:17 PM Tab 31 SB 464 Senator Joyner
3:40:37 PM Senator Joyner LA Randi Rosete
3:40:48 PM PCS Barcode 402202
3:41:01 PM PCS adopted
3:41:59 PM Roll call on SB 464
3:42:05 PM Bill reported favorably
3:42:27 PM Tab 32 SB 1052 Senator Brandes
3:42:41 PM PCS Barcode 592332
3:42:57 PM Amendment to the PCS Barcode 399254
3:43:21 PM Senator Flores

3:43:48 PM Amendment to the PCS adopted
3:43:59 PM Brian Pitts, Justice-2-Jesus
3:45:01 PM PCS adopted
3:45:05 PM Roll call on SB 1052
3:45:11 PM Bill reported favorably
3:45:32 PM Senator Bean
3:45:59 PM Tab 33 SB 1526 Senator Legg
3:46:13 PM Roll call on SB 1526
3:46:51 PM Bill reported favorably
3:47:06 PM Tab 34 SB 732 Senator Abruzzo
3:47:19 PM Roll call on SB 732
3:47:48 PM Bill reported favorably
3:48:13 PM Senator Abruzzo motion
3:48:20 PM Tab 1 SB 724 Senator Flores
3:48:52 PM Senator Hays motion
3:50:15 PM Amendment Barcode 888882
3:52:13 PM Substitute Amendment Barcode 698610
3:53:02 PM Senator Margolis
3:54:36 PM Senator Clemens
3:55:12 PM Senator Flores
3:56:17 PM Senator Stargel
3:56:51 PM Senator Margolis
3:58:44 PM Senator Clemens
3:59:43 PM Senator Stargel
4:00:52 PM Senator Flores close
4:01:28 PM Roll call on Substitute Amendment
4:01:57 PM Substitute Amendment adopted
4:03:50 PM Virginia Frank
4:04:24 PM Sherri Daume
4:05:53 PM Lisa Lizotte
4:08:00 PM Barbara DeVane, FL NOW
4:09:10 PM Greg Pound, Pinellas County Florida Government Corruption
4:16:21 PM Leandra Little, Planned Parenthood
4:17:54 PM Jake Sullivan, Planned Parenthood
4:18:57 PM Jake Solomon, Planned Parenthood
4:19:28 PM Verna Tomasson, Planned Parenthood
4:22:18 PM Brian Pitts, Justice-2-Jesus
4:24:21 PM Cindy Rowan
4:26:12 PM Benita DeFoe
4:26:33 PM Venita DeFoe
4:27:30 PM Susan McIntosh
4:29:17 PM Mary Wells, Life Care of Brandon
4:31:25 PM Erica Williams
4:32:04 PM Pauline Moore
4:33:30 PM Paul Janssan
4:34:22 PM Ana Sanz
4:37:10 PM Senator Margolis
4:39:49 PM Senator Hays
4:41:47 PM Senator Bean
4:42:24 PM Senator Stargel
4:44:30 PM Senator Clemens
4:47:42 PM Senator Bradley
4:48:21 PM Senator Flores close
4:49:56 PM Roll call on SB 724
4:50:55 PM Bill reported favorably
4:51:20 PM Senator Bean motion to reconsider
4:52:12 PM Tab 30 SB 780 Senator Smith
4:52:21 PM Amendment
4:53:05 PM Amendment adopted
4:53:13 PM Senator Smith
4:53:20 PM Senator Bean
4:53:55 PM Roll call on SB 780

4:54:09 PM Bill reported favorably
4:54:37 PM Senator Flores motion
4:54:59 PM Adjourned



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 20, 2015

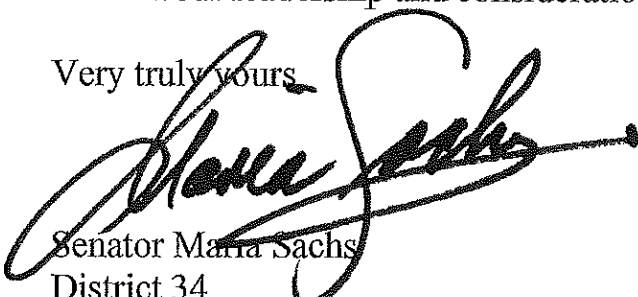
The Honorable Anitere Flores
413 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Flores,

I will not be able to attend the Committee on Fiscal Policy meeting taking place at 1:00 p.m. on April 20, 2015. Please excuse me from attending the meeting.

Your leadership and consideration are appreciated.

Very truly yours,


Senator Maria Sachs
District 34